IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8890 of 2021

Arising Out of PS. Case No.-762 Year-2018 Thana- SHEKHPURA District- Sheikhpura

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Dakshin Bihar Gramin Bank (Erstwhile Bihar Gramin Bank), through the Chief Manager (Legal Cell), Dakshin Bihar Gramin Bank, Head Office- Shri Vishnu Commercial Complex, N.H. 30, New Bypass, Near BP Highway Services Petrol Pump , Asochak, Patna.

... ... Petitioner

Versus

1. The State of Bihar.
2. Prakash Prasad, Son of Sri Shyam Sundar Prasad, Resident of Village - Ner, P.S.- Makdumpur, Distt.- Jehanabad.

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Ranjeet Kumar Pandey, Advocate.
For the State	:	Mr.A.G.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

2 24-02-2021 Learned counsel for the petitioner is directed to remove the defects, as pointed out by the office, within a period of four weeks.

Heard learned counsel for the petitioner and learned A.P.P. for the State.

This application has been filed under Section 439(2) of the Code of Criminal Procedure, (hereinafter referred to as 'Cr.P.C.') seeking cancellation of regular bail granted to the opposite party no. 2 (for short 'O.P. No. 2') vide order dated 14.11.2019, passed in Cr. Misc. No. 63175 of 2019, in connection with Sheikhpura P.S. Case No. 762 of 2018.

The brief facts leading to this application are as under:

The Manager, Bihar Gramin Bank, gave a written information to the S.H.O., Sirari, alleging therein that his predecessor Prakash Prasad (O.P. No. 2), working as Branch Manager alongwith two other Bank Officials, namely, Amit Kumar (Office Assistant) and Vikas Kumar (Manager of Customer Care Centre), have embezzled Rs. 33,65,300/- by adopting illegal means. The O.P. No. 2 filed an application vide Cr. Misc. No. 63175 of 2019 for grant of regular bail submitting therein that he was in custody since 01.08.2019 and charge sheet had already been submitted. It was also submitted that the main allegation is against co-accused Amit Kumar (ex-Office Assistant) and Vikas Kumar. Further, the said embezzled amount got transferred in the Bank account of co-accused Vikas Kumar and his relatives. There has been no wrongful gain made on his part. Moreover, it was submitted that he is ready to deposit an amount of Rs. 4,50,000/- (Rupees Four Lacs and Fifty Thousand) in the learned court below within a period of four months which shall be subject to final disposal of the case.

This Court after considering the submissions advanced on behalf of the petitioner and materials available on record, released the O.P. No. 2 on provisional bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Sheikhpura, in connection with Sheikhpura P.S. Case No. 762 of 2018 and directed the learned court below to confirm the provisional bail of the O.P. No. 2 once the aforesaid amount of Rs. 4,50,000/- (Rupees Four Lacs and Fifty Thousand) is deposited by him within the stipulated period.

The instant application has been filed, seeking cancellation of bail granted to the O.P. No. 2 primarily on three grounds. First one is that the Bank was not made party in regular bail application and hence the Bank got no opportunity to oppose the bail application of the O.P. No. 2. Secondly, the O.P. No. 2 being the Manager of the Bank, his responsibility is graver and he has played an active role in the said misappropriation. Lastly, the bail application of similarly situated co-accused (Amit Kumar) has been rejected by a co-ordinate Bench of this Court.

At this juncture, it is necessary to quote Sub-Section 2 of Section 439 of the Code of Criminal Procedure-

> “ (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

From the reading of the above quoted sub-section, it is clear that neither any ground nor any parameter has been mentioned in the said sub-section which has to be taken into account by the court while deciding an application filed for cancellation of bail. However, the law on cancellation of bail has evolved through various judicial pronouncements. The Hon'ble Supreme Court in the case of **State (Delhi Administration) Vs. Sanjay, reported in (1978) 2 SCC 411** has in paragraph 12 held as follows:

> "12. Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. <u>**Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial."**</u>

Subsequently, the Hon'ble Apex Court in the case of **Dolat Ram & Ors Vs. State of Haryana, reported in (1995) 1 SCC 349** has in paragraph 4 opined the following:-

> "4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and delay with on different basis.
> Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. <u>**Generally speaking the**</u>

grounds of cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conductive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

It would not be out of place to quote the recent observations made by the Hon'ble Apex Court in the case of **Bharatbhai Bhimabhai Bharwad Vs. State of Gujarat and Ors., reported in MANU/SC/0994/2019**, wherein the Hon'ble Supreme Court has in paragraph 10 held the following:

"10. It is well settled that the consideration applicable for cancellation of bail and consideration for challenging the order of grant of bail on the ground of arbitrary exercise of discretion are different. **While considering the application for**

> **cancellation of bail, the Court ordinarily looks for some supervening circumstances like; tampering of evidence either during investigation or during trial, threatening of witness, the Accused is likely to abscond and the trial of the case getting delayed on that count etc.** Whereas, in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration is whether there was improper or arbitrary exercise of discretion in grant of bail. The Appellant has challenged the very grant of bail on the ground of arbitrary exercise of discretion ignoring the relevant materials to be considered in the application for bail. Since the High Court proceeded under the footing as if the Appellant had filed the application only for cancellation of bail for which, the consideration is different, the impugned order is liable to be set aside and the matter is remitted to the High Court for consideration of the matter afresh."

Now, coming to the case in hand, it is apparent from the pleadings of the instant application as well as from the arguments advanced in support thereof that no case is made out for cancellation of bail granted to the O.P. No. 2 by this Court. The instant application has been filed on misconceived grounds. The first ground for cancellation of bail taken by the petitioner is that the Bank was not made party in the bail application, thus, having been deprived of the opportunity to oppose the prayer for bail.

There is no such rule of law, or even a practice in this

Court to make the informant as opposite party mandatory while making bail application in the cases instituted on a police report.

In the Code of Criminal Procedure, Chapter XXXIII deals with the provisions as to bail and bonds but nowhere talks about giving notice to the informant. Section 436A and Section 439 of the Code of Criminal Procedure provide notice thereupon hearing to the Public Prosecutor only. It would be worth here to take note of Chapter XII of the Rules of the High Court at Patna which deals with the procedure in criminal cases. Rule 9 & 9A of Chapter XII of the said rules are as under:

> " 9. No application or admission to bail shall be made without notice in writing given to the Advocate-General not later than non of the day preceding that on which the application is to be made.
> 9A. In all Criminal Miscellaneous cases the copy of the petition served on the Advocate-General by the petitioners shall be used by the Advocate-General in course of the final hearing of such cases and no further copy of paper book shall be served."

It is also necessary to point out here, that while disposing the bail application, learned counsel for the State was heard as the State of Bihar was already made party in the bail application and copy of the same having been served in advance to the office of the learned Advocate General, thus, this Court finds no merit in the submission advanced by the learned counsel for the petitioner.

The second ground raised by the petitioner relates to the gravity of offence and the involvement of O.P. No. 2 being the Branch Manager. It is important to underscore that gravity of the offence cannot be a ground for cancellation of bail at all. An application for cancellation of bail cannot be a camouflaged application for rehearing of the earlier application on merit.

Lastly, the petitioner has brought the attention of this Court to the fact that a similarly situated co-accused, namely, Amit Kumar, has been denied the privilege of bail by a co-ordinate Bench of this Court. Even this argument of the petitioner does not hold water, for the reason that in the said order, the co-ordinate Bench of this Court has articulately observed in the second last paragraph that the said co-accused, namely, Amit Kumar, 'being Assistant in the concerned Bank was responsible for making entries in the relevant registers and it is obvious from perusal of record as well as case diary that defalcation has been committed by making fake entries in the relevant registers of the Bank.' Therefore, the case of the said co-accused is factually distinguishable and cannot be equated with the case of O.P. No. 2.

Therefore, in my considered opinion, unless the petitioner makes out a case that the O.P. No. 2 after grant of bail, has interfered or attempted to interfere with the due course of administration of justice or tampered the evidence and witnesses or evaded or attempted to evade from the due course of justice or abused the concession granted to him or any such overwhelming or supervening circumstance has arisen, which has rendered it no longer conducive to a fair to allow the accused to retain his freedom by enjoying the concession of bail during the trial, there is no occasion for this Court to cancel the bail already granted to the Opposite Party No. 2 as referred above. In the present case, nothing as such has been brought on record, which may be material consideration for cancellation of bail.

Accordingly, this application is dismissed for being devoid of merit.

(Sudhir Singh, J)

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