

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46436 of 2018

Arising Out of PS. Case No.-737 Year-2016 Thana- COMPLAINT CASE District- Araria

Bibi Husna Ara @ Husna Ara @ Husna D/o late Eqbal , W/o Gulam Samdani
Resident of Village- Bhag Mohabbat, P.S. Araria, R.S. District- Araria,
previous Resident of Village- Kasaila, P.S.Bounsi, District- Araria.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Naushad S/o late Eqbal Resident of Village- Kasaila, P.S. Bounsi, District- Araria.
3. Md. Sajjad Hussain@ Sajjad S/o late Eqbal Resident of Village- Kasaila, P.S. Bounsi, District- Araria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Gopal Kumar Jha
For the Opposite Party/s : Mr.Md. Sufiyan

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 18-09-2019 The present application has been filed for cancellation of anticipatory bail, granted to opposite party nos, 2 and 3 vide order dated 16.03.2018 passed in Cr. Misc. No. 51886 of 2017 on the ground of Panchnama on the basis of which, share has been divided between the petitioner and opposite party nos. 2 and 3, who are sister and brothers and without the signature of the petitioner.

The factual matrix of the case is that the opposite party nos. 2 and 3 preferred Cr. Misc. No. 51886 of 2017 with a prayer for anticipatory bail in Complaint Case No. 737 of 2016 wherein process has been directed to be issued after cognizance



being taken for the offence under Section 406 of the Indian Penal Code, pending in the Court of learned Chief Judicial Magistrate, Araria.

The prosecution case as per the complaint petition filed on 19.04.2016 is to the effect that on 18.01.2008, the land appertaining to Khata No. 6, Plot No. 781 measuring an area of 7 ½ decimals and Plot No. 783 measuring an area of 9 decimals total 16 ½ decimals were transferred by opposite party no. 2 in favour of his sons Sakir and Sadir. On 27.11.2012 the opposite party nos. 2 and 3 took the complainant-petitioner and her two sisters to the registry office and got transferred 2.79 acres of land in favour of two sons of opposite party no. 2 namely, Nishant Alam and Nakib Ahmad. It is further alleged that on 31.12.2012, opposite party no. 2 realized Rs.1,44,000/- from the complainant-petitioner and transferred a land which was already transferred in the name of sons of opposite party no. 2 when on 07.11.2015 the complainant-petitioner transferred her share in the name of wife and sons of witness Abbas and subsequently, when they went to get the land mutated in their favour, they came to know that opposite party no. 2 has already transferred the land in favour of his sons.

Considering the nature of dispute between the parties



being brothers and sister and title suit being filed prior to the lodging of the complaint, the opposite party nos. 2 and 3 were granted anticipatory bail. Now the present application for cancellation of bail has been filed on the ground of certain Panchnama.

The parameters for grant of bail and its cancellation are quite different. It is trite that the bail is granted on considering the merits of the case whereas the bail already granted can be cancelled in case (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., as has been held in the case of Mehboob Dawood Shaikh Vs. State of Maharashtra, reported in (2004) 2 SCC 362.

In the present case, there is no pleading in the whole application that the opposite party nos. 2 and 3 have misused the privilege of bail.



In the circumstances, this Court does not find any
merit in this application and accordingly, it is dismissed.

(Dinesh Kumar Singh, J)

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