

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39105 of 2016

Arising Out of PS. Case No.-72 Year-2013 Thana- BANGAWON District- Saharsa

Vinita Devi @ Binita Devi wife of Subodh Khan, daughter of Late Kalikant Khan resident of Village- Bangaon, P.S.- Bangaon, District- Saharsa at present resident of Village- Mahishi, P.S.- Mahishi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Lila Devi wife of Late Indu Shekhar Khan
3. Baby Devi @ Bobby Devi wife of Prabhu Khan
4. Prabhu Kumar Khan @ Prabhu Khan son of Late Indu Shekhar Khan
5. Nand Kumar Khan Son of Late Indushekhar Kha All resident of Village- Bangaon, P.S.- Bangaon, District- Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Amarnath Jha

For the Opposite Party/s : Mr.Sri Dashrath Mehta

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 17-09-2019 Heard learned counsel for the parties.

The present application has been preferred by the petitioner for cancellation of provisional anticipatory bail granted to O.P. Nos. 2 to 5 being mother, brother's wife and brothers of the husband of the petitioner granted vide order dated 30.3.2015 passed in Cr. Misc. No. 36096 of 2014 in connection with Bangaon P.S. Case No. 72 of 2013 registered for the offences punishable under Sections 498A/34 of the IPC.

The learned Court below was supposed to confirm the provisional anticipatory bail of the O.P. Nos. 2 to 5 only



when substantial proof would be produced by the O.P. Nos. 2 to 5 that the share of property of the petitioner's husband namely Subodh Khan alias Subodh Kumar Khan has not been transferred.

It is submitted by learned counsel for the petitioner that certain portion of her husband's property was already transferred prior to the grant of bail since the husband of the petitioner is mentally abraded, though he was also granted provisional bail. The learned court below confirmed the provisional bail without ascertaining that the petitioner's husband's share of property has been transferred.

Considering the fact that meticulous distribution of share of properties of the parties cannot be decided in the present proceeding, more over, O.P. Nos. 2 to 5 were granted provisional bail vide order dated 30.3.2015 passed in Cr. Misc. No. 36096 of 2014 and the provisional bail was confirmed vide order dated 19.9.2015 passed by the learned ACJM I, Saharsa whereas the present application for cancellation of bail has been registered on 6.9.2016, this Court is not inclined to interfere in the matter. Since the Opposite Party Nos. 2 to 4 have enjoyed the privilege of bail for several years and there is nothing on record to suggest misuse of privilege of bail.



The parameters for grant of bail and its cancellation are quite different. The entire application does not suggest any accusation of misuse of the bail by the O.P. No. 2. It is well settled law that once an accused is granted bail either in exercise of jurisdiction under Section 437(1)(2) or 439(1) of the Cr.P.C., the same can be cancelled either in exercise of jurisdiction under sub-section (5) of Section 437 or sub-section (2) of Section 439 Cr.P.C. The grounds of cancellation under Section 437(5) and 439(2) of the Cr.P.C. are identical. Some of the circumstances enumerated by the Supreme Court in the case of Raghbir Singh and Ors. Vs. State of Bihar (1986) 4 Supreme Court Cases 481 in which bail can be cancelled, are - (i) if the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety etc. However, it was made clear that these grounds are illustrative not exhaustive but cancellation of bail stands on a



different footing and the same is harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to. The aforesaid proposition has also been dealt with by the Apex Court in the case of Mehboob Dawood Shaikh Vs. State of Maharashtra, reported in (2004) 2 SCC 362.

In the present case, the petitioner has not contended violation of any of the aforementioned parameters in order to substantiate his prayer for cancellation of bail of O.P. Nos. 2 to 5. The petitioner does not stipulate the present stage of case lodged against O.P. Nos. 2 to 5.

This application is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

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