

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.27240 of 2017**

Arising Out of PS.Case No. -70 Year- 2010 Thana -CHAPRA TOWN District- SARAN

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Sumit Kumar Yadav @ Sumit Kumar son of Ram Babu Rai @ Ram Babu Yadav @  
Lal Babu Rai, resident of Mohalla- Bara Telpa, Behind Petrol Pump, P.S.- Town  
Chapra, District- Saran.

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Ramadhar Mishra son of Late Beni Madho Mishra, resident of Mohalla- Bara  
Telpa, P.S.- Town Chapra, District- Saran.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Vikramdeo Singh, Advocate  
: Mr. Yogendra Prasad, Advocate

For the State : Mr. Arun Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 07-08-2017**

Heard Mr. Vikramdeo Singh, learned counsel for the  
petitioner and learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of  
Criminal Procedure (for short 'the CrPC') has been filed for setting  
aside the order dated 18.03.2017 passed in Cr. Misc. No.158 of 2014  
by the learned 2<sup>nd</sup> Additional Session Judge, Saran at Chapra whereby  
the bail granted to the petitioner by the court of Magistrate on



12.05.2014 in connection with Chpara Town P.S.Case No.70 of 2010 has been cancelled.

**3.** Learned counsel for the petitioner has submitted that the impugned order passed by the learned Additional Session Judge, Saran at Chapra in Cr. Misc. No.158 of 2014 is erroneous in law. He has submitted that no enquiry in terms of Sections 195 and 340 of the CrPC was conducted in order to come to a finding that the signature of the victim on the compromise petition was forged and fabricated and in absence of such conclusive finding, the bail granted to the petitioner by the learned Magistrate ought not to have been cancelled.

**4.** On the other hand, learned counsel for the State has submitted that apparently it is a case of obtaining bail by playing fraud upon the court. He has submitted that a joint compromise petition was filed in a case in which the prayer for grant of pre-arrest bail of the petitioner was first rejected by the Session Judge and then by this Court. Thereafter, the petitioner evaded to appear before the court for almost three years and on the strength of forged and fabricated compromise petition, he obtained bail from the court of Magistrate. He has submitted that the matter was enquired into by a judicial Magistrate pursuant to the order passed by the Court of Session and after obtaining opinion of the handwriting expert and recording the statement of the victim, the court came to a finding that



the signature of the victim was forged and fabricated. He submitted that no illegality can be found with the order impugned.

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

**6.** It would be manifest from the record that prayer for grant of pre-arrest bail of the petitioner was first rejected by the Court of Session and then by this Court. Thereafter, the petitioner evaded to appear before the court for almost three years. Subsequently, he surrendered before the Court of Magistrate and prayed for bail on the basis of a joint compromise petition. Later on, the father of the victim filed a petition stating therein that the bail was obtained by playing fraud upon the court. In his application for cancellation of bail, it was pleaded that the victim had neither signed the compromise petition nor had she appeared before the court on the date mentioned in the compromise petition. The Court of Session directed the learned Magistrate to hold an enquiry and submit a report in this regard. The learned Magistrate conducted an enquiry into the matter. He summoned the victim and examined her. The victim categorically stated that the signature made on the compromise petition was forged one. She also stated that she had not attended the court on the date mentioned in the compromise petition. A report was also called for from the handwriting expert. The expert also corroborated the fact that



the signature put on the compromise petition did not tally with the specimen signature of the complainant given in her statement under Section 164 CrPC. Finding such clinching evidence on record, the learned Additional Sessions Judge, Saran at Chapra came to a finding that the order of bail was obtained by the petitioner by playing fraud upon the court and cancelled the bail bond. In the background of the facts noted above, in my considered opinion, there is no error in the order impugned and the same does not require any interference by this Court in exercise of power conferred under Section 482 of the CrPC as it is well settled in law that an order obtained by playing fraud upon the court is a nullity. So far as the contention of the petitioner that no enquiry in terms of Sections 195 and 340 of the CrPC was conducted is concerned, it is not necessary that in all the cases of forgery in record, the court would direct for an enquiry under Sections 195 and 340 of the CrPC. Moreover, it is not a case where forgery is alleged to have been made in any document, which was in custody of the court. In that view of the matter, if the court, in exercise of its discretion did not opt for filing of a complaint against the petitioner, the same would be of no consequence.

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

8. The petitioner would be at liberty to surrender before the



Magistrate concerned and pray for bail.

**(Ashwani Kumar Singh, J)**

Md.S./-

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