

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.54408 of 2017

Arising Out of PS. Case No.-11 Year-2017 Thana- MAHUA District- Vaishali

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Lal Dev Singh, Son of Sri Kashi Singh, R/o Village- Chakkajiniyam, P.S.-
Mahua, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Baidanth Singh, Son of Manki Singh, R/o Village- Chakkajiniyam, P.S.-
Mahua, District- Vaishali.

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Krishna Kant Singh, Advocate
for the State	:	Mr. Anuj Kumar Srivastava, Advocate
For Opposite Party No.2 :		Mr. S.N.P. Sinha, Sr. Advocate
		Mrs. Rima Sinha, Advocate

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. ORDER

5 28-03-2018 Heard learned counsel for the petitioner, learned counsel
appearing for opposite party no. 2 and learned APP for the State.

Petitioner seeks cancellation of bail granted to opposite
party no. 2 vide order dated 15.09.2017, passed in Cr. Misc. No.
36439 of 2017 in connection with Mahua P.S. Case No. 11 of
2017 for offences punishable under Sections 307, 324, 302/34 of
the Indian Penal Code and Section 27 of the Arms Act.

The prosecution story, as lodged by the
petitioner(informant), is that while his son Amit Kumar
(deceased) was going home, ten persons including opposite
party no. 2 surrounded him and started assaulting him. Specific
allegation upon the co-accused Vinod Singh is that he fired on



the temporal region of the deceased and still finding him alive opposite party no. 2 fired indiscriminately upon the deceased, who succumbed to the injuries.

The main thrust of argument of the petitioner is that while granting bail to opposite party no. 2 this Court had overlooked the fact that the injury on the deceased as per inquest, postmortem report is not one on the skull, but there is one more injury on the chest also, which is alleged to have been caused by opposite party no. 2, as is evident from the First Information Report and this fact has been concealed by the counsel for the opposite party no. 2 while seeking privilege of bail.

Learned Senior Counsel appearing on behalf of opposite party no. 2 submits that the bail granted to opposite party no. 2 requires no interference as the fire-arm injury caused by co-accused on the temporal region was itself fatal and in view of the conditions laid down by the Hon'ble Apex Court in the case of *Dolat Ram and others Vs. State of Haryana* since reported in *(1995) 1 SCC 349* bail already granted ought not to be cancelled unless very cogent and overwhelming circumstances exist. In this regard, he relies on paragraph 4 of the said judgment, which is quoted hereinbelow :

“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.”

Considering the facts and circumstances and the materials on record, it is not the case of the petitioner that opposite party no. 2 has, in any manner, misused the privilege of bail or interfered with due course of administration of justice. Thus, in my considered opinion, the bail already granted to opposite



party no. 2 in connection with Mahua P.S. Case No. 11 of 2017,
pending in the court of learned Chief Judicial Magistrate,
Vaishali at Hajipur or successor court, requires no interference.

Application is hereby rejected.

(Nilu Agrawal, J)

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