

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30936 of 2020

Arising Out of PS. Case No.-179 Year-2012 Thana- CHAPRA MUFFASIL District- Saran

Sunil Rai Son of Rambilas Ray @ Ram Bilash Rai, Resident of Village-
Sadha, P.S.- Chapra Muffasil, District- Saran at Chapra.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ram Binod Singh, Advocate

For the Opposite Party/s : Mr. Shailendra Kumar No.2, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 15-01-2021 The present bail application has been filed by the petitioner seeking regular bail in connection with Chapra Mufassil P.S. Case 179 of 2012 lodged under Sections 341, 323, 147, 148, 149, 341, 323 and 307 of the Indian penal Code and Section 27 of Arms Act.

The matter was earlier taken up on 25.11.2020 and the counsel appearing on behalf of the petitioner had made a prayer for withdrawal of this application on the ground that during pendency of this regular bail application, a second bail application was filed by the petitioner before the court below and the petitioner was granted bail while his application for grant of regular bail was pending in the High Court. The counsel for the petitioner was asked by this court that whether while seeking bail from the concerned court below the fact that his bail application is pending before the High Court was disclosed



or not? The counsel for the petitioner failed to give a satisfactory reply and therefore, a report was called from the concerned court as to whether the petitioner had stated before the court below that his regular bail application was pending in the High Court. Further, the learned counsel for the petitioner was also directed to file a supplementary affidavit.

In pursuance to the aforesaid direction, a report vide Letter No. 66 dated 14.12.2020 has been received from the court of Additional Sessions Judge IX, Saran at Chapra, the relevant extract of which is quoted hereunder:

“It appears from perusal of the bail petition of the petitioner that this fact is not mention in the bail petition of the petitioner that his regular bail application was pending before the Hon’ble High Court, Patna.”

Further, a supplementary affidavit has also been filed on behalf of the petitioner, which is kept on record.

After perusal of the aforesaid report and supplementary affidavit filed by the petitioner, it is necessary to succinctly recapitulate the chronology and manner in which the proceedings of this case has navigated. As per FIR, alleged incident took place on 05.08.2012 at around 10 AM and on the same day the case was registered in Chapra Mufassil Police



Station at around 3 P.M. Thereafter, on 23.06.2020 the petitioner was taken into judicial custody in connection with this case. The petitioner then filed an application for bail before the court of learned Chief Judicial Magistrate, Chapra on 09.07.2020 which was rejected vide order dated 10.07.2020. Thereafter, the petitioner filed a regular bail application before learned Sessions Judge, Chapra, which got dismissed vide order dated 24.08.2020. After that the petitioner approached this court by way of filing the present bail application. The present bail application was filed through E-Filing No. EC-BRHC99-17172-2020 on 07.09.2020 and Token was generated for the said filing on 28.09.2020 with Registration on 12.11.2020. Further, as per Annexure-4 series of the supplementary affidavit filed by the petitioner, some compromise took place between the parties on 16.09.2020/17.09.2020. The petitioner then filed a second regular bail petition before the court of learned Chief Judicial Magistrate, Chapra on 17.09.2020. The said bail application has been brought on record by the petitioner as a part of Annexure-4 series to the supplementary affidavit. A bare perusal of the same reveals that this fact was not disclosed in the said bail petition that for similar relief the present application has been filed before the High Court which was still pending. The learned



Chief Judicial Magistrate, Chapra vide order dated 18.09.2020 enlarged the petitioner on bail taking into account the compromise which took place between the parties as well as the fact that chargesheet has been submitted under bailable offences except for offences under Arms Act. It was also observed by the learned Chief Judicial Magistrate, Chapra that the allegation of firing is not on the petitioner therefore, the offence under Arms Act will not be applicable on the petitioner. However, it is necessary to underscore that while passing the order of grant of bail to the petitioner the learned Chief Judicial Magistrate, Chapra was oblivious to the fact that for the same relief an application was pending before the High Court. This omission on the part of the petitioner is a suppression of material fact, which the petitioner was duty bounded to disclose at the time of seeking bail. The petitioner has obtained a favourable order by the court below by misrepresentation of fact.

It is well settled principle of law that *fraus et dolus nemini patrocinari debent* (i.e., fraud and deceit ought to benefit none). An order, judgment or decree obtained by misrepresenting the fact or by playing fraud on the court is non-est and nullity in the eyes of law. Chief Justice Edward Coke of England had said “Fraud avoids all judicial acts, ecclesiastical



or temporal”. The Hon’ble Supreme Court in a catena of decisions has also held that a person approaching the court of law should always approach it with clean hands. In the case of **A.V. Papayya Sastry and Ors vs Govt. of AP and Ors. reported in (2007) 4 SCC 221** the Hon’ble Supreme Court in paragraph 39 of the judgment has held as under:

“39. ...Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.”

It leaves no doubt that the petitioner has obtained an order of grant of bail from the court of learned Chief Judicial Magistrate, Chapra by suppressing the fact that his bail application was pending in this High Court. I am of the view that it amounts to misrepresentation of fact and thus the petitioner has played fraud on the court. Therefore, the order of



learned Chief Judicial Magistrate, Chapra is vitiated by fraud and is nullity in the eyes of law.

Hence, the learned Chief Judicial Magistrate, Chapra is directed to initiate a proceeding for cancellation of bail granted to the petitioner. Further, the petitioner is directed to surrender before the court of learned Chief Judicial Magistrate, Chapra within a period of four weeks from the date of such cancellation of bail. If the petitioner fails to surrender within four weeks from the date of such cancellation order, the concerned court below will take all necessary steps for the production/arrest of the petitioner.

Lastly, if advised, the petitioner after surrender/arrest will be at liberty to invoke the remedies available in law before him. Any application made by the petitioner before the court below will be decided on its own merit, without being prejudiced by this order and if possible the said application be preferably disposed of on the same day.

With the aforesaid observation and direction, this application is disposed of.

(Sudhir Singh, J)

Narendra/AFR

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