

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41368 of 2016

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1. Ashwani Kumar Singh Son of Late Hari Dayal Singh Resident of 2nd Floor, Krishna Building, S.P. Verma Road, P.S. - Gandhi Maidan, Distt. - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Verma, Sr. Advocate
Mr. Deepak Kumar, Advocate

For the Opposite Party/s : Mr. Pawan Kumar Chaurasiya

For the Informant : Mr. Anish Akhtar, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 26-07-2017

Heard learned counsels for the parties.

The present application has been filed for modification of the order dated 13.1.2016 passed in Cr. Misc. No. 1572 of 2016 to the extent of extending the period of provisional bail of the petitioner.

I.A. No. 1459 of 2017 has been filed for quashing the order dated 22.5.2017 passed by the learned J.M. Ist Class, Patna in Phulwarisharif P.S. Case No. 708 of 2014, whereby the bail bonds of the petitioner have been cancelled and non-bailable warrant of arrest has been directed to be issued.

The factual matrix would unveil that the petitioner was granted provisional anticipatory bail for six months in a case



registered for the offence punishable under section 406 of the IPC. The prosecution case is that the petitioner sold 2800 sq. ft. land to the informant vide registered sale deed dated 15.3.1997. Subsequently, the informant came in possession of the land but subsequently the petitioner who runs a school adjacent to the plot of the informant, started obstructing road of the informant and giving threat to him.

Considering the nature of accusation, the petitioner was granted provisional anticipatory bail for six months. The bail bonds of the petitioner were to be accepted by the learned Court below on filing an affidavit that the petitioner will not make any disturbance in peaceful possession of the land of the informant. Such affidavit was to be transmitted to the concerned police station. The provisional anticipatory bail was to be confirmed by the learned Court below, if, it finds that the petitioner is not creating disturbance in peaceful possession of the informant.

It appears that a report was called for from Phulwarisharif Police Station and another report was submitted by the Executive Magistrate, Sadar, in pursuance to some enquiry being conducted at the behest of the Central Board of Secondary Education but both the enquiry reports suggest that the petitioner is creating disturbance to the informant in possession of his land in



question and consequently, the bail bonds of the petitioner have been cancelled vide order dated 22.5.2017.

It is submitted by learned Senior Counsel for the petitioner that after the grant of provisional anticipatory bail to the petitioner, there is no incident as such has taken place nor any case has been lodged by the informant and for the sale deed executed in 1997, the informant is chasing the petitioner since last about more than one and half decades. It is further submitted that the informant has alternative remedy in law if the petitioner creates any disturbance and obstructs his right of easement.

Learned Counsel for the informant submits that virtually the petitioner has obstructed his right of way and the report of the concerned police station as well as the report of the executive Magistrate reflect the conduct of the petitioner. Moreover, the bail bonds of the petitioner have been cancelled after more than six months of the grant of provisional bail.

Considering the rival submissions of the parties, it appears that the period of provisional bail of the petitioner got lapsed on 12.7.2017 whereas the present modification application was registered on 20.9.2016 and the bail bond was cancelled on 22.5.2017. In the circumstances, this Court is not inclined to revise the earlier order. However, considering the nature of accusation as



the case was registered only under section 406 of the IPC, it is a case for bail if the petitioner surrenders within a period of six weeks from today before the learned Court below. It will be open for the learned Court below to put reasonable conditions while accepting the bail bonds of the petitioner and if the petitioner violates the same, the learned Court below will be at liberty to pass appropriate order in accordance with the provisions of Code of Criminal Procedure.

The present order, in no way, will preclude the informant to take resort to the remedies available under law for safeguarding his right of easement.

Accordingly, the modification application stands disposed of.

(Dinesh Kumar Singh, J)

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