

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26257 of 2017

Arising Out of PS.Case No. -198 Year- 2016 Thana -BIHARSHARIF District- NALANDA
(BIHARSHARIFF)

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Ashok Kumar Son of Late Ram Sharan Sao, resident of Village- Khandakpar, P.S.-
Bihar, District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar.
2. Sangeeta Prasad, W/o Ram Nandan Prasad, Resident of Village- Khandakpar
(Hajipur), P.S.- Bihar, District- Nalanda.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Lakshmi Kant Sharma, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 04-08-2017

Heard Mr. Ramakant Sharma, learned Senior Advocate for
the petitioner and learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing the part of the order
dated 27.04.2017 passed by the learned 3rd Additional Session Judge,
Biharsharif, Nalanda in Bail Petition No. 933 of 2016 whereby the
learned Additional Session Judge has modified the order passed by the
learned Chief Judicial Magistrate, Nalanda on 28.01.2017 and directed
to deposit Rs.8,00,500/- within a month and furnish bond of
Rs.10,000/- with two sureties of the like amount each.



3. Mr. Ramakant Sharma, learned Senior Advocate for the petitioner has submitted that one Sangeeta Prasad submitted a written report against the petitioner on 16.05.2016 alleging therein that the petitioner had taken Rs.16,01,000/- from her for transfer of a piece of plot, but after receiving the said amount, he refused to execute the sale deed and, thus, he committed cheating and breach of trust, pursuant to which Bihar P. S. Case No. 198 of 2016 dated 16.05.2016 was registered against the petitioner *inter alia* under Sections 406 and 420 of the Indian Penal Code.

4. He has submitted that in course of investigation, the police arrested the petitioner and remanded him to judicial custody. His application for bail was rejected by the court of Chief Judicial Magistrate whereafter he moved before the court of session for grant of bail. Learned Session Judge, Bihar Sharif, Nalanda transferred the bail application to the court of learned 3rd Additional Session Judge, Bihar Sharif, Nalanda. On 28.09.2016, the prayer for bail of the petitioner was allowed provisionally on an undertaking given by him that he will refund the total amount of Rs.16,01,000/- in four equal monthly installments within four months.

5. Mr. Sharma, learned Senior Advocate has further submitted that after the order dated 28.09.2016 was passed in B. P. No.933 of 2016, the petitioner deposited Rs.4,00,250/- vide demand draft in the court of Chief Judicial Magistrate on 06.10.2016 and



thereafter, he was released on provisional bail. However, due to demonetization, the petitioner could not deposit the remaining amount as undertaken by him at the time of grant of provisional bail.

6. He has submitted that since the petitioner failed to deposit the remaining amount, as directed by the learned Additional Session Judge, the learned Chief Judicial Magistrate, vide order dated 28.01.2017, refused to confirm the provisional bail granted to the petitioner by the learned 3rd Additional Session Judge and cancelled his bail bond. Thereafter, the petitioner filed an application in the court of learned 3rd Additional Session Judge, Biharsharif, Nalanda and made a prayer for modification of the order dated 28.09.2016 to the extent that he be given further time so that he may deposit the remaining amount in four equal monthly installments.

7. He has submitted that the prayer of the petitioner was contested by the learned counsel for the State and learned counsel for the informant. Having heard learned counsel for the parties, the learned 3rd Additional Session Judge directed the petitioner to deposit the remaining amount through bank draft in the court of Chief Judicial Magistrate within one month. He had also directed that in case the petitioner deposits the remaining amount within a period of one month, the order dated 28.01.2017, passed by the learned Chief Judicial Magistrate whereby the provisional bail of the petitioner was not confirmed and bail bond was cancelled, shall stand recalled.



8. Mr. Sharma, learned Senior Advocate has submitted that the order passed by the learned 3rd Additional Session Judge is too harsh and the same needs to be modified and the petitioner may be allowed to deposit the amount in four equal monthly installments. He has also submitted that the petitioner may be allowed to continue on the provisional bail granted earlier by the court below.

9. On the other hand, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State has submitted that there is no illegality in the order passed by the learned court below. He has submitted that the petitioner was granted provisional bail on certain conditions. He has submitted that the petitioner had himself undertaken to deposit the entire amount in four equal installments within four months. Admittedly, the petitioner failed to comply with the undertaking given to the court. Hence, the court below was left with no option, but to cancel his bail bonds. He has submitted that as the order passed by the learned Chief Judicial Magistrate is neither bad nor erroneous, the challenge to the same before the learned 3rd Additional Session Judge lacked merit. However, in the interest of justice, the learned 3rd Additional Session Judge gave one more opportunity to the petitioner and directed him to pay the remaining amount within one month and, on such payment, it was directed that the order passed by the learned Chief Judicial Magistrate, whereby the bail bond of the petitioner was cancelled, shall stand recalled. He has submitted that in



stead of availing of the opportunity granted by the court below, the petitioner has approached this Court under Section 482 of the Code of Criminal Procedure seeking quashing of that part of the order whereby the some relief had been granted to the petitioner.

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

11. I find substance in the submission of Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.

12. It would be manifest from the record that the provisional bail granted to the petitioner for four months was to be confirmed on the fulfillment of certain conditions imposed by the court. Those conditions imposed were on the basis of undertaking given by the petitioner himself. Admittedly, the petitioner did not comply with those conditions. Hence, the learned Chief Judicial Magistrate was left with no option, but to cancel the bail bond of the petitioner. When the petitioner filed petition in the court of learned 3rd Additional Session Judge, he was granted one month further time to comply with the undertaking given earlier. The time granted by the court below expired on 27.05.2017.

13. In the opinion of this Court, the petitioner ought to have availed of the relaxation granted by the court below, vide its order dated 27.04.2017. As the petitioner failed to avail of the opportunity, no relief can be granted to the petitioner in the present case filed under



Section 482 of the Code of Criminal Procedure, as there is no illegality in the order passed either by the court of Chief Judicial Magistrate or by the court of Additional Session Judge.

14. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.08.2017
Transmission Date	10.08.2017

