

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42469 of 2012

Arising Out of PS. Case No.-1437 Year-1998 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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Shri Baidyanath Jha S/O Late Bisheshwar Jha R/O Mohalla- Amgola, Police
Station- Mithanpura, District- Muzaffarpur, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Narendra Kuamr Anchalia @ Naro Anchalia S/O Late Jeetamal Anchalia,
Partner Of M/S Ramdevji Art International R/O- 60 Bentick Street, Kolkata

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Awadhesh Kumar

For the Opposite Party/s : Mr.Abhay Kumar Rayapp

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 24-07-2019 Supplementary affidavit has been filed on behalf of
the petitioner. Let it be kept on record.

The present application has been filed for cancellation
of bail of opposite party no. 2.

The basic accusation is of misappropriation of
Rs.2,51,000/- of the petitioner by Opposite Party No. 2.

The factual matrix of the case is that the opposite
party no. 2 had initially preferred Cr. Misc. No. 13237 of 2000
for grant of anticipatory bail in Complaint Case No. 1437 of
1998 filed with accusation that a Hindi Feature Film, namely,
'Gharwali Baharwali' was to be released and the O.P. No. 2,
Narendra Kumar Anchalia, when one Kanhaiyalal Anchaliya



contacted the complainant-petitioner for purchase of distribution rights of the film since they claimed to have had distribution rights of the film. The complainant petitioner accepted the offer and handed over the draft of Rupees Two Lakhs Fifty One Thousand and entered into an agreement. The draft was encashed but in violation of the written agreement, the accused entered into a fresh agreement with one Anjana Movies Pvt. Ltd. and thereby assigned the distribution of the said feature film and allowed its exhibition by the said Anjana Movies Pvt. Ltd. Subsequently, on the basis of the complaint instituted by the petitioner, process was directed to be issued after cognizance being taken for the offences punishable under Sections 406 and 417 of the Indian Penal Code. The aforementioned Criminal Miscellaneous application was dismissed vide order dated 21.07.2000 by a Co-ordinate Bench of this Court in following terms :

“....This application is, accordingly, dismissed.

However, if the petitioners appear in the Court below on the next date, their application for regular bail shall be considered on its own merit without being prejudiced by the present order of dismissal and after taking into consideration the argument that no case under section 406 I.P.C. is made out



against the petitioners.”

Thereafter, the opposite party no. 2 renewed the prayer for anticipatory bail vide Cr. Misc. No. 4659 of 2012 on the ground that the alleged amount has been returned to the complainant. The said anticipatory bail application was disposed of vide order dated 15.02.2012, as contained in Annexure-6, with liberty to the learned Court below to consider the release of the petitioner on provisional regular bail which will only be confirmed by the learned Court below on acceptance by complainant that he has received the alleged due amount. The relevant portion of the order dated 15.02.2012 passed in Cr. Misc. No. 4659 of 2012 reads as follows:-

“Let the petitioner surrender within a period of six weeks from the date of receipt of copy of this order in connection with Complaint Case No.1437 of 1998 pending in the court of the learned C.J.M., Muzaffarpur.

Let the learned court below consider to release the petitioner on provisional regular bail which will only be confirmed by the learned court below on acceptance by other sides that they have received back the alleged money.”



Consequently, the learned Magistrate granted provisional bail to opposite party no. 2 vide order dated 15.03.2012 passed by the learned Magistrate. Subsequently, another modification application was filed by opposite party no. 2 vide Cr. Misc. No. 18205 of 2012 on the ground that since the complainant is not accepting the return of the due amount, hence, the learned Court below is not passing any order to confirm the provisional bail. In the circumstances, the Opposite Party No. 2 is ready to deposit the alleged due amount before the learned Court below. The said modification application being Cr. Misc. No. 18205 of 2012 was disposed of vide order dated 9.5.2012 in following terms:-

“It is submitted by learned counsel for the petitioner that the petitioner is ready to deposit the aforesaid amount (Rs.2,51,000) before the learned court below.

Let the said amount be invested in some fixed deposit scheme by the learned court below in connection with Complaint Case No. 1437 of 1998 pending in the court of C.J.M., Muzaffarpur which will be subject to the result of the case. On the deposit of the aforesaid amount, the learned court below will consider to confirm the provisional



regular bail of the petitioner.”

Consequently, the provisional bail of the petitioner on deposit of the said amount was confirmed by the learned Judicial Magistrate, Ist Class, Muzaffarpur vide order dated 31.05.2012.

Learned counsel for the petitioner submits that initially the prayer of O.P. No. 2 for bail was rejected with liberty to the learned Court below to consider the prayer for regular bail. Thereafter the O.P. No. 2 preferred the second anticipatory bail application with false statement that he has returned the due amount to the complainant. Hence, he tried to mislead the Court and had thus made a false statement. However, when this fact was pointed out before the learned Court below that the O.P. No. 2 has never returned the due amount, then he again preferred a modification application before this Court and thereafter he gave an undertaking to the effect that he is ready to deposit the alleged amount in cash before the learned Court below. Though he deposited the said amount but at the initial stage, the O.P. No. 2 tried to mislead the Court and hence, his bail should be cancelled.

Learned counsel for the State submits that he has no instruction that the Opposite Party No. 2 has misused the



privilege of bail.

Considering the fact that initially the prayer for bail of O.P. No. 2 was rejected by a Bench of this Court and thereafter on his submission that he has made payment to the complainant, he was granted provisional bail by the learned Magistrate vide order dated 15.3.2012 but when the complainant declined to have accepted any payment, then further modification application was filed vide Cr. Misc. No. 18205 of 2012, wherein the O.P. No. 2 submitted his willingness to deposit the due amount before the learned Court below in cash, upon which this Court gave liberty to the O.P. No. 2 to deposit the said amount before the learned Court below and the same was to be invested in some fixed deposit scheme which will be subject to the result of the case. On deposit of the said amount, the learned Court below was directed to consider the confirmation of provisional bail of O.P. No. 2 vide order dated 9.5.2012. Consequently, the provisional bail of O.P. No. 2 was confirmed by the learned Court below vide order dated 31.5.2012 on deposit of the alleged due amount. Hence, the provisional bail of O.P. No. 2 was not confirmed on the alleged payment claimed by Opposite Party No. 2 of the alleged amount to the complainant rather on deposit of alleged amount in cash



before the learned Court below.

It is trite law that the consideration for grant of bail and cancellation of bail stand on different footings. It is easier to reject a bail application in a non-bailable case on merits than to cancel a bail granted in such a case. It is trite that bail can be cancelled in cases - (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 (2004) 2 Supreme Court Cases 362. Paragraph no. 07 of the said Judgment reads as follows:

“It is trite law that the considerations for grant of bail and cancellation of bail stand on different footings. By a majority judgment in Aslam Babalal Desai v. State of Maharashtra (1992(4)SCC 272) the circumstances when bail granted can be cancelled were highlighted in the following words:



"On a conjoint reading of Sections 57 and 167 of the Code it is clear that the legislative object was to ensure speedy investigation after a person has been taken in custody. It expects that the investigation should be completed within 24 hours and if this is not possible within 15 days and failing that within the time stipulated in clause (a) of the proviso to Section 167(2) of the Code. The law expects that the investigation must be completed with dispatch and the role of the Magistrate is to oversee the course of investigation and to prevent abuse of the law by the investigating agency. As stated earlier, the legislative history shows that before the introduction of the proviso to Section 167(2) the maximum time allowed to the investigating agency was 15 days under subsection (2) of Section 167 failing which the accused could be enlarged on bail. From experience this was found to be insufficient particularly in complex case and hence the proviso was added to enable the Magistrate to detain the accused in custody for a period exceeding 15 days but not exceeding the outer limit fixed under the proviso (a) to that subsection. We may here mention that the period prescribed by the proviso has been enlarged by State amendments and wherever there is such enlargement, the proviso will have to be read accordingly. The purpose and object of providing for the release of the accused under sub-section (2)



of Section 167 on the failure of the investigating agency completing the investigation within the extended time allowed by the proviso was to instill a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory time frame. The deeming fiction of correlating the release on bail under sub-section (2) of Section 167 with Chapter XXXIII, i.e. Sections 437 and 439 of the Code, was to treat the order as one passed under the latter provisions. Once the order of release is by fiction of law an order passed under Section 437(1) or (2) or Section 439(1) it follows as a natural consequence that the said order can be cancelled under sub-section (5) of Section 437 or sub-section (2) of Section 439 on considerations relevant for cancellation of an order thereunder. As stated in *Raghubir Singh v. State of Bihar* (1986 (4) SCC 481) the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (i) 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, (vii) 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. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

In the present case, none of the above mentioned grounds of misuse of bail has been taken for cancellation of bail of the Opposite Party No. 2 rather the petitioner has sought to review the order granting bail to the O.P. No. 2 by the Magistrate on merits *de novo*. The learned Magistrate granted provisional bail vide order dated 15.3.2012 on the basis of the payment of alleged claimed amount made by the O.P. No. 2 to the complainant. The petitioner did not challenge the same nor did he challenge the order dated 15.2.2012 passed in Cr. Misc. No. 4659 of 2012 when this Court directed the learned Court below to consider the prayer for provisional bail and to confirm the same on acceptance of the complainant that he has received the payment of alleged due amount from the O.P. No. 2.

Hence, in a bail cancellation proceeding, the issue cannot be judged on merit of accusation or the conduct of the



parties. There is no case of the petitioner that O.P. No. 2 has misused the privilege of bail or has suppressed any material fact.

From the discussions made above, it is apparent that the learned Court below confirmed the provisional regular bail of O.P. No.2 on deposit of the entire alleged amount in Court and the said deposited amount is subject to the result of the case. In the circumstances, this Court is not inclined to consider the entire issue *de novo*. Considering the further fact that OP No. 2 has enjoyed the privilege of bail for more than seven years and there is no accusation of misusing the privilege of bail, this Court is not inclined to interfere.

This application is, accordingly, dismissed. Though the petitioner has not brought any document on record to suggest the present stage of trial but in the interest of justice, it is expected from the learned Court below to expedite the trial and conclude the same expeditiously.

(Dinesh Kumar Singh, J)

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