

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20852 of 2018

Arising Out of Phulwari Shariff P.S. Case No.757 of 2015 District- PATNA

=====

Dr. Md. Sarfaraz son of Late Md. Jama, resident of Mohalla- All Nagar, P.S.-
Gardanibagh, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
 2. Syed Nazir Jamal @ Tippu son of Late Syed Khurshid Jamal
 3. Syed Zafar Akbar son of Late Syed Khurshid Jamal,
 4. Md. Khurshid son of Late Gulam Mohammad,
- All are resident of Mohalla- Baully, P.S.- Phulwari Shariff, District- Patna.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Amit, Advocate

For the State : Mr. Arun Kumar Singh-5, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-08-2018

Defects as pointed out by the Registry are ignored.

2. This application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') for quashing the order dated 20.11.2017 passed by the learned Additional District and Sessions Judge-VIII, Patna, in bail application case no.107 of 2016 whereby the application filed by the petitioner under Section 439(2) of the Cr.P.C. for cancellation of pre-arrest bail granted to opposite party nos.2 to 4 vide order dated 09.12.2015 passed in ABP No.7010 of 2015 in connection with Phulwari Shariff P.S. Case No.757 of 2015 has been rejected.



3. Phulwari Shariff P.S. Case No.757 of 2015 was registered for the offences punishable under Sections 341, 323, 325, 384, 385 and 379/34 of the Indian Penal Code. In the said case apprehending arrest at the hands of the police opposite party nos.2 to 4 filed an application under Section 438 of the Cr.P.C. The learned Additional Sessions Judge-VIII, Patna after looking into the materials collected in course of investigation and after hearing the learned counsel for the accused persons as also the learned Additional Public Prosecutor for the State allowed the application filed under Section 438 of the Cr.P.C vide order dated 09.12.2015 passed in ABP No.7010 of 2015.

4. Being aggrieved by the aforestated order dated 09.12.2015 passed in ABP No.7010 of 2015, the informant of the case filed an application for cancellation of bail granted to opposite party nos.2 to 4. After hearing the parties, the court below vide impugned order dated 20.11.2017 rejected the application of the petitioner holding the same to be groundless. Being aggrieved by the aforestated order dated 20.11.2017, the instant application under Section 482 of the Cr.P.C. has been filed.

5. Learned counsel for the petitioner submitted that the accused persons had obtained the order from the court below by playing fraud upon the court. They made misleading statement in their



application and relied on certain documents, which were not relevant.

6. On the other hand, learned counsel appearing for the State submitted that the application is misconceived. The opposite party nos.2 to 4 were granted bail by the court below after looking into the allegations made in the first information report, the materials collected in course of investigation and after hearing the parties. He submitted that none of the grounds set forth by the petitioner in his application for cancellation of bail was tenable in law. Hence, the court below has rightly held that no fraud was played upon the court for obtaining bail.

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

8. The grant of bail is a vital and crucial right of an accused. Once bail is granted to an accused, only in exceptional circumstances, the court would cancel his bail. The pre-conditions for cancellation of bail are:-

- (a) The interference or attempt to interfere with due course of justice.
- (b) Evasion or attempt to evade the due course of justice.
- (c) Interference with the course of investigation.
- (d) Misuse of bail by indulging in similar criminal activity.
- (e) Attempt to tamper with the evidence.

9. It is well settled position in law that bail, once granted,



can be cancelled only if a case for cancellation is made out having regard to the factors, which are not akin to those to be considered for the grant or refusal of bail.

10. In the instant case, the opposite party nos.2 to 4 were granted bail on 09.12.2015 and since then they are regularly appearing before the court. They have not misused the privilege of bail. There is no allegation that they have tampered with the investigation or indulged in similar criminal activity or attempted to tamper with evidence or attempted to evade the due cause of justice. The court below after going through the relevant documents has given a clear finding that no fraud was played upon the court.

11. Hence, no ground for cancellation of bail already granted to opposite party nos.2 to 4 was made out. Hence, I see no illegality in the order dated 20.11.2017 passed by the learned Additional Sessions Judge-VIII, Patna whereby he has rejected the application filed by the petitioner.

12. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.08.2018
Transmission Date	20.08.2018

