

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56032 of 2018

Arising Out of PS. Case No.-167 Year-2015 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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Pawan Kumar Sharma Son of Late Ramanand Sharma, resident of Alankar
Palace Anant Ram Lane Sonapatti, P.S. Kotwali, Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kaushal Kishore Sinha alias Kaushal Kishore Son of Late Damodar Prasad
Sinha, resident of Jhaua Kothi, Khanjarpur, P.S. Barari, Bhagalpur.
3. Ashit Kumar Das, Son of Sudhir Chandra resident of Nathnagar, P.S. Nath
Nagar, District- Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate

Mr. Alok Kumar Jha, Advocate

Mr. Mukund Kumar, Advocate

Mr. Aditya Raman, Advocate

Mr. Akash Kumar, Advocate

For the Opposite Party/s : Mr. Pramod Kumar Pandey, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 2 26-06-2024 1. The instant application under Section 482 of the Cr.P.C.

has been filed for quashing the order dated 06.12.2017 passed
by learned Chief Judicial Magistrate, Bhagalpur in Kotwali P.S.
Case No. 167 of 2015, G.R. No. 747 of 2015 whereby privilege
of bail has been granted to the Opposite Party Nos. 2 & 3.
2. The prosecution case in brief is that one Mahavir Prasad
Chaudhary came to the petitioner with a proposal to sale his



share in the ancestral property measuring 3094 square feet situated at Ward No. 20. The petitioner executed an agreement for sale dated 10.05.2008 vide Instrument No. 4845 with Mahavir Prasad Chaudhary along with his wife which was witnessed and consented by his two sons namely, Anil Chaudhary and Sunil Kumar Chaudhary. When the occasion for execution of sale deed arose, the land owner executed a general power of attorney dated 30.06.2008 in favour of the brother of the petitioner namely, Shravan Kumar Sharma only to the extent of 2320.50 square feet of land, whereas the petitioner has duly paid entire consideration amount of Rs. 8,40,750/-. Insofar differential area of 773.50 square feet was concerned, it was assured that transfer of the said area would be done later. Thereafter, on the basis of the said power of attorney, the brother of the petitioner executed registered deed of conveyance in favour of the petitioner on 03.07.2008 for an area of 2320.50 square feet. Subsequently, the petitioner came to know that the above mentioned general power of attorney and sale deed was cancelled because Partition Suit No. 04 of 2002 was pending before the learned Sub Judge-8, Bhagalpur in which it was ordered to maintain status quo vide order dated 19.03.2002 and the accused persons despite having knowledge about the status



quo order, transferred the disputed property to the petitioner by fraud. The petitioner further learnt about the conspiracy on the part of the land owner as the remaining 773.50 square feet of land which was agreed to be sold to the petitioner was sold to one Jay Shree Thakur, W/o Rajesh Kumar Chaudhary and in the said fraud larger conspiracy of the Directors of Gayatri Homes India Ltd., namely, Kaushal Kishore Sinha, Sanjay Ranjan and Ashit Kumar Das surfaced.

3. In the light of aforesaid facts, Kotwali P.S. Case No. 167 of 2015 was registered against eleven named accused persons including the Opposite Party Nos. 2 and 3 namely, Kaushal Kishore Sinha & Ashit Kumar Das, Directors of Gayatri Homes India Ltd. for the charges punishable under Sections 420, 406, 427, 448 read with Section 120(B) of the I.P.C. The charge sheet was filed against seven named accused persons including the Opposite Party Nos. 2 & 3 on 20.11.2015 and the learned C.J.M., Bhagalpur vide order dated 24.11.2015 took cognizance against the opposite parties including others.

4. On 06.12.2017 the Opposite Party Nos. 2 & 3 surrendered before the Court below and moved a bail application, copy of which was handed over to the prosecution and submission was made on behalf of both the prosecution and the accused.



5. The submission was made by the side of the accused that during the course of investigation Section 41 Cr.P.C. notice was served upon them and they were on Police bond and fully co-operated in the investigation.

6. Learned counsel for the petitioner argued that C.J.M. after taking consideration of the submissions granted bail to Opposite Party Nos. 2 & 3 on the ground that they were released on Police bond during the course of investigation. Learned C.J.M. did not consider any other aspects like the nature of allegations and its seriousness as required under the Cr.P.C.

7. Upon bare reading of the provisions prescribed in the Cr.P.C. relating to bail, it would be clear that there is no provision which talks about grant of bail to an accused merely because such accused has earlier been released on Police bond during the course of investigation. The impugned order is in the teeth of the provisions mentioned under Section 437 (4) Cr.P.C., which requires reasons to be recorded in writing at the time of granting bail. The impugned order granting bail to the Opposite Party Nos. 2 & 3 is *prima facie* illegal and has been passed in complete departure from the procedures established by law.

8. I have heard learned counsel for the parties and have perused the order granting bail. In the instant case the petitioner



has challenged the order granting bail under inherent power of the High Court under Section 482 Cr.P.C., whereas, there is special provision for cancellation of bail in the Cr.P.C. under Section 439(2).

9. The opposite parties have joined the investigation and there is no allegation that they have not co-operated in the investigation and the Police after investigation submitted charge-sheet. The opposite parties were given benefit of Section 41 Cr.P.C. and were on Police bond. They co-operated during the course of investigation and after submission of charge-sheet they surrendered and sought bail. The offences alleged against them is punishable by seven years and / or less then seven years imprisonment.

10. The materials on record indicate that the opposite parties co-operated during the investigation and they enjoyed protection till the filing of the charge- sheet and cognizance order passed thereafter. In such a situation, considering the maximum sentence of the offence the opposite parties were likely to carry and the fact that the opposite parties co-operated during the course of investigation, the learned C.J.M., Bhagalpur granted regular bail to the opposite parties.

11. Accordingly, I do not find any infirmity in the impugned



order dated 06.12.2017 passed in Kotwali P.S. Case No. 167 of 2015, G.R. No. 747 of 2015 warranting interference by this Court. In the result, this application is dismissed.

(Anil Kumar Sinha, J)

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