

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12210 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Sudhanshu Kumar Singh, son of Baidyanath Singh, resident of
Vaishali Bhawan, Saguna, Post Office – Danapur Cantt., Police
Station Danapur, District Patna

.... Petitioner

Versus

1. The State of Bihar
2. Smt. Jagtarni Devi, wife of Shri Jeetender Kumar Singh,
resident of Ram Nagar Road, Chiraiyantand, Post Office –
G.P.O.-800001, Police Station Jakkanpur, Patna (Secretary,
Samyukta Swablambi Sahkari Sheet Bhandar Samiti Limited)
3. Sri Jitender Kumar Singh, sons of Sita Ram Singh, resident of
Ram Nagar Road, Chiraiyantand, Post Office – G.P.O.-800001,
Police Station Jakkanpur, Patna
4. Smt. Punam Singh, wife of Shri M. M. Singh, resident of Mani
Bhawan, A/18, Mohalla – Gola Road (Bailey Road), Ram Jaipal
Nagar, Police Station Rupaspur, (Director, M/s Bhojpur
Freezing Private Limited)
5. Shri M. M. Singh @ Madan Mohan Singh, son of Late Late Hari
Shankar Singh, resident of Mani Bhawan, A/18, Mohalla – Gola
Road (Bailey Road), Ram Jaipal Nagar, Police Station Rupaspur,
District Patna - 800001

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Daya Shankar Prasad

For the Opposite Party/s : Mr. Shailendra Kumar-I

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

ORAL

Date: 17-04-2017

This Court has experienced a growing tendency
among the litigants of lodging criminal cases to settle their
scores, arising out of disputes, which are fundamentally civil in
nature and chase the accused at all levels including all



possible levels, which includes invocation of Section 439 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), for cancellation of bail/anticipatory bail, if bail/anticipatory bail is allowed by a Court. This, of late, has taken a shape of menace and such misadventure, in my view, needs to be checked and firmly dealt with in a manner, which may have deterrent effect also.

2. The present case is an example where I am of the view that filing of the present application for cancellation of anticipatory bail granted to the Opposite Party Nos. 2 to 5 is gross abuse of the process of Court.

3. The Opposite Party No. 2 is wife of Opposite Party No. 3 and Opposite Party No. 4 is wife of Opposite Party No. 5.

4. It is the case of the petitioner that Opposite Party Nos. 2 and 4 had entered into an agreement for sale of their 01 (one) acre of land and Cold Storage along with entire structures, machineries and other equipments, fixtures and fittings, for a consideration of Rs. 2,45,00,000/- (two crores forty five lakhs), pursuant to the resolution taken in the meeting of Board of Directors of Bhojpur Freezing Private Limited, held on 14.03.2011, in favour of Vaishali Daniel Foods Private Limited. The petitioner claims to be the Director of said Vaishali Daniel Foods Private Limited, Vaishali Bhawan, Patna.



5. It is his case in the complaint petition filed in the Court of learned Chief Judicial Magistrate, Patna, giving rise to Complaint Case No. 187 (c) of 2012, that in pursuant to the agreement of sale, he had paid a sum of Rs. 36,00,000/- (thirty six lakhs) through bank drafts in favour of Bhojpur Freezing Private Limited. The Opposite Party Nos. 2 and 4 are thereafter said to have entered into a written agreement in Hindi script on 17.03.2011 to sell the said piece of land and the non-functional Cold Storage. The petitioner is said to have subsequently paid further amounts, in cash, to the Opposite Parties, as described in the complaint petition. It is also alleged that the opposite parties handed over the possession of the said Cold Storage building to the petitioner, who, immediately, started making replacement of damaged machinery and installation of new machinery, so that Cold Storage could be made operational. According to the petitioner, he invested more than Rs. 37,00,000/- (thirty seven lakhs). According to him, the petitioner was willing to get the sale deed executed after payment of entire balance consideration amount and the petitioner had handed over 3 (three) blank cheques to the opposite parties, as security. The opposite parties evaded to execute sale deed and to receive payment of entire rest consideration amount, which compelled the petitioner to issue legal notice to Opposite Party No. 2.



After receiving legal notice, the Opposite Party No. 2 did not reply; rather, used criminal force and ousted the Munshi and labourers of the petitioner from the Cold Storage building on 20.02.2012. Since the Police did not register the First Information Report, despite information having been given, the petitioner filed the said complaint petition. It is also alleged by him that by using criminal force, the Opposite Party Nos. 2 to 5 took signature of the petitioner and his brother, Diwanshu, and his father, Baidya Nath Singh, on blank paper as well as on non-judicial stamp paper.

6. This is the case of the prosecution, as narrated in the complaint petition.

7. The Opposite Party Nos. 2 to 5, since they were made accused of the offence punishable under Sections 406, 420, 341, 323, 386, 120B of the Indian Penal Code, filed anticipatory bail application, which was allowed by an order, dated 10.04.2012, passed by learned Sessions Judge, Patna.

8. The petitioner has a grievance that the Opposite Party Nos. 2 to 5 obtained anticipatory bail order in their favour from the learned Court below on the basis of forged, manufactured and fabricated documents. It is his case that the Opposite Party Nos. 2 to 5 created a fabricated agreement and appended that with the anticipatory bail application with intention to mislead the Court, as also to



tamper with the evidence for their wrongful gains.

9. The nature of dispute, which is there between the petitioner and Opposite Party Nos. 2 to 5, is evident from the contents of the complaint petition. The grant of anticipatory bail by the learned Court below to Opposite Party Nos. 2 to 5, in my view, cannot be termed as incorrect exercise of discretion by the learned Court below.

10. Despite repeated observation made by this Court, expressing disinclination to cancel anticipatory bail granted to the Opposite Party Nos. 2 to 5 by the learned Court below, learned Counsel for the petitioner insisted that the Court must hold, in present application for cancellation of anticipatory bail, that the copy of the agreement relied on by the Opposite Party Nos. 2 to 5 for grant of anticipatory bail was a forged document. He made extensive argument, despite Court's observations, mainly on the point that an order obtained by fraud is a nullity and, therefore, anticipatory bail granted to the Opposite Party Nos. 2 to 5, on such basis, should be cancelled.

11. In response to a query, as to whether the petitioner has filed any complaint case/application before appropriate Court making out a case against the private opposite parties for giving false evident in the judicial proceeding and thereby obtaining an order from a Court,



learned Counsel for the petitioner informed that the petitioner had filed a complaint case making out a case of commission of offence punishable under Chapter-XI of the Indian Penal Code, but the learned Court below has rejected the said complaint case. He has also informed that the petitioner had filed criminal revision application against the order rejecting his complaint case, which, too, has been dismissed. There is no reference to these facts, made in the present application seeking cancellation of anticipatory bail.

12. The facts, as noted above, eloquently speak the nature of dispute between the petitioner and Opposite Party Nos. 2 to 5. The petitioner did approach learned Additional Sessions Judge X, Patna, for cancellation of anticipatory bail, which has been rejected.

13. This is his yet another attempt before this Court to get anticipatory bail granted to Opposite Party Nos. 2 to 5 cancelled. In the present case, seeking cancellation of anticipatory bail, the correctness of agreements between the parties cannot be gone into, as that is at the core of the dispute raised by the petitioner in his complaint case.

14. The filing of the present application, seeking cancellation of anticipatory bail, in the facts and circumstances as noticed above, in my view, is abuse of process of Court. It is not, at all, bona fide.



15. Last, but not the least, when I indicated that I was going to dismiss the application, Mr. Daya Shankar Prasad, learned Counsel for the petitioner, said that he will be going to Supreme Court against the dismissal order. Such statement, by an Advocate to the Court, verges contempt of court. He is warned to be careful in future; else, it may entail serious consequence.

16. In the facts and circumstances of the case, as discussed above, this application is dismissed with a cost of Rs. 20,000/- (twenty thousand) to be deposited by the petitioner in the account of Bihar State Legal Services Authority, Patna, within a period of four weeks from today.

17. List this case, under the heading "To Be Mentioned" on 15th May, 2017, for compliance of the order of the payment of cost.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01.05.2017
Transmission Date	01.05.2017

