

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14313 of 2016

Arising Out of PS.Case No. -128 Year- 2011 Thana -BARHARA District- PURNIA

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1. Prafulla Ranjan Tiwary S/o late Lakshmi Narayan tiwary Resident of Village- Basudeopur, PS Barhara, Kothi, District Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Birendeo tiwary S/o late kamdeo tiwary R/o Village- Basudeo PS Barhara, Kothi, District Purnea.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanajy Kumar, Advocate
Mr. Saket Tiwary, Advocate
For the Opposite Party/s : Mr. Md. Fahimuddin, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

7 29-11-2016 This application has been filed seeking cancellation of bail of the opposite party No. 2 who is an accused in Barhara P.S. Case No. 128 of 2011 registered for the offences punishable under Sections 420 and 468 read with Section 34 of the Indian Penal Code.

This Court had granted to the petitioner anticipatory bail vide an order dated 17.01.2014 passed in Criminal Miscellaneous No. 39905 of 2013, subject to certain conditions, including the condition that while furnishing bail bond, he shall file an affidavit stating that he was not an accused in any other case and if he failed, he would not be released on bail.



Mr. Sanjay Kumar, learned counsel appearing on behalf of the petitioner has submitted that the opposite party No. 2 was an accused in Complaint Case No. 3698 of 2011 registered for the offence punishable under Sections 420 and 468/34 of the Indian Penal Code also, in which, he was granted anticipatory bail by this Court by an order dated 09.07.2013 passed in Criminal Miscellaneous No. 14071 of 2013. He has submitted, referring to Annexure-2 to this application, that the opposite party No. 2 was made accused in yet another case, namely, Barhara P.S. Case No. 140 of 2013, disclosing offences punishable under Sections 420, 467, 468, 120B and 506 read with Section 34 of the Indian Penal Code. Suppressing these facts, he filed an affidavit stating that he did not have any case pending against him and got himself released, in terms of the order dated 17.01.2014 passed in Criminal Miscellaneous No. 39905 of 2013.

I have perused the application seeking cancellation of bail and the First Information Report and the complaint petition, in which, the opposite party No. 2 has been made accused. The allegation against the petitioner is that he executed sale deed with respect to land, which fell in the share of the petitioner. This is not in dispute that the petitioner and opposite party No. 2 have common genealogy and are fighting against each other over



property disputes.

It appears to me that it is because of dispute between the petitioner and opposite party No. 2 which is primarily civil in nature, the cases have been instituted. This Court does not intend to indicate that the allegations as made in the First Information Report or complaint petition do not at all constitute a criminal offence. It is the case of the petitioner that the land with respect to which the opposite party No. 2 has executed sale deed, is owned by him (the petitioner). If that be so, the vendee could have a grievance against execution of the sale deed.

The plea which is being taken for the purpose of cancellation of bail is hyper technical and in my opinion, it cannot be a valid ground for cancellation of bail, in the absence of any allegation that after having been released on bail, the opposite party No. 2 has ever misused the privilege of bail.

This application is accordingly rejected.

(Chakradhari Sharan Singh, J)

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