

State Of Bihar vs Md. Ekbal @ Mister on 20 June, 2017

Author: Sharan Singh

Bench: Sharan Singh

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 17470 of 2015

Arising Out of PS.Case No. -277 Year- 2011 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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1. Md. Rustam @ Minu, Son of Md. Yashin, Resident of Khilafat
Nagar, P.S. - Habibpur, District - Bhagalpur.

..... Petiti

Versus

1. The State of Bihar.
2. Md. Ekbal @ Mister, Son of Md. Salim @ Md. Suleman @ Md.
Shakil, Resident of Mohalla - Kabirpur, Rahmadbag Nayatola,
P.S.. Nathnagar, District - Bhagalpur.
3. Kumod Kumar, Inspector of Police, through the Se
Superintendent of Police, Gaya

..... Opposite Parties

WITH

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Criminal Miscellaneous No. 17775 of 2017

Arising Out of PS.Case No. -277 Year- 2011 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

=====

1. The State Of Bihar

..... Petiti

Versus

1. Md. Ekbal @ Mister, Son of Md. Salim @ Md. Suleman @ Md.
Shakil, resident of Mohalla- Kabirpur, Rahmat Bag Naya Tola,
Police Station- Nath Nagar, District- Bhagalpur.

..... Opposite Party

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Appearance :

(In Cr.Misc. No.17470 of 2015)

For the Petitioner : Mr. Sandeep Kumar

For the State : Mr. Nand Kumar

For O. P. No. 2 : Mr. Ajay Kumar Singh

Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017

For O. P. No. 3 : Mr. Ravindra Kumar
: Mr. Shishir Kumar
(In Cr.Misc. No.17775 of 2017)
For the Petitioner/s : Mr. R. B. Roy „Raman
For the Opposite Party/s :

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CORAM:	HONOURABLE	MR.	JUSTICE	CHAKRADHARI
SHARAN SINGH				
JUDGMENT AND ORDER				
ORAL				
Date: 20-06-2017				

There is a common relief sought for in both these applications filed under Section 439 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the „Code), seeking cancellation of anticipatory bail of one Md. Ekbal @ Mister, granted by this Court, by an order, dated 29.03.2012

, passed in Criminal Misc. No. 39834 of 2011.

2. Criminal Misc. No. 17775 of 2017 has been filed on behalf of the State of Bihar, whereas, Criminal Misc. No. 17470 of 2015 has been filed by one Md. Rustam @ Minu.

3. The main ground, which has been taken in these applications for cancellation of anticipatory bail, is that said Md. Ekbal @ Mister is a history-sheeter and is an accused in one-and-a-half dozen of cases of serious nature. At the time of consideration of anticipatory bail application filed by Md. Ekbal @ Mister, his criminal antecedent report was called for by this Court. An antecedent report was submitted by the District Police of Bhagalpur, showing that the said Md. Ekbal @ Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 Mister had no criminal antecedent at all. Considering the said report to be correct, this Court, while, observing as follows, granted said Md. Ekbal @ Mister anticipatory bail by order, dated 29.03.2012:-

"The First Information Report is against unknown. There is no recovery from the possession of the petitioner. The name of the petitioner finds place in the confessional statement of the co-

accused. However, the criminal antecedent report called for shows that there is no criminal antecedent."

4. It is being alleged that Police-Criminal nexus facilitated grant of anticipatory bail to said Md. Ekbal @ Mister on the report of Sri Kumod Kumar, the then Inspector of Police

-cum- Station House Officer, Kotwali Police Station, Bhagalpur.

5. What is not in dispute is that said Md. Ekbal @ Mister is accused in, at least, following cases, as is evident from the statement made in Criminal Misc. No. 17775 of 2017, filed on behalf of the State of Bihar for cancellation of bail:-

- (i) Jagdishpur (Habibur) Police Station Case No. 68 of 2003,
- (ii) Nathnagar (Lalmati) Police Station Case No. Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 82 of 2005,
- (iii) Bhagalpur (Mahila) Police Station Case No. 33 of 2013,
- (iv) Nathnagar (Madhusudanpur) Police Station Case No. 293 of 2014,
- (v) Tatarpur Police Station Case No. 262 of
- (vi) Kotwali Police Station Case No. 277 of 2011
- (vii) Dumka Muffassil (Masanjore) Police Station Case No. 40 of 2009, of 1998,
- (ix) Dumka Town Police Station Case No. 159 of 1998,
- (x) Dumka Town Police Station Case No. 130 of 1999, &
- (xi) Dumka Town Police Station Case No. 142 of 1998.

6. In Criminal Misc. No. 17470 of 2015, details of following cases have been mentioned, which are said to have been instituted against the said Md. Ekbal @ Mister:-

- (i) Dumka Mufassil (Masanjore) Police Station Case No. 40 of 1999,
- (ii) Dumka Town Police Station Case No. 148 of Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 1998,
- (iii) Dumka Town Police Station Case No. 130 of 1999,
- (iv) Dumka Town Police Station Case No. 157 of 1998,
- (v) Dumka Town Police Station Case No. 159 of 1998,
- (vi) Jagdishpur (Habibpur) Police Station Case No. 91 of 1994,
- (vii) Jagdishpur (Habibpur) Police Station Case No. 93 of 1997,

- (viii) Habibpur Police Station Case No. 24 of 2002,
- (ix) Habibpur Police Station Case No. 68 of 2003,
- (x) Habibpur Police Station Case No. 261 of 2006,
- (xi) Habibpur Police Station Case No. 45 of 2011,
- (xii) Complaint Case No. 2524 of 2012
- (xiii) Bhagalpur (Mahila) Police Station Case No. 33 of 2013,
- (xiv) Nathnagar (Madusudanpur) Police Station Case No. 293 of 2014, Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017
- (xv) Nathnagar Police Station Case No. 82 of 2005, (xvi) Kotwali Police Station Case No. 262 of 2006, & (xvii) Kotwali Police Station Case No. 277 of 2011.

7. Some of the cases are common in the two list of cases supplied by the parties.

8. Referring to some of the cases mentioned in Criminal Misc. No. 17470 of 2015, the said Md. Ekbal @ Mister has taken a plea that in those cases, he is not an accused because father's name of the accused of those cases is different from the name of his father.

9. Expressing anguish over the conduct of the police officers of Bhagalpur District Police, this Court had directed the Inspector General of Police, Bhagalpur Zone, Bhagalpur, by an order, dated 03.03.2017, passed in Criminal Misc. No. 17470 of 2015, to file an affidavit dealing with the averments made in the application seeking cancellation of bail. Sri Kumod Kumar, the then Station House Officer of Kotwali Police Station, Bhagalpur, was allowed to be impleaded as Opposite Party No. 3, who has entered appearance through his learned Counsel. The Inspector General of Police, Bhagalpur Zone, Bhagalpur, upon calling for a report from the Senior Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 Superintendent of Police, Bhagalpur (Bihar) and the Superintendent of Police, Dumka (Jharkhand) has given a list of criminal cases involving Md. Ekbal @ Mister, which have been noted above, in paragraph no. 5 of this judgment and order.

10. Dealing with the association of Md. Ekbal @ Mister with Sri Kumod Kumar, the then Station House Officer, Kotwali Police Station, Bhagalpur, following statement has been made in paragraph 11 of the affidavit sworn on behalf of Inspector General of Police, Bhagalpur Zone, Bhagalpur.

"11. That in reply to the statement made in paragraph no. 9 of the petition, it is stated that the report speaks that Md. Mister used to work for the Police Officers namely Kumod Kumar, INSPOL -

cum- SHO, Kotwali P.S., Sanjay Bishwas, SI -cum- SHO, Tatarpur P.S. and Santosh Sharma, SI -

cum- SHO, Adampur O.P. There is no clear evidence of any illegal collection."

11. It is not clear, however, as to in what manner the said Md. Ekbal @ Mister used to work for the said Police Officers, when this is not being disputed that Md. Ekbal @ Mister has long list of criminal cases against him.

12. In Criminal Misc. No. 17775 of 2017, it has Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 been stated that said Md. Ekbal @ Mister is a notorious criminal of Bhagalpur district and adjoining districts also and as a matter of fact, after getting bail in the present case, he has become a terror of the district. It has also been stated that after his release on bail in the present matter, Md. Ekbal @ Mister, again, has been made accused in Nathnagar Police Station Case No. 293 of 2014, registered for the offences punishable under Sections 419/420/468 of the Indian Penal Code.

13. I have heard Mr. Sandeep Kumar, learned Counsel for the petitioner, Md. Rustam @ Minu, Mr. Nand Kumar, learned Additional Public Prosecutor appearing on behalf of the State of Bihar, Mr. Ravindra Kumar, learned Counsel representing Opposite Party No. 3, Sri Kumod Kumar, the then Station House Officer, Kotwali Police Station, Bhagalpur and Mr. Ajay Kumar Singh, learned Counsel appearing on behalf of Md. Ekbal @ Mister.

14. Mr. Sandeep Kumar, learned Counsel, appearing on behalf of the petitioner in Criminal Misc. No. 17470 of 2015, has submitted that this Court was misled on the fact whether said Md. Ekbal @ Mister had any criminal antecedent or not. According to him, no such privilege of anticipatory bail would have been granted by this Court had this Court been knowing about the criminal antecedent of said Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 Md. Ekbal @ Mister. It is his contention that the order granting anticipatory bail was fraudulently obtained by the said Md. Ekbal @ Mister and, therefore, the said privilege should be cancelled.

15. Mr. Nand Kumar, learned Additional Public Prosecutor, has also made similar statements, reiterating what has been said in the application seeking cancellation of bail filed on behalf of the State of Bihar. He has relied on Supreme Court's decision, in the case of Aslam Babalal Desai v. State of Maharashtra (AIR 1993 SC 1).

16. Mr. Ajay Kumar Singh, learned Counsel representing the said Md. Ekbal @ Mister, has submitted that Criminal Misc. No. 17470 of 2015, filed by a person who is neither the informant of the case nor in any manner connected with the concerned cases, has no locus standi to maintain the application seeking cancellation of bail. He has submitted that this Court allowed Md. Ekbal @ Mister privilege of anticipatory bail after taking into account the merits of the case in relation to accusation, since he was neither named in the First Information Report nor any recovery had been made from his possession and his name had surfaced on the basis of confessional statement of co-accused. It is also his plea that since criminal antecedent report, submitted by the police showed that he had no criminal antecedent, this Court had Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 granted the said Md. Ekbal @ Mister privilege of anticipatory bail. It is his case that the petitioner, Md. Rustam @ Minu, has criminal history and is accused in several cases of serious

nature. This application for cancellation of bail has been filed by him because of personal rivalry. It is his further contention that said Md. Ekbal @ Mister has neither misused his liberty by indulging in similar criminal activity nor by making any attempt to tamper with the evidence or threatening the witnesses or interfering with the course of investigation in any manner. In the absence of such circumstances, the power under Section 439 (2) of the Code, cancelling anticipatory bail should not be exercised, he contends. He has argued that parameters for grant of bail and cancellation of bail rest on two different pedestals and question of setting aside an unjustified, illegal or perverse order is different from cancelling an order of bail on the ground that accused had misconducted himself or because of some supervening circumstances, warranted such cancellation. He has reiterated that the petitioner of Criminal Misc. No. 17470 of 2015 himself is a hardened criminal, on account of which the Bhagalpur Police has been taking action against him and it is by way of retaliation that the present application seeking cancellation of bail has been filed.

17. Mr. Ajay Kumar Sinha, learned counsel, Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 appearing on behalf of the opposite party No. 2, has placed great reliance on Supreme Court decision in case of Abdul Basit @ Raju & Ors. Vs. Mohd. Abdul Kadir Chaudhary, reported in (2014) 10 SCC 754 with special reference to paragraphs 14, 20, 21, 26 and 27. Referring to the said decision, learned counsel has submitted that cancellation of bail, on the ground of the same having been obtained by fraud, will amount to review of the order granting anticipatory bail, which is barred by operation of Section 362 of the Code. According to him, such exercise can be done only by a superior Court, on the ground of the order granting anticipatory bail itself being vulnerable.

18. Mr. Sandip Kumar, learned Counsel, appearing on behalf of the petitioner, has submitted that in the present case, the question is not of correctness or otherwise of the order granting anticipatory bail, rather it is with respect to the manner in which the petitioner obtained an order from this Court by playing fraud with the aid and collusion of the district police.

19. The opposite party No. 2 has not disputed the fact that there are so many cases pending against him. The plea which has been taken on behalf of the opposite party No. 2, relying on Supreme Court decision in case of Abdul Basit @ Raju (supra), though appears to be quite convincing Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 on the point of exercise of power under Section 439(2) of the Code, the said decision is, however, distinguishable in view of the statutory requirement, under Section 438 of the Code, for grant of bail to a person apprehending arrest. Section 438 of the Code read thus:-

"438. Direction for grant of bail to person apprehending arrest.- [(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of inuring or humiliating the applicant by having him so arrested, either reject the application Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the applicant shall be finally heard by the Court.

(1-B) the present of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.] (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 under sub-section (1)."

(Emphasis is supplied)

20. The antecedent of the applicant, seeking anticipatory bail, is one of the four considerations statutorily prescribed as condition precedent for the High Court or Court in Sessions to grant anticipatory bail. There being statutory requirement to this effect, under Section 438 of the Code, this Court had called for a report from the district police as regards petitioner's criminal antecedent. The petitioner had apparently not disclosed his criminal antecedent in his application. The district police, more particularly opposite party No. 3, misled this Court by giving false information that opposite party No. 2 had no criminal antecedent. This requirement is not there either under Section 437 or Section 439 of the Code. Laying down in the Statute itself, as to what would be the considerations for grant of anticipatory bail, is of great significance and its importance cannot be undermined. If the Court was fraudulently misled to exercise power under Section 438 of the Code by supplying wrong information collusively, an exercise to cancel anticipatory bail, so granted, shall not amount to review of the order rather a mere declaration that the order granting anticipatory bail was obtained by fraud.

21. Words of Chief Justice Edward Coke, "fraud avoids all judicial acts, ecclesiastical or temporal" has Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 consistently been guiding principle emphasizing the legal position that principle of finality of litigation cannot be stretched to the extent of any absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants. [A.V. Papayya Sastry and Others v. Government of A.P. and Others, reported in (2007) 4 SCC 221)].

22. The Supreme Court, in case of A.V. Papayya Sastry (supra), dealing with fraud in judicial proceedings has held as follows in paragraphs 21 to 26 as follows:

"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

"Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral

proceedings.

Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017

23. In the leading case of *Lazarus Estates Ltd. v. Beasley* Lord Denning observed: (All ER p. 345 C) "No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

24. In *Duchess of Kingstone*, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be *res judicata* and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was 'misled'. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said; fraud and justice never dwell together (*fraus et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraus et dolus nemini patrocinari debent*).

26. Fraud may be defined as an act of deliberate deception with the Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personem. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

(Emphasis is added)

23. In case of *Jai Prakash Singh Vs. The State of Bihar and Another*, reported in (2012) 4 SCC 379, the Supreme Court observed that anticipatory bail, being an extra ordinary privilege, can be granted only in exceptional cases. The Court referred to earlier decision in case of *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, reported in (2011) 1 SCC 694, which had laid down the factors and parameters, which could be taken into consideration while dealing with an application for anticipatory bail. In the present case, indisputably, this Court was fraudulently misled while allowing opposite party No. 2 the privilege of anticipatory bail inasmuch as false facts were made available to the Court on the question of antecedent of Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 opposite party No. 2, in relation to his criminal antecedent.

24. The plea that even if a fraud of any nature is detected while allowing an application for anticipatory bail, subsequently the same cannot be cancelled by the High Court in any circumstance is not acceptable to me. For example, if by way of tampering or interpolations in the First Information Report itself, a person succeeds in obtaining anticipatory bail, will the High Court be

not justified in cancelling the anticipatory bail, so granted, if fraud is detected subsequently? The game played by the police in the present case by making available to the High Court a false information to help the Opposite Party No. 2, in my view, is a good ground for cancellation of bail because criminal antecedent of the accused has been provided as consideration for grant of anticipatory bail in the Code itself. The High Court has wide powers to pass appropriate orders to prevent abuse of process of the Court and to otherwise secure ends of justice under Section 482 of the Code. Once fraud is detected and established, the High Court shall be well within its jurisdiction and can certainly exercise its power under Section 482 of the Code, even for the purpose of cancellation of bail in appropriate cases.

25. Considering the long list of cases pending against opposite party No. 2 and taking into account the fact that the information with respect to his criminal antecedent Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 was suppressed deliberately, I consider it to be a fit case for cancellation of bail granted to opposite party No. 2 by order of this Court, dated 29.03.2012, passed in Criminal Misc. No. 39834 of 2011.

26. Learned counsel, appearing on behalf of the opposite party No. 2, as has been noted above, has raised preliminary objection over the maintainability of Criminal No. 17470 of 2015, filed by a stranger, not connected in any manner with the case in which the said opposite party No. 2 has been granted anticipatory bail. I find substance in such preliminary objection raised.

27. Criminal Misc. No. 17470 of 2015 is, accordingly, dismissed as not maintainable, whereas, Cr. Misc. No. 17775 of 2017, filed on behalf of the State of Bihar is allowed.

28. The privilege of anticipatory bail granted to the opposite party (Criminal Misc. No. 17775 of 2017), by virtue of order of this Court, dated 29.03.2012, passed in Criminal Misc. No. 39834 of 2011, stands cancelled. The opposite party No. 2, namely, Md. Ekbal @ Mister, is directed to be taken into custody in connection with the concerned Bhagalpur Kotwali Police Station Case No. 277 of 2011.

29. Before I part with the present judgment and order, in peculiar facts and circumstances of the case, I Patna High Court Cr.Misc. No.17470 of 2015 dt.20-06-2017 direct the Director General of Police, Bihar, to ensure that criminal cases lodged against the opposite party No. 2, namely, Md. Ekbal @ Mister, are brought to their logical end as expeditiously as possible, since it has emerged from the facts that he appears to be enjoying close association with the police officials.

30. The Director General of Police, Bihar, is also directed to consider initiating appropriate disciplinary action against Kumod Kumar, the then Station House Officer of Bhagalpur Town police station, who, apparently, misled this Court by giving false information as regards antecedent of the opposite party No. 2.

31. This disposes of the applications.

Prabhakar Anand/Praveen

AFR/NAFR	AFR
CAV DATE	N/A
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