IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38055 of 2016

Arising Out of PS.Case No. -3465 Year- 2010 Thana -KATIHAR COMPLAINT CASE District- KATIHAR

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Vikram Thakur, S/o Sri Nand Kishore Thakur, Resident of Mohalla - Mirchaibari, P.S. and District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sakaldip Yadav @ Sakaldip Kumar Yadav, S/o Sri Sadanand Yadav.
3. Sadanand Yadav, S/o Late Adhir Lal Yadav.

O.P. Nos. 2 and 3 are the residents of village Bhatwara, P.S. - Korha, District - Katihar.

4. The Brach Manager, United Bank of India, Katihar Branch, Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Narayan Singh, Sr. Adv.
Mr. Tara Nath Jha, Adv.

For the State : Mr. Damodar Pd. Tiwary, APP

For the Bank : Mr. Binod Bihar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. ORDER

8 20-06-2017 An apparently incorrect submission made at the Bar by learned Senior Counsel, appearing on behalf of the petitioner, deliberately has resulted into unnecessary

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confusion, leading to filing of the present application seeking cancellation of anticipatory bail granted to opposite party Nos. 2 and 3.

2. The opposite party Nos. 2 and 3 are accused of offence punishable under Sections 406 and 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act, who had applied for grant of anticipatory bail before this Court, giving rise to Cr. Misc. No. 56863 of 2015.

3. Mr. Narayan Singh, learned Senior Counsel, appearing on behalf of the petitioners in Cr. Misc. No. 56863 of 2015, took specific plea before this Court that the cheque, issued under the signature of opposite party No. 3, had not been dishonoured because of insufficiency of fund and, therefore, no offence, under Section 138 of the Negotiable Instruments Act, was made out. Considering the said submission to be correct, this Court allowed the petitioners (opposite party Nos. 2 and 3 herein), the privilege of anticipatory bail.

4. The present application seeking cancellation of bail, under Section 439(2) of the Code of Criminal Procedure, 1973, has been filed asserting that the cheque, issued by opposite party No. 3, was dishonoured because of insufficiency of fund and wrong plea was taken on behalf of

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the petitioners, leading to grant of anticipatory bail in their favour.

5. Considering the nature of dispute, this Court had directed the Branch Manager of the concerned United Bank of India, Dr. Rajendra Prasad Path, Katihar, to state whether the said cheque was dishonoured because of insufficiency of fund or otherwise and whether on the date of presentation of cheque, in question, there was adequate amount available in the account of opposite parties.

6. An affidavit has, accordingly, been filed by the Branch Manager, United Bank of India, paragraph 2 of which reads thus:-

> *"**2.** That the deponent respectfully states and submits that on the date of presentation of cheque in question was no adequate amount available in the said account, hence the Bank after verifying the account dishonoured the cheque due to insufficient balance and remitted back to the collecting Bank with the memo dated 11.10.2010."*

It is evident, thus, that the Court was misled while granting the opposite parties the privilege of

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anticipatory bail.

7. The case for cancellation of bail is, accordingly, made out.

8. The bail granted to the opposite party Nos. 2 and 3, by virtue of order of this Court, dated 09.03.2016, passed in Cr. Misc. No. 56863 of 2015, in connection with Complaint Case No. 3465 of 2010, is, hereby, cancelled.

9. The opposite party Nos. 2 and 3, namely, Sakaldip Yadav @ Sakaldip Kumar Yadav and Sadanand Yadav, are directed to appear before the court below within four weeks and seek regular bail, if so advised.

10. This application, seeking cancellation of bail, is, accordingly, allowed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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