

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6465 of 2016

Arising Out of PS. Case No.-48 Year-2014 Thana- MAHILA P.S. District- Nalanda

Shagufta Perween, D/o Anwar Sarwar, resident of Village- Sohdi, P.O. & P.S.- Sohrai, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Babar Gilani Son of Md. Nasim Ahmad resident of Mohalla- Panchaitiya Akhara, P.S.- Kotwali, District- Gaya, Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar

For the Opposite Party/s : Mr. Ajay Kumar (App)

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 12-09-2018 Heard learned counsels for the parties.

The present application has been filed for cancellation of anticipatory bail granted to opposite party no. 2 vide order dated 11.01.2016 passed in Cr. Misc. No. 35384 of 2015 in connection with Nalanda Mahila P.S. Case No. 48 of 2014 registered for the offences punishable under Sections 498A, 313, 406, 323, 506/34 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act, pending in the Court of learned Chief Judicial Magistrate, Nalanda at Biharsharif.

The factual matrix of the case is that the petitioner filed Complaint Case No. 951 of 2014 on 9.8.2014 against the O.P. No. 2, which was subsequently registered as Nalanda Mahila P.S. Case No. 482014 with accusation under



Sections 498A, 313, 408,423 and 506 of the IPC and Sections 3 and 4 of Dowry Prohibition Act. It is alleged by the petitioner informant that she was married with O.P. No. 2 Babar Gilani on 7.7.2002 according to Muslim customs but after marriage when the petitioner went to her matrimonial house, the accused persons started demanding further dowry as colour television and other articles and due to non-fulfillment of the same, torture was being inflicted on the petitioner-informant which resulted in miscarriage. Subsequently, the petitioner was blessed with two sons who, at the time of filing of criminal case, were seven and nine years old, respectively. But, ultimately a Complaint Case No. 1152 of 2008 was filed, which ended into compromise. Thereafter, the petitioner was again subjected to cruelty and she was ultimately driven out of the matrimonial house on 3.6.2014, as a result, the instant complaint was filed. The O.P. No. 2 preferred Cr. Misc. No. 35384 of 2015 with a prayer for anticipatory bail. The application for anticipatory bail of O.P. No. 2 was heard in presence of the petitioner. It was offered on behalf of the O.P. No. 2 that he was ready to make payment of Rs.4000/- per month from February, 2016 by depositing the same in the bank account of the petitioner by second week of every month. The said offer was accepted by the learned counsel



for the petitioner and he undertook to provide bank account number of the petitioner on affidavit within three weeks and considering the aforesaid stand of the petitioner and O.P. No. 2 , O.P. No. 2 was granted anticipatory bail, however, the said payment was subject to any order being passed in matrimonial or maintenance proceeding.

It is submitted by learned counsel for the petitioner that subsequent to the grant of bail, O.P. No. 2 threatened her. More over, O.P. No. 2 has suppressed the fact of earlier filing of the complaint, which ended into compromise and filing of restitution suit.

From perusal of the materials on record, it appears that the order granting anticipatory bail to O.P. No. 2 was passed when the petitioner agreed for receiving the offered amount with a liberty to the petitioner to file an application for cancellation of bail of the O.P. No. 2 in case he defaults in making payment on three consecutive occasions. It is submitted by learned counsel for the petitioner that O.P. No. 2 has not defaulted in making payment but has prayed for enhancement of quantum of amount.

This Court is not inclined to interfere on two grounds; firstly, that the parameters for grant of bail and its



cancellation are quite different and secondly, that the petitioner has failed to make out a case that O.P. No. 2 has misused the privilege of bail though it is alleged that petitioner was threatened by O.P. No. 2 but there is nothing on record to suggest that any report was made to the police in this regard.

The parameters for grant of bail and its cancellation are quite different. It is well settled law that once an accused is granted bail either in exercise of jurisdiction under Section 437(1)(2) or 439(1) of the Cr.P.C., the same can be cancelled either in exercise of jurisdiction under sub-section (5) of Section 437 or sub-section (2) of Section 439 Cr.P.C. The grounds of cancellation under Section 437(5) and 439(2) of the Cr.P.C. are identical. Some of the circumstances enumerated by the Supreme Court in the case of Raghbir Singh and Ors. Vs. State of Bihar (1986) 4 Supreme Court Cases 481 in which bail can be cancelled, are - (i) if 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 go underground by becoming unavailable to the investigating



agency, (vii) attempts to place himself beyond the reach of surety etc. However, it was made clear that these grounds are illustrative not exhaustive, but cancellation of bail stands on a different footing than that of rejection of bail and the same is harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

None of the above quoted grounds is applicable in the present case and the petitioner has sought to cancel the bail of O.P. No. 2 by reconsidering the accusation on merits. Similar view has been taken by the Supreme Court in the case of State (Delhi Administration) Vs. Sanjay Gandhi, AIR 1978 SC 961 where it has been held that power of cancellation of bail is extraordinary in nature where it is found that the accused is interfering with the course of justice by tampering the witness and such power can be exercised with utmost care and circumspection. Paragraph 13 reads as follows:

“13. Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case 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 circumstances, it



would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over. brother, a sister or a parent who has seen the commission of crime, may resile in the Court from a statement recorded during the course of investigation. That happens instinctively, out of natural love and affection, not out of persuasion by the accused. The witness has a stake in the innocence of the accused and tries therefore to save him from the guilt. Likewise, an employee may, out of a sense of gratitude-, oblige the employer by uttering an untruth without pressure or persuasion. In other words, the objective fact that witnesses have turned hostile must be shown to bear a causal connection with the subjective involvement therein of the respondent. Without such proof, a bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused. Inconsistent testimony can no more be ascribed by itself to the influence of the accused than consistent testimony, by itself, can be ascribed to the pressure of the prosecution. Therefore, Mr. Mulla is right that one has to countenance a reasonable possibility that the employees of Maruti like the approver Yadav might have, of their own volition, attempted to protect the respondent from involvement in criminal charges. Their willingness now to oblige



the respondent would depend upon how much the respondent has obliged them in the past. It is therefore necessary for the prosecution to show some act or conduct on the part of the respondent from which a reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the respondent.”

In the case of Biman Chatterjee Vs. Sanchita Chatterjee and Anr. (2004) 3 Supreme Court Cases 388, the bail was sought to be cancelled on the ground that in spite of the undertaking the husband failed to compromise and keep the wife with him wherein the Supreme Court held that the bail cannot be cancelled on the ground alien to the grounds mentioned under Section 437(3) of the Cr.P.C. Paragraph 7 reads as follows:

“7. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be



that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law.”

More over, the O.P. No. 2 was granted bail, when the petitioner accepted the offer of the O.P. No. 2, and the bail was also granted, with a view to save the petitioner and



minor children from destitution and vagrancy with a lurking hope that the issue may reconcile in future, that too with a rider that the petitioner may file an application for cancellation of bail in case O.P. No. 2 defaults in making payment so agreed. This is not the case of petitioner that O.P. No. 2 has defaulted in making payment and has obstructed the trial or tampered with the evidence, rather from the pleadings on record, it is evident that it has been filed for increase the quantum of payment which is being paid to her by O.P. No. 2. However, needless to mention that this Court while granting bail to O.P. No. 2 had clarified that the aforesaid payment will be subject to any order being passed in matrimonial or maintenance proceeding.

In view of the discussions made above, this Court finds that no grant has been made out for cancellation of bail by O.P. No. 2.

Accordingly, this application is dismissed.

(Dinesh Kumar Singh, J)

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