

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35057 of 2013

Arising Out of PS.Case No. -1750 Year- 2003 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Dr. Shailesh Kumar Sinha S/O Late B.P. Sinha Resident Of Mohalla-
Quarter No.-40, M.I.G.H., Kankarbagh Colony, P.S.- Kankarbagh, District-
Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Satish Kumar S/O Harendra Prasad Resident Of Mohalla- Chitragupta
Kitab Ghar, Postal Park, Road No.-1, P.S.- Kankarbagh, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md.Imteyaz Ahmad

For the Opposite Party/s : Mr. Umeshanand Pandit(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

10 17-01-2017 Heard the parties.

By way of the present application, filed under Section 482 of the Cr.P.C., the petitioner seeks quashing of the order, dated 19.07.2013, passed by the learned Sessions Judge, Patna in Criminal Misc. No. 21 of 2011 by which he cancelled his previous order dated 10.02.2011, passed in A.B.P. no. 5861 of 2010, by which he has granted anticipatory bail to the petitioner and further directed the learned Court below to issue warrant of arrest against the petitioner.

Prosecution story in brief is that opposite party no. 2 filed a complaint in the Court of learned Chief Judicial Magistrate,



Patna, on the basis of which Complaint Case No. 1750(C) of 2003, was instituted under Section 326, 307, 420, 468 and 471 of the Indian Penal Code against the petitioner. Thereafter the complainant was examined on solemn affirmation and the statements of witnesses were recorded in enquiry under Section 202 of the Cr.P.C. After enquiry the learned Chief Judicial Magistrate, vide order, dated 05.01.2004 hold that *prima facie* case is made out against the petitioner and others for offences punishable under Sections 326, 307, 420, 468 and 471 of the Indian Penal Code.

Petitioner after coming to know about the issuance of process, filed an application for anticipatory bail, which was numbered as A.B.P. No. 5861 of 2010 and learned District and Sessions Judge, Patna vide order, dated 10.02.2011 allowed the anticipatory bail of the petitioner.

It further appears that later on a petition was filed on behalf of opposite party no. 2 that the petitioner has suppressed the fact that the petitioner had earlier moved for anticipatory bail i.e. A.B.P. No. 1698 of 2004 and the said application was withdrawn vide order passed in A.B.P. No. 1698 of 2004 and prayed for cancellation of anticipatory bail of the petitioner, and the above Miscellaneous was numbered as Criminal Miscellaneous No. 21 of



2011.

It further appears that learned Sessions Judge after hearing the parties vide order, dated 19.07.2013, passed in Criminal Miscellaneous No. 21 of 2011 cancelled the previous order allowing bail to the petitioner and directed the Court below for issuance of warrant against the petitioner, which is under challenge in the present application.

It further appears that in the present application, this Court vide order, dated 29.11.2013, stayed the further proceeding in Criminal Miscellaneous No. 21 of 2011 and since then case is pending for disposal.

It has been submitted on behalf of the petitioner that as a matter of fact, there is no suppression of fact on the part of the petitioner rather the petitioner has earlier filed A.B.P. No. 1698 of 2004 on 06.08.2004 but on some advice, the petitioner also preferred quashing application being Criminal Miscellaneous No. 23739 of 2004 and the aforesaid quashing application was admitted for hearing vide order, dated 03.09.2004 and further proceeding of Complaint Case No. 1750(C) of 2003, pending in the Court of learned Chief Judicial Magistrate, was stayed and once the order had been passed, the petitioner has handed over the copy of the same to the learned counsel appearing in A.B.P. No.



1698 of 2004. It has also been submitted that as there was no apprehension of his arrest at that time, learned counsel for the petitioner prayed for withdrawal of the said A.B.P. No. 1698 of 2004 and the same was permitted to be withdrawn vide order, dated 27.01.2004.

Further submission of learned counsel for the petitioner is that it was the misfortune of the petitioner that the aforesaid quashing application being Criminal Miscellaneous No. 23739 of 2004 was taken up for hearing and the Hon'ble Court vide its order, dated 09.09.2010, dismissed the said application.

It is also submitted that in view of the aforesaid development, the petitioner again approached the learned Court below and his counsel advised him to file application for anticipatory bail and accordingly, A.B.P. No. 5861 of 2010 was filed before the learned District and Sessions Judge, Patna, which was allowed vide order, dated 10.02.2011. It has also been submitted that as earlier anticipatory bail was permitted to be withdrawn and was not decided on merit as that time proceeding of the Court below was stayed, hence due to lack of knowledge of legal terms, the aforesaid fact was not disclosed in the subsequent anticipatory bail application and it was simply an oversight by the petitioner.



On the basis of the above, learned counsel for the petitioner has submitted that that it is a bonafide mistake, caused due to oversight and the said act of the petitioner was not intentional and the same is not going to affect the merit of the case. Learned counsel for the petitioner further submitted that there is no violation of any provisions of Code of Criminal Procedure or any rules, however as it is a practice to disclose the previous filing of the anticipatory bail application, the said mistake at best be termed as violation of practice. Further as now the learned District and Sessions Judge, has directed to issue non bailable warrant of arrest ignoring the fact that for the period from 2004 to 2010, the case remained stayed and later on he has been granted bail as such it is not a case of misuse of privilege of bail as provided in Section 439(2) of the Code of Criminal Procedure. Hence the order dated 19.07.2013, passed by the learned Sessions Judge, Patna in Criminal Misc. No. 21 of 2011 may be stayed.

Learned counsel appearing on behalf of the State and learned counsel for the opposite party no. 2 has opposed the application of the petitioner and submitted that it cannot be said that the petitioner had no knowledge about the practice of disclosing the previous filing and outcome of the said filing and he willfully did not disclose this fact before the court below while



preferring another anticipatory bail application and hence it is clearly a case of suppression of material facts.

Having heard the parties, after perusal of the record, it appears that earlier an application for anticipatory bail was filed by the petitioner being A.B.P. No. 1698 of 2004 and while it was pending, a quashing application was filed by the petitioner before this Court, which remained stayed for the period from 2004 to 2010 and that very quashing application i.e. Criminal Miscellaneous No. 23739 of 2004 after hearing was dismissed by this Court vide order dated 07.09.2010. Thereafter another anticipatory bail application was filed by the petitioner which was numbered as A.B.P. No. 5861 of 2010. No doubt it is an admitted fact that petitioner has not stated in the application for anticipatory bail about the withdrawal of his previous anticipatory bail application but from the facts as stated above, it is a bonafide mistake that cannot be ruled out and so far order, dated 10.02.2011 passed in A.B.P. No. 5861 of 2010 is concerned, the same was passed on the merit of the case and the petitioner was granted anticipatory bail.

Whatever the facts may be, In my opinion without going into the details of genuineness of the claim of the parties as the present case is pending since the year 2013 and the proceeding in



the Court below was stayed, as such to meet the ends of justice that the petitioner should surrender before the Court below within a period of six weeks from today and pray for bail, which will be considered by the learned Court below taking into consideration the fact that the petitioner was earlier granted anticipatory bail by the learned Districts and Sessions Judge, Patna, shall allow the petitioner the privilege of bail to the satisfaction of the Court below with the condition that the petitioner shall cooperate in the disposal of the Trial and make himself available in the Court, as and when required and in the event of failure on his part to appear before the Court on two consecutive occasions, without showing any genuine reasons, shall make himself liable for cancellation of bail bonds.

With the aforesaid observation, this application is disposed of.

(Vinod Kumar Sinha, J)

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