

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No.7247 of 2015**

Arising Out of PS. Case No.-364 Year-2012 Thana- Patna Complaint Case District- Patna

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Md. Ayyaj @ Md. Aiyaz, S/o Late Mahmud Mian, resident of Village-  
Mohammadpur Kabristan, P.S. Sultanganj, District Patna.

... .. Petitioner

Versus

1. State of Bihar.
2. Md. Shami, S/o Late Sarfuddin Ahmad, Resident of Azimabad Colony, P.S. Sultanganj, District Patna.

... .. Opposite Parties

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**Appearance :**

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| For the Petitioner/s          | : | Mr.Bharat Lal                 |
| For the State                 | : | Mr.L. K. Sharma, APP          |
| For the Opposite Party no.2 : |   | Mr. Pankjesh Sharma, Advocate |
|                               |   | Mr. Deepak Kumar, Advocate    |

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date : 10-05-2019**

Heard learned counsel appearing for the respective parties.

In this case, the petitioner is challenging the order dated 21.01.2015 passed in Complaint Application No. 364 of 2012 by the Judicial Magistrate, Patna City, by which he has cancelled the bail bond of the petitioner on the ground that he has failed to comply his own undertaking to settle the dispute amicably as he was granted bail vide order dated 21.11.2012 on the premise that he himself undertook to settle the dispute amicably.



In the complaint petition, it has been alleged that the accused persons have taken money to give the same to the farmers as well as their personal use. As per the complaint petition, Rs.2,00,6000/- has been given and out of that Rs.10,00,000/- has been returned. Allegation has been made that the petitioner has not returned the rest money and misappropriated the same.

Learned counsel for the petitioner submits that it is a dispute with regard to purchase of the land and the allegation made in the complaint petition is completely untrue. He further submits that in the complaint petition illegal demand of money has been made. He next submits that though at the time of granting bail the petitioner had given undertaking that he will settle the dispute amicably and he tried his best to settle the dispute, but the same was not settled. Whereafter, the opposite party no.2 filed an application before the Court below and brought the aforesaid fact to the notice of the Court below and the Court below vide impugned order has cancelled the bail bond of the petitioner on the ground that he failed to settle the dispute with opposite party no.2.

It has further been alleged that even though the undertaking had given that he will settle the dispute, failure to



obtain the same would not be a ground for cancellation of bail. In support of his submission, he has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***Biman Chatterjee vs. Sanchita Chatterjee and Anr.*** reported in ***2004(2) PLJR 201***, wherein the Hon'ble Supreme Court has held that apart from non- fulfilment of the terms of the compromise, cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise.

It will be proper to quote relevant portion of paragraph no.7 of the aforesaid judgment, which reads as under:-

*“... That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What*



*the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law.”*

In such view of the matter, the order of cancellation of bail of the petitioner dated 21.01.2015 passed in Complaint Application No. 364 of 2012 by the Judicial Magistrate, Patna City, is set aside. Consequently, the earlier order of the Court below dated 21.11.2012, granting bail to the petitioner, is hereby resorted. Let the petitioner continue on bail on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties of the like amount each to the satisfaction of the Judicial Magistrate, Patna City, in connection with Complaint Application No. 364 of 2012.

Accordingly, this petition is allowed.

**(Shivaji Pandey, J)**

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