

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34201 of 2016

Arising Out of PS. Case No.-39 Year-2016 Thana- MAHARAJGANJ District- Siwan

Om Prakash Singh Son of Umeshwar Singh, Resident of Village-
Sikandarpur, P.S- Maharajganj, District- Siwan.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Rajesh Kumar Singh Son of Late Prabhu Nath Singh, Resident of vill-
Sikandarpur, P.S- Maharajganj, Dist- Siwan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bijay Prakash Singh

For the Opposite Party/s : Mr.Sri Panchanand Pandit

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 22-01-2020 The present application has been filed for cancellation of bail, granted to opposite party no. 2 vide order dated 12.5.2016 passed in Cr. Misc. No. 20507 of 2016 in connection with Maharajganj P.S. Case No. 39 of 2016 registered for the offences punishable under Sections 406,420,120B,323,504 and 506 of the Indian Penal Code, on the ground that the O.P. No. 2 made a false statement in the criminal miscellaneous application that he has no criminal antecedent whereas in fact, he was accused in Maharajganj P.S. Case No. 227 of 2012 registered for the offences punishable under Sections 341,323,324,307 and 504/34 of the IPC.

The prosecution case of Maharajganj P.S. Case No. 39



of 2016 is that the informant-petitioner gave one and half lakh rupees to the O.P. No. 2 in the month of March, 2009 on assurance of installing a mobile tower on the land of the informant-petitioner. The money was given on the assurance that the informant-petitioner will earn rupees six thousand per month on the installation of mobile tower. The petitioner collected the amount from several persons and on 29.12.2015 when the informant-petitioner asked the O.P. No. 2 to return the money then he started abusing and assaulting the informant-petitioner.

Considering the accusation arising out of contractual nature of relationship between the parties, and the fact that no payment was ever made through banking channel and the statement made in paragraph 3 of the petition that the O.P. No. 2 is not having any criminal antecedent, he was granted anticipatory bail vide order dated 12.5.2016 passed in Cr. Misc. No. 20507 of 2016.

It is submitted by learned counsel for the O.P. No. 2 that though the O.P. No. 2 was accused in one case referred to above from before but due to lack of instructions, he could not make correct statement in the bail petition. However, the O.P. No. 2 has not misused the privilege of bail as he has not been



made accused in any case subsequent to the grant of bail by this Court.

It is well settled law that the parameters of grant of bail and its cancellation are quite different. Once an accused is granted bail either in exercise of jurisdiction under Section 437(1)(2) or 439(1) of the Cr.P.C., the same can be cancelled either in exercise of jurisdiction under sub-section (5) of Section 437 or sub-section (2) of Section 439 Cr.P.C. The grounds of cancellation under Section 437(5) and 439(2) of the Cr.P.C. are identical. Some of the circumstances enumerated by the Supreme Court in the case of Raghbir Singh and Ors. Vs. State of Bihar (1986) 4 Supreme Court Cases 481 in which bail can be cancelled, are - (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. However, it was made clear that these grounds are illustrative not exhaustive but



cancellation of bail stands on a different footing and the same is harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to. The aforesaid proposition has also been dealt with by the Apex Court in the case of Mehboob Dawood Shaikh Vs. State of Maharashtra, reported in (2004) 2 SCC 362.

This is not in dispute that correct statement with regard to criminal antecedent of the petitioner was not given in the petition for which learned counsel for the petitioner should have been careful.

While granting bail, the nature of accusation is being judged but while considering the cancellation of bail, basic considerations are whether the accused has misused the privilege of bail either by tampering of evidence or absconding or has suppressed material fact at the stage of grant of bail. Since another case was registered four years prior to grant of bail in the present case and there is nothing on record that the petitioner has been made accused in any other case subsequent to grant of bail, this Court is not inclined to interfere in the matter.

This application is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

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