

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27267 of 2020

Arising Out of PS. Case No.-102 Year-2014 Thana- GWALPARA District- Madhepura

Lil Sagar Yadav @ Nil Sagar Yadav @ Lil Sagar, Son of Julum Yadav,
Resident of Village - Jamhara, P.S.- Sonbarsha Raj, District - Saharsa.

... .. Petitioner

Versus

The State of Bihar

.. ... Opposite Party

Appearance :

For the Petitioner/s : Mr.Pramod Mishra, Advocate

For the Opposite Party/s : Mr. Choubey Jawahar, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 22-02-2021 Reference may be made to the order dated
08.12.2020 which reads as under:-

“Heard learned counsel for the petitioner and Mr. Chaubey Jawahar, learned APP for the State.

The petitioner in the present case is seeking regular bail in connection with Gawalpara P.S. Case No. 102 of 2014 registered for the offences punishable under Section 392 of the Indian Penal Code.

Learned counsel for the petitioner submits that the name of the petitioner has transpired in this case in a confessional statement of one Lalu Kumar Yadav @ Lalo Yadav who has been granted bail vide order dated 20.07.2017 passed in Cri. Misc. No. 32999 of 2017 by a learned Co-ordinate Bench of this Court. It is further submitted that the petitioner is in jail in connection with this case for last about



one year and hence, he may be enlarged on bail.

On the other hand, Mr. Chaubey Jawahar, learned APP for the State has strongly opposed the prayer for bail of the petitioner. Learned APP has submitted that while granting bail to an accused this Court may also consider the criminal antecedent of the accused and the conduct of the accused and then a view may be taken whether in such circumstance the privilege of bail be allowed. Pointing out to the facts of the present case as appearing in the investigation report, learned APP has submitted that there are 32 cases against the petitioner, in paragraph '3' of the present petition, however, the petitioner has indicated about only 7 cases. It is then submitted that all the cases against the petitioner are of grave nature as it would appear that he is in habit of committing the offences and then he was absconding in the cases against him.

Learned APP submits that he has been arrested only a year back, even this case is of the year 2014 and in this case the co-accused was granted bail in the year 2017, therefore, it may be easily judged that this petitioner, if released on bail is likely to abscond once again and there are ample materials indicating his conduct.



Learned APP has further pointed out that in fact this petitioner and the co-accused are cousin brothers and this fact has also come in the case diary, he has read out some of the paragraphs in which the name of the petitioner has transpired.

Having regard to the facts and circumstances of the case, in view of the materials appearing in the case diary and that the petitioner was absconding in this case as also in other cases and he has been arrested only a year back and the trials are pending against him in the cases which are decades old, this Court is not inclined to grant bail to the petitioner.

The prayer for regular bail of the petitioner is, thus, refused.

Let the trial be expedited.

The trial Court is directed to proceed with the trial and give priority to the case whenever physical court starts. The Prosecution must cooperate in course of trial.

Although this application is dismissed, this Court having noticed that there is huge criminal antecedents of the petitioner as has been informed to this Court by learned APP for the State after going through the supplementary case diary but the deponent of the affidavit has disclosed only 7 cases, let a notice to show cause be issued to deponent



Jabesh Kumar son of Mantu Yadav resident of village Balam, P.S. Madhepura, District Madhepura calling upon him to show cause as to why he should not be prosecuted for filing a false affidavit.

Let such show cause be filed within a period of four weeks from today.

List this case under heading 'To be Mentioned' with the show cause on 11th January, 2021."

A show cause has been filed on behalf of the deponent. The deponent who is the nephew as well as the pairvikar of the petitioner has taken a plea that he had no deliberate or willful intention to conceal the criminal antecedent of the petitioner. It is his submission that the same has occurred because of his unawareness about the pending cases against the petitioner.

This Court has heard Mr. Pramod Mishra, learned counsel earlier representing the petitioner and now the deponent. Learned counsel has taken a clear stand before this Court by categorically stating that the pairvikar of the petitioner had given him instruction saying that only those cases which are mentioned in paragraph '3' in the application are presently pending against the petitioner. The pairvikar had under some impression that he is not required to give description of those



cases in which the petitioner has already been acquitted, therefore did not inform the learned counsel. Learned counsel submits that regarding other pending cases he was not informed.

This Court has no iota of doubt that learned counsel for the petitioner has acted as per the instruction. The Court is, however, not ready to accept the affidavit of the deponent because the deponent happens to be the nephew of the petitioner and it has transpired in course of hearing that he had been doing pairvy on behalf of the petitioner in some other cases as well where he had sworn affidavit. It is not the case of the deponent that he is living separately from the petitioner or at some far distant place where in ordinary course he could not have come to know about the pending cases.

To this Court, it prima-facie appears that it was a coveted attempt on the part of the pairvikar in not disclosing all those pending cases in which the petitioner was not on bail. He has selectively given in paragraph '3' only those six cases (one case has been repeated at serial no. 7) in which the petitioner has got bail. Now it is an admitted position that the petitioner was made accused in as many as 32 cases and out of 32 cases it is stated that in 12 cases he has been acquitted by the learned court below. In some of the cases he had been granted bail but it



would now be a matter of verification whether in those cases the petitioner has disclosed correctly his criminal antecedents before the learned court below and/or before this Court.

It is quite obvious that in the present case of the year 2014, the petitioner was absconding, it would be again a matter to be verified as to in how many cases and since when the petitioner had been absconding.

One thing is admitted now that even after deducting the number of cases in which the petitioner has already been acquitted, he has got at least 20 cases approximately on his head whereas only six cases have been disclosed in paragraph '3'. This was a clear attempt to play fraud upon this Court and this has definitely come in the way of rendering justice by this Court.

Learned counsel has submitted that even he has been duped by giving wrong instruction.

Learned counsel for the State submits that in view of the judgement of the Hon'ble Apex Court in the case of **Uttar Pradesh Residential Employees Cooperative House B. Society Vs. New Okhla Industrial Development Authority** reported in **(2004) 9 SCC 670**, the Hon'ble Supreme has taken a view that filing of false affidavit also amounts to Contempt of



the Court. In this regard, another judgment of the Hon'ble Apex Court in the case of **Chandra Shashi Vs. Anil Kumar Verma** reported in **(1995) 1 SCC 421** has been relied, this Court may apart from taking any other action initiate proceeding for criminal contempt.

Having considered the entire facts and circumstances of the case, this Court is of the considered opinion that these are the matters which are to be taken seriously otherwise anybody may endeavour to play a fraud upon court by concealment of material facts such as criminal antecedents of an accused and this Court finds that these attempts are being taken now regularly and the Court has come across several circumstances in which concealment of criminal antecedents have been noticed. Earlier in one of the cases being Cr. Misc. No. 5928 of 2020 disposed of on 01.02.2021, this Court has directed for initiation of a criminal contempt proceeding.

The show cause filed on behalf of the deponent does not inspire confidence of this Court and hence it is hereby rejected.

The Registrar General of this Court shall examine the records of all the cases in which the petitioner has been granted bail so far to find out whether there was a correct disclosure of



his criminal antecedent in those cases by the pairvikar of the petitioner. Let such exercise be completed within three weeks from today.

After perusal of those records, if it is found that the petitioner has not disclosed correctly the criminal antecedents, the same will be brought to the notice of the concerned Court for consideration and passing appropriate order. It will also be open to the Investigating Officer/ public prosecutor of those cases, as the case may be, to take steps to file an appropriate application for cancellation of bail.

So far as the present case is concerned, since this Court has found a clear case of concealment of criminal antecedents of the petitioner, the learned Registrar General shall lodge a complaint in the court of learned Chief Judicial Magistrate, Patna.

This Court further directs the Registry to initiate a suo-motu criminal contempt proceeding against the deponent for filing false affidavit before this Court concealing huge criminal antecedents of the petitioner.

Notice shall be issued to the deponent in criminal contempt and the matter be placed before appropriate Bench after seeking permission of Hon'ble the Chief Justice.



This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

