

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63878 of 2025

Arising Out of PS. Case No.-28 Year-2022 Thana- KHAJEKALA District- Patna

Sanjay Kumar S/o- Late Lala Prasad Yadav Mohalla - Gurhatta, P.S.-
Khajekala, District – Patna. Petitioner.

Versus

1. The State of Bihar
2. Gopal Prasad Roy S/o- Late Munnu Prasad Yadav R/o- Rai Jai Krishna Road, Gurhatta Ps- Khajekala Dist- Patna
3. Amit Kumar S/o- Gopal Prasad Roy R/o- Rai Jai Krishna Road, Gurhatta Ps- Khajekala Dist- Patna

... .. Opposite Parties.

Appearance :

For the Petitioner	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Ms. Sheshadri Kumari, Advocate Mr. Shashank Kashyap, Advocate
For the O.P. No.2 and 3	:	Mr. Sumit Kumar Singh, Advocate Mr. Hash Kaushal, Advocate Mr. Aman Raj, Advocate Ms. Abhilasha Kumari, Advocate
For the State	:	Mrs. Gulnar Begum, APP

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL ORDER

9 03-04-2026 Heard learned counsel for the petitioner, learned counsel for the opposite party nos.2 and 3 and learned APP for the State.

2. This application has been preferred on behalf of the petitioner for cancelling/recalling the order dated 16.06.2025 passed by this Court in Cr. Misc. No.57707 of 2024, granting anticipatory bail to the opposite party nos.2 and 3.

3. The brief facts of the case, as borne out from the written report submitted by the petitioner before the S.H.O. of Khajekala Police Station, *inter alia*, is that the petitioner had purchased a plot, bearing Municipal Survey Plot No.1380, Seat No.201, Ward No.23/28, present Ward No.60, Circle No.121,



Holding No.5/1/A, 5/1/C, having its area 20 kathas, in his name, in the name of his wife and in the name of his sister-in-law (Bhabhi) through a registered sale deed and came in possession thereof. It is further alleged that one Gopal Prasad Rai (opposite party no.2), in connivance with land Mafiya and antisocial elements, was selling out the part of the disputed land by creating forged documents to different persons and have also broken the lock of the room of the caretaker and put in possession of one Paramanand Pashi. The petitioner was also threatened of dire consequences on objection being raised by him.

In the last part of the written report, there is general and omnibus allegation against opposite party nos. 2 and 3 of trying to alienate the plots of land belonging in the share of the informant/petitioner.

4. On the basis of the said written report Khajekala P.S. Case No. 28 of 2022 was instituted under Sections 447, 448, 506, 467, 468, 420, 471/34 of the Indian Penal Code.

5. At the very outset, Mr. Ranjan Kumar Dubey, learned counsel for the petitioner has submitted that the informant received the notice in the bail application bearing Cr. Misc. No. 57707 of 2024 during the summer vacation and the court was to reopen on 16.06.2025 and the opening day itself i.e. on 16.06.2025 the said case was listed and the opposite party no. 2



(petitioner herein) could not file the Vakalatnama and as such, was unable to appear in the said case. Cr. Misc. 57077 of 2024 was thus, disposed of on 16.06.2025 itself granting the privilege of anticipatory bail to the present opposite parties nos. 2 and 3, noting in the said order that despite issuance of notice, opposite party no. 2 (petitioner herein) had not appeared. The present petitioner thus did not get an opportunity to bring the correct facts before the court in the earlier proceeding of anticipatory bail.

6. Learned counsel submits that the opposite party nos. 2 and 3, by suppressing the material facts, got an order in their favour which requires reconsideration and should be recalled. It has been submitted that the suppression of facts has been made with respect to Mutation Case, Tile Suit and the Partition related documents, which are vital and material in nature. With regard to Mutation Case, it has been pointed out that the opposite party nos. 2 and 3, in their bail application have contended that the land in question has been mutated in the name of their father, but the real fact is that such mutation was done earlier by misrepresenting before the concerned authority and the order dated 11.09.2021 in the Mutation Case No. 13830/ 2021-22 passed by the Circle Officer was dismissed by the Court of the D.C.L.R., Patna City in Mutation Appeal No. 169/ 2023-24 vide



order dated 03.01.2024. The appeal was thus allowed in favour of the present petitioner.

7. Learned counsel for the petitioner has further contended that so far as the second ground relating to Title Suit bearing T.S. No. 423 of 1989 is concerned, the impression given at the time of argument on behalf of opposite party nos. 2 and 3, is that the name of the informant (petitioner herein) did not find place in the plaint although the fact is that the document itself would show that the informant's name was added on the said plaint which is Annexure-9 to the supplementary affidavit filed by the petitioner.

8. Further contention of the petitioner with regard to the partition document (Annexure-6 to the present application) brought on record by the opposite parties is that the said partition deed does not bear the signature of either of the parties, rather only the signature of the panchas appear on the said document. This fact was also not placed before the Court at the time of hearing of the bail application, as such no authenticity can be attached to the so-called partition deed.

9. On the basis of the above grounds of suppression of material facts, it has been submitted that the order of bail granted in favour of the opposite party nos.2 and 3 requires reconsideration and the anticipatory bail granted to them is fit to



be cancelled.

10. *Per contra*, Mr. Sumit Kumar Singh, learned counsel appearing for the opposite party nos.2 and 3, has raised a preliminary objection that the present petitioner had opportunity to appear during the bail hearing, as notice was issued to him on 22.03.2025 in Cr. Misc. No.57707 of 2024, fixing the next date of hearing on 16.06.2025. Despite the said opportunity, the petitioner failed to appear before the Court on the said date resorting to lame excuse of not being able to mark the list as it was opening day of the Court after Summer Vacation. The order of the Court dated 16.06.2025 clearly notes in para-3 that “Despite issuance of notice O.P. No.2 has not appeared in the present proceeding.” The present cancellation application should not be entertained on this score itself that the petitioner had shown negligence and laches in ensuring a timely legal representation.

11. It is further submitted that the ground of suppression of material facts taken on behalf of the petitioner is not correct and, as a matter of fact, the opposite parties did not suppress any fact from the Court.

12. With regard to the mutation case, it has been submitted that the order passed by the D.C.L.R. is not a judicial finding of title or fraud and the entries made therein do not confer



or take away the title, as is settled law. Moreover, the said order of the D.C.L.R. was made the subject matter of challenge in Mutation Revision No.1 of 2024.

13. It has next been submitted with reference to the Title Suit No.423 of 1989, that it is an old document with the entry made on the third page of the said plaint and the existence of this litigation is an indicator of the fact that the issue of title is disputed and is pending for final adjudication, as such the dispute between the parties is purely civil in nature.

14. Learned counsel for the opposite parties submits with regard to the petitioner's contention relating to genuineness of the partition deed that the document records a family settlement of the year 1984 and the petitioner's submission that the said partition deed lacked the necessary signatures and did not include the disputed plots has been responded to by the counsel for the opposite party nos. 2 and 3 by submitting that the genuineness of the deed entails questions of complex documentary proof and interpretation to be done by the civil court of competent jurisdiction and hence, the contention of the prosecution is irrelevant to the question of bail cancellation.

15. This Court upon consideration of the rival contentions of the parties, comes to a considered conclusion that the contesting parties are co-sharers of the property in question and



the FIR indicates allegation of sale made by the opposite party nos. 2 and 3, of plots falling in the share of the petitioner on the basis of some forged documents. It is also a fact that with regard to the dispute between the parties, civil remedies are available and have already been resorted to. Further allegation in the FIR is in the nature of anticipation that the opposite parties would cause threat and damage to the safety of the petitioner and his family members.

16. It is thus concluded that even if there exists some discrepancies with regard to the land related documents, the same do not tantamount to suppression of such vital facts which can be equated to playing fraud with the court and which would be sufficient to vitiate the order granting anticipatory bail to the opposite party nos. 2 and 3. It is settled by various pronouncements of Hon'ble Supreme Court that the meaning and scope of the expression 'material fact' and the effect of 'suppression' of the same would be that whether the same was material for grant or denial of the relief in question.

17. One has to be mindful of the fact that the present application is one of cancellation of bail, the parameters of which, as settled by way of several judicial pronouncements, are distinct from that of grant of bail. It is equally settled that bail once granted, ought not to be cancelled in a mechanical manner.



However, an unreasoned or perverse order of bail is always subject to assessment and interference by a superior court. So far as other grounds of any supervening misconduct of the accused or emergence of some very cogent or overwhelming circumstances necessary to cancel the bail earlier granted, have not been urged or agitated.

18. In the background of the law relating to cancellation of bail, which is not lightly or mechanically to be resorted to, the order dated 16.06.2025 passed in Cr. Misc. No. 57707 of 2024 granting anticipatory bail to the opposite party nos. 2 and 3, having been passed upon consideration of the civil nature of dispute between the family members, does not warrant any interference. The present application for cancellation of bail is not fit to be sustained and is thus hereby dismissed.

(Soni Shrivastava, J)

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