

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26495 of 2019

Arising Out of PS. Case No.-252 Year-2017 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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Surya Prasad Sahi, aged about 70 years, male, Son of Late Ram Phal Sahi, Resident of Village - Gori Gamadih, P.S.- Saraiya, Distt – Muzaffarpur, at present R/o - 1/3 Sri Nagar Colony, Gobarsahi, Bhagwanpur, P.S.- Sadar, Distt - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Nagendra Sahi @ Nagendra Kumar, Son of Late Ram Shankar Sah, Resident of Village - Gorigama Dih, P.S.- Saraiya, Distt - Muzaffarpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rama Kant Sharma, Adv.
For the Opposite Party/s : Mr. Murli Dhar, APP.
For the Opposite Party No2.: Mr. Sanjay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 27-08-2019 Heard Mr. Rama Kant Sharma, learned senior counsel

 appearing for the petitioner as well as Mr. Sanjay Kumar, learned

 counsel appearing for O.P.No.2.

The petitioner seeks cancellation of bail granted to O.P.
no. 2 in A.B.P. No. 308 of 2019 vide order dated 05.02.2019
passed by learned XI th Additional Session Judge, Muzaffarpur in
Complaint Case No. 252 of 2017.

Learned senior counsel appearing for the petitioner
submits that the Court below while granting bail to the O.P. no. 2,
has taken into consideration the defence of the accused and has
discussed the entire facts as if the court below is holding trial
while granting bail. Learned senior counsel in support of his
argument relies upon the judgment reported in (2006) 12 SCC 131



para 11 to 14 and (2007) 10 SCC 368 para 4 to 7.

On the other hand, learned counsel appearing for O.P. no. 2 submits that learned Court below has rightly granted anticipatory bail to O.P. no. 2 inasmuch as the allegation in the complaint filed by the petitioner was bouncing of cheque of a sum of Rs. 21 lakhs and from perusal of the complaint, it is evident that at best an offence under Section 138 of NI Act is made out against O.P. No.2. Learned counsel further submits that on the basis of the facts stated in the complaint, no offence under Section 420 of Indian Penal Code is made out against O.P. No.2 and learned Court below on prima facie finding of the view rightly exercised its discretion and has granted anticipatory bail to the O.P. no. 2.

Learned counsel further submits that finding arrived at by learned Court below is not conclusive finding but it is a prima facie finding based upon the material available on record.

After having heard learned counsel for the parties and taking into consideration the facts that the allegation against O.P.No.2 is not serious in nature and the judgment relied upon by learned senior counsel in support of his arguments reported in (2006) 12 SCC 131 is not applicable on the facts and circumstances of the case inasmuch as in the aforesaid judgment (Supra), Hon'ble Supreme Court has held that detailed examination of evidence and elaborate merits of the case should be



avoided while granting bail and further observed that particularly in any serious offence, the reasons must be indicated while granting bail and the jurisdiction should be exercised judiciously. In the judgment reported in (2007) 10 SCC 368, Hon'ble Supreme Court has laid down the principles for cancellation of bail.

After perusing the impugned order and the facts involved in the case, I do not find any material to come to the conclusion that the learned Court below has not exercised its discretion judiciously while granting bail and I am also satisfied that learned Court below has given prima facie reasons for granting bail to the O.P. No. 2.

Accordingly, in the facts and circumstances of the case, this application is dismissed.

It goes without saying that finding arrived at by the learned Court below while granting bail shall not prejudice the case of the parties in trial.

(Anil Kumar Sinha, J)

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