

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24407 of 2016

Arising Out of PS.Case No. -270 Year- 2015 Thana -BRAHMPURA District- MUZAFFARPUR

Munni Khatoon, wife of Md. Shamshad Quraishi, Resident of Mohalla-Mehandi Hassan Chowk near Arabic College, P.S.- Brahampura, District-Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
2. Md. Saddam, son of Md. Shamin Quraishi, Resident of Mohalla-Mehandi Hassan Chowk near Arabic College, P.S.- Brahampura, District-Muzaffarpur

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Hari Kishore Thakur, Advocate

For the Opposite Party/s : Mr. Manoj Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

4 14-09-2016

The instant application under Section 439(2) of the Code of Criminal Procedure has been filed by the petitioner for cancellation of anticipatory bail granted to the opposite party No. 2 vide order dated 12.04.2016 passed in Cr. Misc. No. 2894 of 2016 in connection with Brahampura P.S. Case No. 270 of 2015 registered under Section 376 of the Indian Penal Code.

It is contended by the learned counsel for the petitioner that while invoking the power of this Court under

Section 438 of the Cr.P.C., the opposite party No. 2 had suppressed the vital fact that on the application of the investigating officer, the jurisdictional Magistrate had directed for addition of Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') on 3rd February, 2016 to the F.I.R.

It is submitted that due to said suppression of fact the court was misled and the application preferred under Section 438 of the Code of Criminal Procedure of the opposite party No. 2 was allowed by this Court, vide order dated 12.04.2016, passed in Cr. Misc. No. 2894 of 2016.

On the other hand, learned counsel for the opposite party No. 2 has submitted that there was absolutely no suppression of fact on the part of the petitioner. The FIR was registered on 09.11.2015 under Section 376 of the Indian Penal Code only. The aforesaid Cr. Misc. No. 2894 of 2016 was filed before this Court on 18th January, 2016 and memo of application of the application under Section 438 of the Code of Criminal Procedure was affidavited on 11th January, 2016 and, till that date, the provision of POCSO Act were not added or ordered to be added by the court to the FIR in question. He has submitted that the subsequent prayer of the investigating officer and the

order passed over such application was never brought to the notice of the opposite party No. 2. Thus, the allegation that the opposite party No. 2 had suppressed vital fact that the FIR in question was also registered under Section 4, 8 and 12 of the POCSO Act is without any merit.

I have heard learned counsel for the parties and perused the record.

I find substance in the argument advanced by the learned counsel for the opposite party No. 2. The prayer for grant of pre-arrest bail of the petitioner was allowed on merits after taking into consideration materials collected during investigation, specially statements of witnesses recorded under Section 161(3) of the Cr.P.C. in paragraphs no. 85, 86 and 87 of the case diary. The witnesses, whose statements were recorded in those paragraphs, had stated before the investigating officer that the daughter of the informant was in the habit of lodging complaint/FIR under Section 376 of the IPC and, later on, she used to compromise those cases.

It is well-settled that the yardstick for refusal of bail cannot be applied for cancellation of bail. There is nothing on record on the basis of which it can be said that after being released on pre-arrest bail, the opposite party No. 2 has either

tampered with the evidence or abused the privilege of bail.

In that view of the matter, I do not find any merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

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