

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4126 of 2016

Arising Out of PS. Case No.-133 Year-2015 Thana- GHANSHYAMPUR District- Darbhanga

Shiv Narayan Yadav son of Maheshwar Yadav, resident of village- Borba,
P.S.- Ghanshyampur, District- Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar
2. Santosh Sharma son of Mahendra Sharma
3. Binod Sharma son of Babu Narayan Sharma
4. Suresh Sharma son of Ram Prasad Sharma
5. Umesh Sharma son of Ram Prasad Sharma
6. Babu Saheb Sharma son of Chandrashekhar Sharma
7. Ram Babu Sharma son of Chandrashekhar Sharma
8. Lakshmi Sharma son of Jageshwar Sharma
9. Sutkun Sharma son of Mohan Sharma All are resident of village- Borba, P.S.- Ghanshyampur, District- Darbhanga

... .. Opposite Party/s

with

Criminal Miscellaneous No. 3947 of 2016

Arising Out of PS. Case No.-133 Year-2015 Thana- GHANSHYAMPUR District- Darbhanga

Shiv Narayan Yadav Son of Maheshwar Yadav Resident of village - Borba,
P.S. Ghanshyampur, District - Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar
2. Babu Narayan Sharma Son of Late Thithar Sharma null
3. Dasai Sharma Son of Sri Babu Narayan Sharma Both are resident of village - Borda, Police Station Ghanshyampur, District - Darbhanga

... .. Opposite Party/s

Appearance :

(In Criminal Miscellaneous No. 4126 of 2016)

For the Petitioner/s : Mr. Narendra Kumar Singh

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

(In Criminal Miscellaneous No. 3947 of 2016)

For the Petitioner/s : Mr. Narendra Kumar Singh

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

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH



ORAL JUDGMENT

Date : 12-09-2018

Heard learned counsel for the petitioner and the learned APP for the State.

Both the applications arise out of Ghanshyampur P.S. Case No. 133 of 2015 dated 30.06.2015. In Cr. Misc. No. 3947 of 2016, prayer has been made for cancellation of bail of O.P. Nos. 2 and 3 therein, who were granted pre-arrest bail vide order dated 24.11.2015 passed in Cr. Misc. No. 53561 of 2015 while Cr. Misc. No. 4126 of 2016 has been filed for cancellation of bail of O.P. Nos. 2 to 9 therein, who were granted pre-arrest bail vide order dated 07.12.2015 passed in Cr. Misc. No. 55445 of 2015. The cancellation of bail of the opposite parties concerned, is being sought mainly on the ground that the opposite parties are threatening the petitioner to withdraw the case, who is the informant of Ghanshyampur P.S. Case No. 133 of 2015.

The prosecution case in Ghanshyampur P.S. Case No. 133 of 2015 is that in the background of a land dispute, Mahendra Sharma and Ramchandra Sharma inflicted farsa blow on the head and hand of the informant, whereas co-accused Mangal Sharma assaulted the brother of the informant with iron rod causing uprooting of his teeth. It is further alleged that co-accused Babu Narayan Sharma jumped on the chest of the informant whereas



Dasai Sharma assaulted the informant with the butt of the pistol and Babu Narayan Sharma set the cattle shed on the fire.

Considering the accusation being levelled in the background of land dispute and there being a counter version of the occurrence, the opposite parties were granted anticipatory bail.

It is submitted by learned counsel for the petitioner that all the accused persons, i.e., the opposite parties in the two applications under consideration, are threatening the petitioner and in this regard the petitioner submitted an application before the Officer-in-Charge, Ghanshyampur on 20.11.2015, as contained in Annexure-3. Subsequently, the Police made Sanha Entry No. 381/2015 dated 20.12.2015. Thereafter, a report in that regard was submitted by the Station House Officer of Ghanshyampur Police Station on 23.12.2015, as contained in Annexure-4 to the concerned Judicial Magistrate.

Both the applications do not suggest any accusation of misuse of the anticipatory bail by the opposite parties. 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 Sections 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 reported in, (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 and 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 opposite parties by reconsidering the accusation on merits, which cannot at all be a ground for cancellation of bail. Similar view has been taken by the Supreme Court in the case of State



(Delhi Administration) Vs. Sanjay Gandhi, reported in, 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. A 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 Bhagirathsinh Vs. State of Gujrat, reported in, (1984) 1 Supreme Court Cases 284, the Supreme Court observed that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail. Similar view was taken by the Apex Court in the case of Dolat Ram and Ors. Vs. State of Haryana, reported in, (1995) 1 Supreme Court Cases 349. Paragraph 4 reads as follows:

“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.”

In the present case the learned Magistrate has not thought it proper to register a case against the opposite parties, on the basis of the report submitted by the Station House Officer of Ghanshyampur P.S. Moreover, there is no substantial material on record to suggest that opposite parties have misused the privilege



of bail or that they tampered with the evidence. Hence, this Court is not inclined to interfere.

Accordingly, both the applications are dismissed.

(Dinesh Kumar Singh, J)

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