

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48262 of 2023

Arising Out of PS. Case No.-649 Year-2018 Thana- GOPALGANJ TOWN District-
Gopalganj

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Arvind Kumar Gupta, Son of Satpal Arya, Resident of Village- Flat No. L
2095, First Avenue, Gaur City-1, Greater Noida West Sector-1, Greater Noida,
P.S.- Gautam Budh Nagar, West Gautam Buddha Nagar, Uttar Pradesh-201318

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gangdayal Yadav, Son of Late Munar Yadav, Resident of Village- Amawa
Nakchhed, Pergana Kuwari, P.S.- Gopalganj, Distt- Gopalganj

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate Ms. Megha, Advocate
For the State	:	Mr. Ajit Kumar, APP
For the O.P. No. 2	:	Mr. Harendra Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

Date : 27-09-2024

1. The instant criminal miscellaneous petition has been filed under section 439(2) of the Code of Criminal Procedure (in short ‘Cr.P.C.’) with a prayer to cancel the bail of the Opposite Party No. 2 (in short ‘O.P. No. 2’) Gangdayal Yadav which has been granted to him vide order dated 13.04.2023 in Cr. Misc. No. 14438/2023 passed by this Court, in connection with Gopalganj P.S. Case No. 649/2018 registered for the offences under sections 420, 467, 468, 471 and 120B of the Indian Penal Code (in short ‘IPC’).



Submissions on behalf of the Petitioner : -

2. Mr. Ansul, learned counsel for the petitioner has argued that the father of the petitioner purchased a plot of land bearing Khata No. 112, R.S. Plot No. 1362 from Sheoraj Kohar, Saral Kohar and sons of Bahadur Kohar namely Motilal Kohar and Phuleshwar Kohar in the year 1943 through a registered Sale Deed dated 25.03.1943 and after his death, the petitioner came in the possession of the said land and the mutation of the land also took place in his name and the rent of the land is being paid regularly by him. The petitioner and his family members have been keeping their peaceful possession over the said land since its purchase. Learned counsel has further submitted that on 03.10.2018, the informant, father of the petitioner, came to know that the accused persons including the O.P. No. 2 fraudulently and through a deep rooted conspiracy obtained a judgment and decree in their favour with regard to the petitioner's father's land on the basis of a forged sale deed dated 13.01.1942, of which xerox copy has been filed as Annexure-4. Thereafter, the petitioner came to know that the co-accused Radhika Devi who happens to be the wife of the O.P. No.2 filed a Title Suit No. 236/1996 before the court of Sub-Judge-I, Gopalganj against the petitioner, his father and his brother



Mukund Gupta and in that suit, one namely Sudama Yadav came in the picture as an intervener who placed himself as defendant in the said title suit and in this regard, the copy of the decree passed in the Title Suit 236/1996 has been filed as Annexure-‘5’.

3. Learned Counsel has further submitted that it came to the knowledge of the petitioner that the co-accused persons including O.P. No. 2 forged a *vakalatnama* in the name of the petitioner, his father and his brother in furtherance of conspiracy and the same was filed in the Title Suit No. 236/1996 and thereafter, the written statement and an affidavit were also filed on behalf of the petitioner, his father and brother. Further, the accused got a fictitious person examined in place of the petitioner’s father in the said Title Suit and in pursuant of the judgment passed in the Title Suit No. 236/1996, an Execution Case No. 15/2017 was started and only then the petitioner and his father came to know about this fraud and consequently, on 12.10.2018, the petitioner’s father appeared through his lawyer in the Execution Case No. 15/2017. It has been further submitted that the petitioner’s father died in the year 2000 and thereafter, some of the co-accused persons fraudulently and by manipulating the records got the decree executed in the



Execution Case No. 15/2017 and accordingly, O.P. No. 2, his wife and other co-accused have committed a serious fraud and cheating not only with this petitioner and his family members but also with the trial court and there are sufficient materials to prove the fraud in view of the discrepancies regarding the age of the accused which has been shown in the Title Suit No. 236/1996 and other relevant documents and all the accused including O.P. No. 2 are the members of a land *mafia* and used to grab the lands of others by fraudulent measures and there are several FIRs against them including Gopalganj P.S. Cases Nos. 647/2018, 648/2018, 649/2018, 650/2018, etc.

4. Learned counsel has further submitted that the petitioner appeared in Cr. Misc. No. 14438/2023 through his lawyer and his name was also appearing in the daily causelist but due to inadvertence, he could not appear at the time of hearing of the case and the relevant and important facts to make the O.P. No. 2 disentitle for the privilege of bail could not have been placed before this court.

Submissions on behalf of the O.P. No.-2 :-

5. On the other hand, Mr. Harendar Prasad, learned counsel appearing for the O.P. No. 2 has vehemently opposed this petition and submitted that the petitioner has not made out a



case of the misuse of privilege of bail by the O.P. No. 2 and from the avertments made by the petitioner in his petition, it is clearly evident that neither a false submission nor any kind of concealment of any relevant fact was made by the O.P. No. 2 at the time of hearing in Cr. Misc. No. 14438/2023. This Court granted the relief of regular bail to O.P. No. 2 mainly considering the facts that two co-accused persons were already on bail at that time including the petitioner's wife and an Execution Case filed in respect of the alleged decree was pending in between both the parties and it was also taken into consideration that the petitioner was a Government employee by profession.

Learned counsel has further submitted that the O.P. No. 2 was granted the relief of regular bail about four months after his custody period that was also taken into account by this Court, hence, there is no substance in this present petition and the same is liable to be dismissed.

Consideration and Analysis : -

6. I have heard both the sides, gone through the materials placed before this Court with this petition as Annexures No. '1' to '19' and also have perused the order dated 13.04.2023 passed in Cr. Misc. No. 14438/2023 by which the



O.P. No. 2 was granted the relief of regular bail by this Court and also have perused the FIR of Sadar Town P.S. Case No. 649/2018 registered under sections 420, 467, 468, 471 and 120B of IPC, in respect of which the O.P. No. 2 was granted the relief of regular bail.

7. The petitioner has prayed for to cancel the privilege of bail which has been granted to O.P. No. 2 vide order dated 13.04.2023 passed in Cr. Misc. No. 14438/2023.

8. At first, I would like to discuss the principles laid down by the Hon'ble Apex Court which must be kept in mind while deciding a prayer for cancellation or revocation of bail under section 439(2) Cr.P.C.

The Hon'ble Apex Court in the case of **Imran vs. Mohammed Bhava and Another** reported in **(2022) 13 SCC 70** ruled that a bail once granted can be revoked if the relevant materials on record, gravity of the offence or its social impact have not been considered or the bail has been granted in a mechanical manner, however, it is a well established principle that once bail has been granted it would require overwhelming circumstances for its cancellation. While laying down the said principle, the Hon'ble Apex Court took into account its own observation made in the judgment passed in the case of **Vipan**



Kumar Dhir vs. State of Punjab reported in **(2021) 15 SCC 518**.

9. Likewise, the Hon'ble Apex Court in its recent judgment passed in the case of **Himanshu Sharma vs. State of Madhya Pradesh** reported in **(2024) 4 SCC 222** has ruled that the cancellation of the bail is entirely different from the grant of bail as the bail can only be cancelled if the accused has misused the liberty granted to him, flouted the conditions of bail order, the privilege of bail has been granted in ignorance of statutory provisions restricting the powers of the Court to grant bail or the bail order has been got by the accused by misrepresenting or fraud. While laying down the said principles, the Hon'ble Apex Court took into account the ratio laid down by the Hon'ble Apex Court in the cases of **Abdul Basit vs. Mohd. Abdul Kadir Chaudhary** reported in **(2014) 10 SCC 754** and **Gurcharan Singh vs. State (UT of Delhi)** reported in **(1978) 1 SCC 118**.

10. The provision of section 439(2) of Cr.P.C. empowers the High court and Session court to direct any person, who has been released on bail under Chapter XXXIII of Cr.P.C., be arrested and committed to custody. Though in this section, the specific ground upon that basis the privilege of bail can be cancelled, has not been enumerated but in this regard the



position has been cleared by the Hon'ble Apex Court in the various judgments and in the light of the ratio settled by the Hon'ble Apex Court, the following grounds for cancellation of bail broadly emerge :-

(i) The accused has misused his liberty by indulging in similar criminal activity or

(ii) He/She has interfered with the course of investigation or

(iii) He/She has attempted to temper with the evidence or witness or

(iv) He/She has threatened the witness or indulged in similar activity which would hamper smooth investigation or trial.

(v) There is likelihood of his fleeing to another country or

(vi) He/she has attempted to make himself unavailable to the investigating agency or the court or

(vii) He/She has attempted to place himself beyond the reach of his surety or

(viii) He/She has misused the liberty granted to him by this or that way or

(ix) He/She has flouted any of the conditions of the



bail order or

(x) He/She has got the relief of bail from the court by misrepresentation of a material fact or by committing a fraud with the court, etc.

11. Now, I come to the merit of the present case. While arguing, the learned counsel for the petitioner has mainly pointed out the alleged fraudulent act of the O.P. No. 2 and others in getting the alleged judgment and decree in their favour in regard to the petitioner's father's land on the basis of a forged sale deed from the court of Sub-Judge-1, Gopalganj by filing a Title Suit No. 236/1996 and while committing the alleged forgery, several documents such as Vakalatnama, written statement, complaint, affidavits were forged by impersonating the petitioner, his father and his brother. Learned counsel has further pointed out the several criminal cases bearing P.S. Case Nos. 647/2018, 648/2018, 649/2018, 650/2018 and some other cases detailed in the Annexure No. -18, most of them registered at Gopalganj Town Police station for the various offences of IPC, against the O.P. No. 2 and others which shows the O.P. No. 2 as being a habitual criminal in committing the offences of similar nature.



12. After having perused the order dated 13.04.2023 passed in Cr. Misc. No. 14438/2023, I find that while granting the relief of bail to O.P. No. 2, it was mainly taken into consideration that two co-accused persons had already been granted bail including the wife of O.P. No. 2 and the Execution Case No. 15/2017 filed in respect of the alleged forged decree was pending and the O.P. No. 2 had spent about four months in jail till that time and his counsel took the plea that he was a Government teacher by profession and regarding the criminal antecedents of 13 cases, it was revealed by his counsel that the final form had been submitted in five cases, in three other cases O.P. No. 2 had been granted bail and the rest cases were lodged by his agnates. The petitioner has given the details of some criminal cases in his petition which are against the O.P. No. 2 and others and it appears that among these cases Gopalganj P.S. Case No. 647/2018 and 650/2018 were lodged on the report of Government Officials and rest cases bearing No. 649/2018 and 648/2018 were lodged by the petitioner's father and one, namely, Gyan Prakash, who was a witness in the Gopalganj P.S. Case No. 649/2018 lodged by the petitioner. Though there are several criminal cases against the O.P. No. 2 and against him there is also the allegation of being involved in



the activity of land *mafia* but the petitioner has not convinced this Court about the presence of any of the above-mentioned grounds to justify his prayer for cancellation of bail and it is not the case of the petitioner that the O.P. No. 2 had committed a fraud with this court or made any misrepresentation with regard to a material fact before this Court at the time of hearing his Cr. Misc. No. 14438/2023 and there is nothing material or evidence to show that the O.P. No. 2 has misused the privilege of bail which has been granted to him vide order dated 13.04.2023 and there is no material to show that he has threatened any witness of the prosecution or has indulged in an offence similar to the present matter subsequently after getting the relief of the bail in the present matter and there is nothing material to show that he may flee to another country during the trial. Further, the relief of bail was granted to the O.P. No. 2 mainly considering his custody period of four months, the privilege of bail having already been granted to his wife and some co-accused and pendency of the Execution case in between both the parties relating to the land which is one of the main subject matters in most of the cases running in between both the parties and the same are sufficient for one to get the relief of bail. Accordingly, I find no merit in this



petition, so, it stands dismissed.

(Shailendra Singh, J.)

annu/-

AFR/NAFR	AFR
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