

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.20447 of 2015**

Arising Out of PS.Case No. -321 Year- 2011 Thana -MADHUBANI COMPLAINT CASE District-  
MADHUBANI

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1. Pradeep Kumar Jha son of Baidya Nath Jha  
2. Shambhu Nath Jha son of Yogendra Jha  
Both are residents of village- Harana, P.S.- Rudrapur, District Madhubani  
.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Sita Raman Jha son of Late Indra Narain Jha, resident of village- Harana, P.S.-  
Rudrapur, District- Madhubani  
.... .... Opposite Party/s

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**Appearance :**

|                        |   |                                                                                     |
|------------------------|---|-------------------------------------------------------------------------------------|
| For the Petitioner/s   | : | Mr. Rajiv Roy, Advocate<br>Mr. Manoj Kumar Jha, Advocate<br>Mrs. Sugandha, Advocate |
| For the State          | : | Mr. Murlidhar, APP                                                                  |
| For the Opp.Party no.2 | : | Mr. Baidyanath Thakur, Advocate<br>Mr. Shankar Thakur, Advocate                     |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 30-06-2015**

This application under section 482 of the Code of Criminal Procedure (for short “the Code”) is directed against the order dated 21.1.2015 passed by the learned Additional Sessions Judge-IV, Madhubani in Sessions Trial No.248 of 2014 arising out of Complaint Case No.321 of 2011 whereby the bail already granted to the petitioners has been cancelled in exercise of powers conferred under section 439(2) of the Code.

2. The opposite party no.2 Sita Raman Jha initially lodged an FIR vide Rudrapur P.S. Case No.4 of 2010 dated 12.2.2010 alleging therein that in the night intervening between 11.2.2010 and 12.2.2010 at about 1 a.m. on hearing sound of knocking of the door



his wife suspected that some miscreants had entered into the courtyard of the house. His wife woke him up. When he opened the door of his bedroom, he saw the co-villagers Hem Narayan Jha, Amit Kumar Jha and Pradeep Kumar Jha being armed with pistol were seen standing outside his bedroom in the torchlight. When he raised alarm, they ran away towards main door of the house. He chased them shouting “Chor-Chor”. When he reached near the main door, he saw Shambhu Nath Jha, Dilip Jha and 3-4 unknown persons standing there with pistol in their hands. He caught hold of one of the miscreants. His wife and sister-in-law (Bhabhi) also followed him shouting “Chor-Chor”. In the meantime, some one fired causing injury to his wife. When he saw his wife in an injured condition, he released the miscreant whom he had apprehended. Thereafter, the accused persons fled away. He took his injured wife to Jhanjharpur Sub-Divisional Hospital with the help of co-villagers where the doctor declared her brought dead.

**3.** Thus, it would appear from the contents of the FIR of Rudrapur P.S.Case No.4 of 2010 that apart from the petitioners of the present case, three more persons were named as accused in the FIR. After institution of the FIR, the police took up investigation of the case. While the case was still under investigation, opposite party no.2 Sita Raman Jha filed an application before the Magistrate concerned in the form of protest against the manner in which investigation was



being carried on. The protest application filed by opposite party no.2 was kept on record in Rudrapur P.S.Case No.4 of 2010.On completion of investigation, the police submitted final report holding accusation against the named accused persons of the case to be false vide final report no. 6 of 2011 dated 14.02.2011. In the said police report, it is stated that the informant repeatedly changed his version during investigation and the statement of his Bhabhi Smt.Vandana Jha, who was the only other person said to be present at the time of occurrence apart from the deceased does not align with the statement of the informant. According to the investigating officer of the case, it transpired during investigation that opposite party no.2 had illicit relationship with his Bhabhi and he used to subject his wife to mental and physical cruelty. The investigating officer of the case suspected complicity of the informant in the alleged murder of his wife.

4. After receipt of the final report, the learned Additional Chief Judicial Magistrate, Jhanjharpur issued notice to the informant for hearing on the police report submitted under Section 173 of the Code. On 31.05.2011 the learned Additional Chief judicial Magistrate, Jhanjharpur accepted the final report submitted by the police after hearing the informant and examining the materials available on record. He directed the protest petition to be separately registered as a complaint case. Accordingly, Complaint Case No. 321 of 2011 was registered. In the complaint case, the opposite party no.2



was examined on oath and in course of enquiry conducted under section 202 of the Code six other witnesses were also examined in support of the complaint. In the complaint case cognizance of the offence under Section 302 read with 34 of the Indian Penal Code and Section 27 of the Arms Act was taken against the petitioners and two others namely, Amit Kumar Jha and Dilip Kumar Jha and they were summoned to face trial. In the background of the facts mentioned above the accused persons of the complaint case including the two petitioners filed an application for grant of anticipatory bail before the learned Sessions Judge, Madhubani on 29.09.2012 vide ABP No. 979 of 2012 which was dismissed on 2.11.2013. Thereafter, the petitioner along with others filed anticipatory bail application before this Court on 20.11.2013 vide Cr.Misc. No. 49567 of 2013 and the same was disposed of vide order dated 11.03.2014 with following observations:

“It appears that Final Report was submitted in the matter which was accepted, but the cognizance was taken on the basis of Protest-cum-Complaint Petition whereafter summons were issued and thereafter Bailable Warrant of Arrest were also issued upon which the Petitioners appeared before the Investigating Agency and were released on bail.

In view of such, this application for anticipatory bail is not maintainable.

**It is disposed off with direction to the Petitioners to appear before the Additional Chief**

**Judicial Magistrate, Jhanjharpur, Madhubani, in connection with C.R.Case No.321 of 2011, who shall pass order in accordance with law in the light of the decision rendered in the case of Mahendra Pd.Singh Vs. The State of Bihar [2004(3) PLJR 491].**

The application stands disposed off.

The Petitioners shall deposit a sum of Rs.1,000/- in the District Legal Aid Committee, Madhubani.”

(emphasis supplied)

5. It would be relevant to mention here that during pendency of the application for bail before this Court, the court of Magistrate had issued bailable warrant of arrest against the accused persons in the complaint case to secure their attendance. While executing bailable warrant of arrest, the police released the accused persons on furnishing an undertaking that they would appear before the court on the next appointed date. While arguing the application for anticipatory bail before this Court, these facts were brought to the notice of the court. Somehow or the other, the Bench hearing the anticipatory bail application of the accused persons of the complaint case got an impression that the petitioners were granted police bail in course of investigation of the case. It was in this background that this Court while disposing of the bail application of the accused persons directed the petitioners to appear before the court below and the court

below was directed to consider the decision of this Court in the case of *Mahendra Prasad Singh vs. The State of Bihar* [2004 (3) PLJR 491].

6. In *Mahendra Prasad Singh* case (supra) the accused of a non-bailable offence was taken into custody by the police during investigation and then granted the benefit of police bail under the provisions of Section 437(2) of the Code. Subsequently, after completion of investigation the police submitted chargesheet only in bailable offences. However, the Magistrate differed with the opinion of the police and took cognizance for non-bailable offences also. Thereafter, the accused filed an application for anticipatory bail under Section 438 of the Code apprehending danger of arrest and custody before this Court. After considering the relevant facts, a Bench of this Court held as under :

“5. In the facts of the case, the petitioner must honour the terms of police bail and appear before the Court without any delay. In case, the petitioner appears before the Court below within six weeks, then the Court below shall consider his prayer for bail in accordance with law keeping in view the well established principle that a person who is already on bail shall not be denied such privilege unless there is any allegations of misuse etc. With this observation, this application for anticipatory bail is disposed of.”



7. Pursuant to the aforesaid order dated 11.03.2014 passed in Cr.Misc.No. 49567 of 2013 both the petitioners appeared before the learned Magistrate on 24.03.2014 and prayed for bail. The learned Magistrate considered the matter in detail and rejected the application for bail of the petitioners and remanded them to judicial custody vide order dated 24.3.2014. While rejecting the bail application, he has observed that the facts of the case of ***Mahendra Prasad Singh*** (supra) were not akin to the facts of the present case.

8. The petitioners thereafter moved for bail under Section 439 of the Code before the learned Sessions Judge, Madhubani vide BP No. 15 of 2014 (C.F.)/ 56 of 2014. The bail application of the petitioners was heard by the learned Ad hoc Additional Sessions Judge III, Madhubani. He granted bail to the petitioners vide order dated 17.04.2014. The operative part of the aforesaid order dated 17.04.2014 is as under:

“Heard. It is apparent from the case record initially on the basis of fard beyan of the informant a case was instituted with Rudrapur P.S. in which the final report was submitted and the same was accepted by the learned A.C.J.M., Jhanjharpur but on the basis of protest-cum-complaint petition the cognizance for the offence committed u/s 302/34 I.P.C. and 27 Arms Act was taken by the learned A.C.J.M., Jhanjharpur. It further transpires that summons, thereafter bailable warrant of arrest was



issued and the petitioners were released on bail by the police. It further transpires that petitioners had preferred anticipatory bail vide Cr.Misc.No. 49567/13 before the Hon'ble High Court, Patna and the Hon'ble Court vide order dated 11.3.2014 has observed that "It appears that Final Report was submitted in the matter which was accepted, but cognizance was taken on the basis of protest cum complaint petition whereafter summons were issued and thereafter bailable W/A were also issued upon which the petitioners appeared before the Investigating Agency and were released on bail. In view of such, this application for anticipatory bail is not maintainable."

The Hon'ble High Court in the said order has further directed that "the petitioners to appear before the Addl. Chief Judicial Magistrate, Jhanjharpur, Madhubani who shall pass order in accordance with law in the light of the decision rendered in the case of Mahendra Prasad Singh vs. State of Bihar, 2004(3) PLJR 491."

The Hon'ble Court further directed the petitioner to deposit a sum of Rs.1,000/- in the District Legal Aid Committee, Madhubani.

In Mahendra Prasad Singh vs. State of Bihar further in Awadhesh Narain Rai & others vs. State of Bihar and in Ram Bilash Singh vs. State of Bihar it has been observed by the Hon'ble Court that .... " the court below shall consider prayer of bail in accordance with law keeping in

view the well established principle that a person who is already on bail shall not be denied such privilege unless there is any allegation of misuse etc....”

In the light of above discussed facts and in view of observation made in Cr.Misc.No. 49567/13 dt. 11.3.2014 and the direction of the Hon’ble Court which has been complied with the petitioners by depositing a sum of Rs.1,000/- in District Legal Aid Committee, Madhubani, let both the petitioners be directed to be released on bail on furnishing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of the learned court below.”

9. It would be apposite to note here that the aforesaid order dated 24.03.2014 passed by the learned Magistrate by which the petitioners were remanded to judicial custody was challenged by the co-accused Amit Kumar Jha and Dilip Kumar Jha before this Court in Cr.Misc. No.15666 of 2014. The ground for challenge in the aforesaid Cr.Misc. No.15666 of 2014 was mainly that the learned Judicial Magistrate had not taken the order passed by this Court in Cr.Misc. No. 49567 of 2013 in its true perspective and had wrongly interpreted the same and remanded the petitioners to judicial custody. The aforesaid application bearing Cr.Misc. No. 15666 of 2014 was placed before the same Bench which had considered Cr.Misc.No. 49567 of 2013. After hearing the parties, while dismissing the aforesaid

application on 23.07.2014, this Court observed:

“The Petitioners Amit Kumar Jha and Dilip Kumar Jha along with Pradeep Kumar Jha and Shmbhu Nath Jha preferred an anticipatory bail application vide Cr.Misc.No. 49567 of 2013. This Court under a misconception that the case was still continuing on the basis of original First Information Report was of the view that since the Petitioners had surrendered before the investigating agency the Anticipatory Bail application was not maintainable. Hence it disposed of the matter directing the Petitioners to appear before the Court below, which was further directed to consider the decision of this Court in the case of Mahindra Pd. Singh versus The State of Bihar reported in 2004(3) PLJR 491. Unfortunately, this Court did not take into note that in fact when the case was no longer on the original First Information Report but had proceeded on the protest-cum-complaint petition the fact that the Petitioner had appeared before the investigation agency at one stage had no meaning in the present proceeding.

In such circumstances, I am convinced that the order dated 11.3.2014 passed in Cr. Misc. No.49567 of 2013 was erroneous and the observations made therein are fit to be ignored.

In view of the clarification, evidently this application is not maintainable.

It is dismissed as such.”

**10.** After the aforesaid order dated 23.7.2014 passed by this Court, the opposite party no.2 filed an application on 12.8.2014 in Sessions Trial No.248 of 2014 under section 439(2) of the Code for cancellation of bail granted to the petitioners vide aforesaid order dated 17.4.2014 passed by the learned Ad hoc Additional Sessions Judge-III, Madhubani. The learned 4<sup>th</sup> Additional Sessions Judge, Madhubani after hearing the parties allowed the application filed under section 439(2) of the Code vide order dated 21.1.2015 and cancelled the bail bond of the two petitioners of the present case. The relevant part of the order is as under:

“In the light of the observation made in the Cr. Misc. No.15666 of 2014 dated 23.7.2014 of the Hon’ble Court the observation made in Cr. Misc. No.49567 of 2013 dated 11.3.2014 in regard to consideration of bail on the basis of the observation made in Mahendra Prasad Singh case does not remain in existence and any order passed by this court in regard to the compliance of the above direction automatically comes to an end and unsustainable.

Consequently, the order of enlargement on bail and furnishing bail bond of the afore named both accused persons namely, Pradeep Kumar Jha and Shambhu Nath Jha stands cancelled. Both the accused persons are entitled to move application for grant of bail u/s 439 of the Code of Cr.P.C. which shall be considered on their own merit.

Accordingly, the instant petition of both the accused persons are hereby disposed of. Both the accused persons are directed to remain physically present on 12.02.2015.”

**11.** The aforesaid order dated 21.01.2015 passed by the learned Additional Sessions Judge IV, Madhubani in Sessions Trial No. 248 of 2014 is under challenge in the present application before this Court.

**12.** I have heard Mr. Rajiv Roy, learned counsel for the petitioners, Mr. Baidyanath Thakur, learned counsel for opposite party no.2 and Mr. Murlidhar, learned Additional Public Prosecutor for the State.

**13.** Learned counsel for the petitioners has submitted that the impugned order dated 21.01.2015 is bad in law and wrong on facts. According to him, the trial court has passed the order in mechanical manner ignoring the principles laid down by the Supreme Court in the matters of cancellation of bail under Section 439(2) of the Code. He has submitted that the court below has failed to consider the fact that the petitioners have neither concealed nor misrepresented any fact before this Court or before the trial court.

**14.** He has further contended that the court below has failed to consider the fact that the petitioners surrendered before the Magistrate and were remanded to judicial custody. They were granted



bail by the learned Ad hoc Additional Sessions Judge III, Madhubani under Sections 439 of the Code and while on bail, they never misused the privilege of bail in any manner. He further contended that there is no charge that the petitioners ever interfered with the investigation or tampered with the evidence or threatened the witnesses in any manner. He has submitted that the parameters for grant of bail and cancellation of bail are entirely different as has been laid down by the Supreme Court in several cases. Reliance has been placed by him on the decisions of the Supreme Court in this regard in *State of Karnataka vs. L. Muniswamy* [(1977) 2 SCC 699]; *Babu Singh vs. The State of U.P.* [(1978) 1 SCC 579]; *State (Delhi Admn.) vs. Sanjay Gandhi* [(1978)2 SCC 4011]; *Bhagirath Singh vs. State of Gujarat* [(1984) 1 SCC 284]; *Aslam Babu Lal Desai vs. State of Maharashtra* [(1992)4 SCC 272]; *Dolat Ram vs. State of Haryana* [(1995)1 SCC 349]; *Ram Charan vs. State of M.P.* [(2004)13 SCC 617]; *Mehboob Dawood Shaikh vs. State of Maharashtra* [(2004)2 SCC 362]; *Jayendra Saraswathi Swamigal vs. State of Tamil Nadu* [(2005)2 SCC 13] and *Nityanand Rai vs. State of Bihar* [(2005)4 SCC 178].

15. Learned counsel for the petitioners has further submitted that though the court of Sessions has power to cancel bail in exercise of powers conferred under Section 439(2) of the Code but it has no power to review the order granting bail on merits in absence of

any supervening circumstances.

16. In response, learned counsel for opposite party no.2 has submitted that it has not been laid down by the Supreme Court that only if supervening circumstances are there, on assessing the same, bail can be cancelled. He has contended that while considering the cancellation of bail, the court has also to consider the gravity of nature of the offence, prima facie case against the accused persons, position and status of the accused etc. According to him, if there is very serious allegation against the accused, his bail may be cancelled even if the accused has not misused the privilege of bail granted to him. He has further contended that in the present case apparently the trial court had fallen in error while granting bail to the petitioners. It wrongly applied the principles enunciated by this Court in ***Mahendra Prasad Singh*** case (supra). The facts of ***Mahendra Prasad Singh*** case (supra) were not applicable to the facts of the present case. The matter was also clarified by this Court while disposing of Cr. Misc. No.15666 of 2014. According to him, there is no illegality in the impugned order dated 21.1.2015 passed by the court below. In support of his contentions, learned counsel for the opposite party has placed reliance on the decisions of the Supreme Court in ***Praksh Kadam and others vs. Ram Prasad Vishwanath Gupta and another [(2011)6 SCC 189]***; ***Kanwar Singh Meena vs. State of Rajasthan and another [(2012)12 SCC 180]*** and ***State of U.P. through CBI vs. Amarnath***

***Tripathi [(2005) 8 SCC 21].***

**17.** Learned counsel for the opposite party no. 2 has further submitted that the bar created under Section 362 of the Code would not be applicable in the cases in which bail has been granted by a court on erroneous consideration of facts or law.

**18.** Learned counsel for the State has adopted the arguments advanced on behalf of learned counsel appearing on behalf of opposite party no.2. He has contended that there is no error in the impugned order passed by the learned Sessions Judge and by cancelling the bail granted to the petitioners obviously the trial court has simply corrected the error committed by it inadvertently

**19.** I have carefully considered the submissions advanced by the respective counsel for the parties.

**20.** In view of the submissions advanced at the Bar, it would be necessary to examine the ambit and scope of Section 362 and 439(2) of the Code which reads as under:-

“362. **Court not to alter judgment.**- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

**439. Special powers of High Court or Court of Session regarding bail.-**

(1) x x x x x x x x x x x x x x x x x x x x x x x

(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.”

**21.** On a careful examination of the decisions of the Supreme Court noted hereinabove, it would be apparent that rejection of bail when applied for is one thing, cancellation of bail already granted is another. It is easier to reject a bail application in a non-bailable offence than to cancel a bail granted in such a case. 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 circumstance, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during trial. The power to cancel the bail has to be exercised with care and circumspection. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety etc. These grounds are illustrative and not exhaustive.

**22.** The scope of power to the High Court under section

439(2) of the Code has been considered by the Supreme Court in the case of *Gurucharan Singh vs. State (Delhi Administration)* [(1978)1 SCC 118]. In *Gurucharan Singh* (supra) the Hon'ble Supreme Court succinctly explained the provisions regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 and elucidated the position of law vis-a-vis powers of the courts granting and cancelling the bail as under :

“16. Section 439 of the new Code confers special powers on the High Court or Court of Session regarding bail. This was also the position under Section 498 CrPC of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to the custody. In the old Code, Section 498 (2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who had been admitted to bail under subsection (1) to be arrested and may commit him to custody. In other words, under Section 498 (2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of



Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. *When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for*

*cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.”*

**(emphasis supplied)**

**23.** In *Dolat Ram and Others vs. State of Haryana [(1995)1 SCC 349]*, the Supreme Court considered the distinction between rejection of bail at the initial stage and the cancellation of bail already granted earlier by the Court. It observed as under:-

“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 dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for 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 conducive 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.”

**24.** In the case of *Puran vs. Rambilas [(2001) 6 SCC 338]*, the Supreme Court held in paragraph 11 that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation.

**25.** The case laws on which learned counsel for the opposite party no. 2 has placed reliance mostly deal with the cases in which though the applications for bail were allowed by the sessions court, the same were cancelled by the High Court.

**26.** In *Amarmani Tripathi* case (supra), the bail was cancelled as it was established that there were serious attempts to tamper with the evidence and to interfere with in course of investigation and threatened the witnesses.

**27.** In *Prakash Kadam and Others* (supra), the sessions court had granted bail to the appellants but that had been cancelled by the High Court. The order of the High Court cancelling the bail was

under challenge before the Supreme Court. In that case, the accused policemen had killed an innocent person in a false police encounter at the behest of third person. It was in this context, the Supreme Court held that the High Court was perfectly justified in cancelling the bail granted to the appellant accused.

**28.** In *Kanwar Singh Meena* (supra), in a case registered under Sections 147, 148, 149, 364 and 302 of the Indian Penal Code, the High Court had granted bail to the accused Khushiram Meena. The appellant Kanwar Singh Meena challenged the order passed by the High Court before the Supreme Court. The Supreme Court taking into consideration the fact that in a heinous crime the accused was granted bail ignoring the relevant materials. The Supreme Court was also of the view that the order passed by the High Court suffered from serious infirmities and it was passed in an arbitrary and casual manner. In that context, the Supreme Court cancelled the bail granted to the accused by the High Court.

**29.** In my opinion, the facts of the case on which learned counsel for opposite party no.2 has placed reliance are entirely different from the facts of the present case.

**30.** In the instant case, there is no allegation that after being released on bail, the petitioners misused their liberty or interfered with the course of investigation or attempted to tamper with the evidence or witnesses. There is also no allegation that there is likelihood of



their being fleeing away to another country or they are attempting to hide themselves by going underground or becoming unavailable. There is no allegation of misuse of privilege of bail or having committed similar offences while on bail. There is also no allegation that the petitioners had made any misrepresentation before the Court while pressing their bail application.

**31.** Even on facts, I find that the accusation made in the first information report instituted by the complainant was found to be false in course of investigation by the police. The police suspected complicity of the opposite party no. 2 in committing murder of his wife. It transpired during investigation of the case that the complainant was having illicit relationship with his Bhabhi and due to this reason he used to subject his wife to cruelty. The final report submitted by police was accepted by the Magistrate after hearing the informant and perusing the materials on record.

**32.** In such background of the facts when the matter proceeded on complaint, the petitioners applied for anticipatory bail. Their anticipatory bail was rejected by the court below. When they moved before this Court, it was disposed of with certain observations as noted hereinabove. The petitioners surrendered before the Magistrate concerned and prayed for bail. The Magistrate rejected the application for bail of the petitioners on merits by a reasoned order. The learned Magistrate categorically held in his order that the facts of



the case of ***Mahendra Prasad Singh*** (supra) do not apply to the facts of the case of the petitioners. The petitioners were taken into custody and remanded to jail. They moved for bail before the sessions court. They had neither suppressed any fact nor made any misleading statement in their application. The parties were heard before the learned sessions court and after hearing the parties, the sessions court had granted them bail keeping in mind various facts including the decision of this Court in ***Mahendra Prasad Singh*** (supra). It is true that when two other co-accused of the complaint case approached this Court for quashing of the order passed by the learned Magistrate whereby the application for bail of the petitioners was rejected, this Court clarified that the observation in respect of ***Mahendra Prasad Singh*** (supra) was erroneously made in its earlier order dated 11.03.2014 passed in Cr. Misc. No. 49567 of 2013. However, in my opinion, such clarification made by this Court could not have been a ground for cancellation of bail of the petitioners by the sessions court.

**33.** At this stage, it would be apposite to consider whether the impugned order date 21.2.2015 passed by learned Additional Sessions Judge-IV, Madhubani in Sessions Trial No.248 of 2014 arising out of Complaint Case No.321 of 2011 would amount to review of the earlier order.

**34.** In the case of ***Narendra K. Amin vs. State of Gujarat [(2008) 13 SCC 584]***, a three-Judge Bench of the Supreme Court has



reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In that case, the High Court had cancelled the bail granted to the accused in exercise of powers under Section 439(2) of the Code. In appeal before the Supreme Court, it was contended that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Supreme Court while affirming the principles laid down in *Puran case* (supra) has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code.

35. This aspect was once again considered by the Supreme Court in the case of *Abdul Basit alias Raju and others vs. Mohd. Abdul Kadir Chaudhary and another* [(2014)10 SCC 754]. The Supreme Court in paragraph 17 made discussion about the facts of *Puran vs. Rambilas* (supra) and *Narendra K. Amin vs. State of Gujarat* (supra) and observed as under:

“17. .... In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same Court.”

36. On the same line in *Ranjit Singh vs. State of M.P.*,

*[(2013) 16 SCC 797]*, the Supreme Court has observed as under:

“19. .... There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court.”

**37.** In *Abdul Basit alias Raju and Others vs. Mohd. Abdul Kadir Chaudhary and Another* (supra), taking into consideration the provisions of Section 362 of the Code, the Supreme Court observed as under:

“19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused’s misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

20. In the present case, the respondents herein had filed the criminal miscellaneous petition



before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, *functus officio* and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The



singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.

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26. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the petitioner-accused. Even though the cancellation of bail rides on the satisfaction and discretion of the court under Section 439(2) of the Code, it does not vest the power of review in the court which granted bail. Even in the light of fact of misrepresentation by the petitioner-accused during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition.

27. Herein, the High Court has assigned an erroneous interpretation to the well settled



position of law, assumed expanded jurisdiction onto itself and passed an order in contravention of Section 362 of the Code cancelling the bail granted to the petitioners herein. Therefore, in our considered opinion, the High Court is not justified in reviewing its earlier order of grant of bail and thus, the impugned judgment and order requires to be set aside.”

**38.** Keeping in mind the facts and circumstances of the case as also the law laid down by the apex court in the decisions noted hereinabove including the decision in *Abdul Basit* (supra), I am of the opinion that it was not open to the trial court to cancel the bail of the petitioners in exercise of powers conferred under Section 439(2) of the Code on merits as the same would amount to reviewing its earlier order of grant of bail.

**39.** Regard being had to the statutory provisions under the Code, I find that there is no express provision for review of order granting bail. After grant of bail, the learned Sessions Judge had become *functus officio*. Section 362 of the Code clearly bars the court from reviewing its own order on merits. In absence of any of the grounds enumerated hereinabove warranting cancellation of bail granted to the petitioners, the impugned order dated 21.01.2015 passed by the learned Additional Sessions Judge-4<sup>th</sup>, Madhubani, in Sessions Trial No. 248 of 2014, arising out of Complaint Case No.

321 of 2011 cannot be upheld as the same is in contravention of section 362 of the Code. Accordingly, the order dated 21.5.2015 passed by the learned Additional Sessions Judge-IV, Madhubani in Sessions Trial No.248 of 2014 arising out of Complaint Case No.321 of 2011, is set aside.

**40.** The application stands allowed.

**(Ashwani Kumar Singh, J)**

Md.S./-

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