

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28162 of 2019

Arising Out of PS. Case No.-20 Year-2015 Thana- JAKKANPUR District- Patna

MUNINDRA KUMAR Son of Late Krishna Prasad Resident of Village - Nawki Bazar, P.S.- Bagaha, District - West Champaran, presently resident of C/o Ram Iqbal Rai, 2nd Floor, Changar Ashok Nagar, P.S.- Kankarbagh, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Premchand Prasad Son of Late Jai Kishun Sah Resident of Village - Bhargawi Complex, Dunwalia, P.S.- Bagha, District - West Champaran.
3. Sakuntla Devi Wife of Prem Chand Prasad Resident of Village - Bhargawi Complex, Dunwalia, P.S.- Bagha, District - West Champaran.
4. Anju Kumari Wife of Diraj Kumar Resident of Village - Bhargawi Complex, Dunwalia, P.S.- Bagha, District - West Champaran.
5. Niraj Kumar Son of Prem Chand Prasad Resident of Village - Bhargawi Complex, Dunwalia, P.S.- Bagha, District - West Champaran.
6. Anil Kumar Son of Late Jai Mangal Prasad Resident of Village - Mahnar, P.S.- Mahnar, District - Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, Adv. Mr. Anuj Kumar
For the Opposite Party/s :		Mr. Shyameshwar Dayal
For O.P. No. 2 to 6	:	Mr. B.K. Singh Chouhan

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 30-08-2019 Heard learned Counsel for the petitioner, learned counsel appearing for Opposite Party Nos. 2 to 6 and learned Additional Public Prosecutor for the State.

This application has been filed for cancellation of bail granted to Opposite Party Nos. 2 to 6 by learned Sessions Judge, Patna on 22-06-2015, in A.B.P. No. 3269 of 2015 (arising out of Jakkampur P.S. Case No. 20 of 2015).



The allegation against the Opposite Party Nos. 2 to 6, in brief, is that the informant Mundrika Kumar and co-accused Dhiraj Kumar jointly started a company in the name and style of M/s Bagaha Contractors (P) Ltd., registered under the Companies Act. It has been alleged that a joint bank account was operational with the joint signatures of the informant and co-accused Dhiraj Kumar. The allegation is that Dhiraj Kumar withdrew a sum of Rs. 33,00,000/-. It has further been alleged that Opposite Party Nos. 2 to 6, along with co-accused Dhiraj Kumar, under a criminal conspiracy, concealed the digital signature of the informant and were indulged in dishonest and fraudulent removal or concealment of property and identity theft under Information and Technology Act. It has also been alleged that Opposite Party Nos. 2 to 6 along with co-accused Dhiraj Kumar removed the complainant and his brother Ashok Kumar from the Directors of the said company and further by creating forged share transfer deed and other documents, used it before R.O.C., Patna and transferred the shares standing in the name of informant and his relatives, which amounts to dishonest and fraudulent execution of deed and forgery of valuable security and cheating.

Learned counsel for the petitioner submits that the



learned lower court while granting bail has lost sight to the relevant facts involved in the case and has granted bail to Opposite Party Nos. 2 to 6 without taking into consideration the fact that there was specific allegation against Opposite Party Nos. 2 to 6 of collusion with co-accused Dhiraj Kumar in fraudulently ousting the informant and Ashok Kumar from the Directors of the company and forging the digital signature of the informant and transferred all shares. He, relying on Annexure -3, which is an order passed by this Court in Cr. Misc. No. 26957 of 2016, under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the First Information Report, submits that this Court while disposing of the quashing application has come to a finding that upon plain reading of the application made in the complaint, which discloses *mens rea* of criminal offence committed by Opposite Party Nos. 2 to 6 and others. He also relied upon an unreported judgment of this Court passed in Criminal Misc. No. 4443 of 2011 (Ram Iqbal Rai vs. State of Bihar and Another), dated 22.11.2013, and submits that the bail granted by the Court can be cancelled if the Court has not taken into consideration the relevant factors involved in the case and has wrongly exercised its discretion.

On the other hand, learned counsel appearing on



behalf of Opposite Party Nos. 2 to 6 submits that the learned Court below while granting bail has taken all the relevant facts involved in the case, which would be evident from the impugned order itself that learned court below after taking into consideration the entire facts has come to the conclusion that there is no direct evidence against the Opposite Party Nos. 2 to 6 to substantiate the allegation. He further submits that the company, in question, is a family company opened by close relatives among themselves and the informant after sometimes voluntarily resigned and the Opposite Party Nos. 2 to 6 were inducted in the company and the dispute between the parties is already pending before the Company Law Board, Kolkata. He further submits that from perusal of the complaint, it would be evident that the amount of Rs. 33,00,000/- was allegedly withdrawn by co-accused Dhiraj Kumar after forging the signature of the informant and there is no allegation against Opposite Party Nos. 2 to 6 regarding withdrawal of the said amount. He also submits that the allegation of forging the signature of the informant and transfer of shares are not against Opposite Party Nos. 2 to 6 and only allegation against them is that they, in connivance with the main accused Dhiraj Kumar, were indulged in the transfer of shares and preparing of forged



letter of the informant. He, relying upon a judgment of this Court, reported in **2019 (2) PLJR 687**, submits that this Court, relying on various judgments of the Supreme Court, has laid down seven circumstances for cancellation of bail, but none of the circumstances is attracted in the present case inasmuch as the Opposite Party Nos. 2 to 6 have not misused the liberty for the last four years, since bail was granted to them in the year 2015. He further relies on a judgment of the Supreme Court passed in Appeal (Cr.) No. 529 of 2005 to submit that the Supreme Court has held that the grounds for cancellation of bail should be those which arose after grant of bail and should be referable to the conduct of the accused while on bail. He, thus, submits that such is not the case, which has been made in this application for cancellation of bail by the petitioner.

After having heard learned counsel for the parties concerned and taking into consideration the materials on record, it appears that the learned court below while granting bail has considered all the facts and circumstances involved in the case and has rightly exercised its jurisdiction and came to the conclusion that the Opposite Party Nos. 2 to 6 deserve privilege of anticipatory bail and has granted Opposite Party Nos. 2 to 6 bail. The judgment cited on behalf of the petitioner is not



applicable in the facts of this case inasmuch as all the relevant facts and circumstances were considered by the court below and further Opposite Party Nos. 2 to 6 have not misused the privilege of bail for the last four years.

Accordingly, I am not inclined to interfere with the order impugned.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand

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