

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24451 of 2013

Arising Out of PS.Case No. -421 Year- 2009 Thana -BEGUSARAI TOWN District- BEGUSARAI

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1. Sanjay Kumar Sinha, son of Sri Shyam Nandan Singh,
 2. Shyam Nandan Singh, son of late Bichho Singh,
 3. Smt. Kanti Devi, wife of Sri Shyamnandan Singh, all resident of village Khamhar, P.S. Begusarai, Mufassil, in the district of Begusarai, presently residing in mohalla- Harakh Subhash Nagar, P.S. Begusarai Town in the district of Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. Shiv Narayan Singh, son of late Janak Prasad Singh, resident of mohalla- Kashipur Ward No. 11 P.S. Samastipur, in the town and district of Samastipur,
3. Asha Kumari, daughter of Sri Shiv Narayan Singh, resident of mohalla- Kashipur Ward No. 11 P.S. Samastipur in the town and district of Samastipur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. AkhileshwarPd. Singh, Sr. Advocate with
Mrs. Anita Kumari Singh, Advocate

For the Opposite Party No.1: Mr. Binod Kumar 2, APP

For the Opposite Party No.2: Mr. Patanjali Rishi, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 12-04-2017

1. This application has been filed for quashing the order dated 21.05.2013 passed by the learned Sessions Judge, Begusarai, in Cr. Misc. No.52 of 2010, whereby the petitioners' bail in connection with Begusarai Town P.S. Case No.421 of 2009 registered for the offence under Section(s) 341, 323, 307, 498-A/34 Indian Penal Code has been cancelled.

2. From perusal of the impugned order, it appears that regular bail granted to petitioner No.1, Sanjay Kumar Sinha, by order dated 27.01.2010 in B.A.No.2266 of 2009 and anticipatory bail granted



to petitioner Nos.2 and 3, namely, Shyam Nandan Singh and Smt. Kanti Devi by order dated 27.01.2010 in ABA No.1069 of 2009 have been cancelled on an application filed on behalf of Shiv Narain Sinha- Opposite Party No.2.

3. Short fact of the case is that daughter of Shiv Narayan Singh was married with petitioner No.1 on 10th March, 2004, according to Hindu rites and rituals. The daughter of the Opposite Party No.2, namely, Asha Kumari, (Opposite Party No.3) after marriage was subjected to physical and mental torture by these petitioners for which she gave information to the informant on telephone on several occasions. The informant-Opposite Party No.2 along with other relations came to the matrimonial home of Opposite Party No.3 and tried to persuade the accused persons. But, after returning of the Opposite Party No.2, accused persons again started committing cruelty and torture with Opposite Party No.3. The daughter of the Opposite Party No.2 was blessed with female child in the meantime. On 18.10.2009, the informant-Opposite Party No.2 got information on telephone that his daughter has been brutally assaulted and attempt has been made to kill her by pressing her neck. The Opposite Party No.2 came to matrimonial house of Opposite Party No.3 where he found her in unconscious state. The grand-daughter of the Opposite Party No.2 was crying. The Opposite Party No.2 with the help of other relations brought Opposite Party No.3 to the clinic of Dr. Naresh Singh for



treatment. After investigation, charge-sheet has been submitted against the petitioners for the offence punishable under Sections 307/34, 498-A/34 Indian Penal Code and other sections of the Penal Code along with Section 4 of the Dowry Prohibition Act.

4. Provisional bail was granted to the petitioner No.1 vide B.A. No.2266 of 2009, which was confirmed by the learned Court below on 27.01.2010 on the basis of submission made before the Court below by the Opposite Party No.3, who appeared with her husband, Sanjay Kumar Sinha, petitioner No.1, in Court, and stated that she is living normal life in matrimonial house and there is, now, no ill behaviour by the accused persons with her. The Court below has, however, made observation in the order dated 27.01.2010 that in case of resumption of torture again, Opposite Party No.3, Asha Kumari, may bring the same to notice of the court for proper action in the matter.

5. Similarly, on 27.01.2010, on similar grounds, petitioner Nos.2 and 3 were granted anticipatory bail by the learned Sessions Judge vide A.B.A. No.1069 of 2009.

6. Thereafter, a petition under Section 439 (2) of the Code of Criminal Procedure was filed by the informant-Opposite Party No.2 for cancellation of bail of these petitioners on the ground that petitioners after grant of bail remained peaceful for few days and again started torturing the daughter of the informant-Opposite Party No.2 mentally and physically in various ways. Petitioner no.1 had assaulted



his wife-Opposite Party No.3 in conspiracy with petitioner Nos. 2 and 3 and misbehaved with the Opposite Party No.2 and gave threat to eliminate his daughter. These petitioners ousted the daughter of the informant-Opposite Party No.2 from their house after snatching all the ornaments. It has further been mentioned in the petition filed for cancellation of bail of the petitioners that they gave threat to the informant and the witnesses and made demand to withdraw the case. The husband-petitioner No.1 for putting undue pressure has filed false criminal case against the informant, his daughter-Opposite Party No.3 and other witnesses for which Begusarai Town P.S. Case No.85 of 2010 was instituted, wherein, the supervising authority has found the case false. The petition filed for cancellation of bail of the petitioners under Section 439(2) Cr. P. C. in the lower Court has been annexed with the petition as Annexure-4.

7. Thereafter, on the basis of the petition filed under Section 439(2) Cr. P.C. by the informant for cancellation of bail of the petitioners, matter was heard in the lower Court and the Court below has cancelled bail of the petitioners by order dated 21.05.2013 passed in Cr. Misc. No.52 of 2010 on the ground that these petitioners have violated the terms and conditions of the agreement after being granted bail by order dated 27.01.2010.

8. During hearing of this petition, matter was sent to the Mediation Centre by order dated 21.04.2014. From the report of the



Mediation Centre, it appears that even after three months of matter being pending in the Mediation Centre, no amicable settlement of dispute was arrived at. The Mediator in his report dated 18.07.2014 stated that there is chance of amicable settlement of dispute between the parties and made prayer to extend the time for further three months. After receiving the report of the Mediation Centre, both parties were called in Chambers by this Court for personal hearing. Both the parties appeared in Chambers. This Court after talking with both the parties found that there is no chance of reconciliation. Accordingly, the matter was ordered to be listed for hearing on merit.

9. From perusal of the impugned order, it appears that husband-petitioner No.1 was, initially, granted provisional bail, which was later on confirmed by order dated 27.01.2010 as both husband and wife appeared in lower Court and the wife had stated that she is living normal life in her matrimonial house and there is no ill behaviour by the accused persons towards her. The Court below, however, gave observation in the order dated 27.01.2010 that in case of resumption of torture again, Asha Kumari-Opposite Party No.3 may bring the same to the notice of the Court for proper action in the matter.

10. It has been submitted on behalf of the informant-Opposite Party No.2 that his daughter-Opposite Party No.3 is ready to live with her husband. The husband was, accordingly, called in Chambers and the case was fixed for reconciliation in Chambers in



which both husband and wife appeared in Chambers on 17.02.2017, but the Court found that there is no chance of reconciliation.

11. Counsel for the Opposite Party Nos.2 and 3 has relied on a judgment of this Court in the case of *Kumari Juhi Rai vs. State of Bihar* reported in **2011 (4) PLJR 716** and has submitted that bail of the petitioners are liable to be cancelled as petitioners have violated terms and conditions of bail.

12. On the other hand, counsel for the petitioner has relied upon a judgment of this Court in the case of *Pradeep Kumar Jha vs. State of Bihar* reported in **2016(2) PLJR 322**, wherein, the Court has held that it was not open to the trial Court to cancel the petitioners' bail as the same would amount to reviewing its earlier order of grant of bail and there is no express provision for review of the order granting bail.

13. Learned counsel for the Opposite Party Nos.2 and 3 in reply to the aforesaid submission has submitted that Section 439(2) Cr. P. C. specifically lays down that: **"A High Court or Court of Sessions may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody"**.

14. The Hon'ble Supreme Court in a judgment in the case of *The State through the Delhi Administration vs. Sanjay Gandhi* reported in **AIR 1978 SC 961** has clearly laid down in paragraph 24 of the aforesaid judgment as follows:



"Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court or Court of Sessions to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extra-ordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the Courts to be silent spectators to the subversion of the judicial process. We might as well wind up the Courts and bolt their doors against all than permit a few to ensure that justice shall not be done."

15. Similarly, the Hon'ble Supreme Court in the case of *Aslam Babalal Desai vs. State of Maharashtra* reported in *AIR 1993 SC 1* has laid down in para 11 of the judgment as follows:

".....the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Sections 437(1) or (2) or Section 439(1) can be cancelled where (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. It must also be remembered that rejection of bail



stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

16. In the instant case, accused persons (petitioners) were granted bail in view of compromise arrived at between the parties. Both husband and wife had appeared in Court. The wife had stated that she is living normal life in matrimonial home and there is no ill behaviour by the accused persons whatsoever, but after grant of bail the accused persons remained peaceful for few days and again started torturing the daughter of the Opposite Party No.2 mentally and physically in various ways. The matter was sent to the Mediation Centre by this Court but no amicable settlement could be arrived at. Husband and wife were called in Chambers of this Court. The wife was ready to live with the husband but amicable settlement could not be made.

17. In the present case, admittedly, the petitioner No.1- husband of the Opposite Party No.3 was on provisional bail and the same was confirmed on 27.01.2010, when he appeared in Court along with wife and she stated that she is living normal life in her matrimonial home and there is no ill behaviour by the accused persons whatsoever. But, soon after confirmation of provisional bail of petitioner No.1, petitioner No.1 and other family members again started committing physical and mental torture with Opposite Party No.3. The learned



Court below while granting bail to petitioner No.1 by order dated 27.01.2010 in B.A. No.2266 of 2009 has clearly observed: “It is needless to say that in case of resumption of torture again, Asha Kumari may bring the same to the notice of the Court for proper action in the matter.” Petitioner Nos.2 and 3 are parents-in-law of Opposite Party No.3, who were granted anticipatory bail by order dated 27.01.2010 in A.B.A. No.1069 of 2009. There has been no such observation by the lower Court in the order dated 27.01.2010 passed in A.B.A. No.1069 of 2010 granting anticipatory bail to them.

18. Primal role for repeating physical and mental torture and interference with justice delivery system is against the husband-petitioner No.1. The Opposite Party No.2 has stated in the petition filed for cancellation of bail under Section 439(2) Cr. P.C. that the husband-petitioner No.1 was putting undue pressure on Opposite Party Nos.2 and 3 and has filed a criminal case against Opposite Party Nos.2 and 3 and other witnesses vide Begusarai Town P.S. Case No.85 of 2010, wherein, the supervising authority has found the case false.

19. Therefore, this Court, in the facts and circumstances of the case as well as in the interest of justice, does not find any illegality in the impugned order dated 21.05.2013 passed by the Sessions Judge, Begusarai, in Cr. Misc.No.52 of 2010, by which bail granted to the petitioner No.1 in B.A.No.2266 of 2009 was cancelled.

20. So far cancellation of bail of petitioner Nos.2 and 3



are concerned, this Court finds that they are parents-in-law of the Opposite Party No.3. There is no primal role alleged against them for committing torture with Opposite Party No.3 and interfering with justice delivery system. Therefore, part of the order dated 21.05.2013 passed by the Sessions Judge, Begusarai, in Cr. Misc. No.52 of 2010, by which bail of Opposite Party Nos.2 and 3, were cancelled is hereby set aside.

21. The Court below will take appropriate step in accordance with law for taking petitioner No.1 in custody since his cancellation of bail by the Court below by impugned order dated 21.05.2013 is hereby affirmed.

22. This application is, accordingly, allowed in part.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	20.03.2017
Uploading Date	13.04.2017
Transmission Date	13.04.2017

