

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30358 of 2018

Arising Out of PS. Case No.-28 Year-2013 Thana- ARARIA District- Araria

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Sundari Devi @ Sundari Kumari Wife of Rakesh Kumar Jha @ Nikkoo
Resident of Village - Madanpur, Ward No. 7, P.S. - Araria, District - Araria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Santosh Jha, Son of Late Kameshwar Jha
3. Nitesh Jha, Son of Santosh Jha
4. Sanjana Jha @ Sanjana Rai, Wife of Santosh Jha, All are residents of Village - Charaiya, P.S. - Bhargama, District - Araria.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Singh
For the Opposite Party/s : Mr. Md. Sufiyan

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 03-10-2018

Heard Mr. Ramesh Kumar Singh, learned counsel for the petitioner and Mr. J.N. Thakur, learned APP for the State.

The present application has been filed for cancellation of anticipatory bail granted to opposite party nos. 2 to 4, who happen to be the father-in-law, brother-in-law (husband's brother) and mother-in-law of the petitioner respectively. The opposite party nos. 2 to 4 were granted anticipatory bail vide order dated 25.04.2013 passed in Cr. Misc. No. 12680 of 2013 on the submission that opposite party nos. 2 to 4 are ready to allow the petitioner to enjoy her share of



the property in in-laws house with a direction to opposite party nos. 2 to 4 to submit affidavit to that effect before the learned Court below and the said affidavit was transmitted by the learned Court below to the concerned I.O. of Araria (Madanpur) P.S. Case No. 28 of 2013.

It is submitted by learned counsel for the petitioner that for six months the petitioner stayed in her matrimonial house peacefully and thereafter she was tortured and ultimately she was assaulted by her husband and in-laws family members including opposite party nos. 2 to 4 on 06.05.2014 and consequently, she lodged another criminal case being Araria Mahila P.S. Case No. 22 of 2014 on 07.05.2014 with accusation under Sections 498A, 341, 323, 379/34 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act against the O.P. Nos. 2 to 4 and in the said case, the opposite party nos. 2 to 4 have been granted bail and hence, prayer has been made to cancel the bail of opposite party nos. 2 to 4 in connection with Araria (Madanpur) P.S. Case No. 28 of 2013.

Learned APP for the State submits that for the subsequent event the substantial case has been lodged against opposite party nos. 2 to 4. Moreover, the opposite party nos. 2 to



4 are enjoying the privilege of bail since last more than five years in that case.

Considering the rival submissions of the parties, keeping in view the fact that the thrust of accusation is against the husband of the petitioner, opposite party nos. 2 to 4 are father-in-law, mother-in-law and brother-in-law of the petitioner, coupled with the fact that the opposite party nos. 2 to 4 are enjoying the privilege of bail for more than five years. Moreover, for the subsequent incident a criminal case was lodged in which they have been granted bail and there is nothing on record to suggest that the petitioner raised any grievance before the learned Court below with regard to complying the undertaking given before this Court.

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. The Supreme Court in the case of State (Delhi Administration) Vs. Sanjay Gandhi, AIR 1978 SC 961 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 present case, though the case has been lodged subsequently with accusation under Sections 498A, 341, 323,379/34 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act when thrust of accusation is against the husband of the petitioner and opposite party nos. 2 to 4 are family



members of the husband of the petitioner.

In view of the discussions made above, this Court is not inclined to interfere.

Accordingly, this application is dismissed.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

