

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30193 of 2018

Arising Out of PS. Case No.-291 Year-2017 Thana- GAURICHAK District- Patna

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Sushil Kumar Bajaj, aged about 53 years, Son of Late Purshottam Das Bajaj, resident of 301, Mansarovar Garden, Satyam Block, P.S.- Gandhi Maidan, Frasar Road, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Shiv Pujan Singh @ Pujan Singh @ Pujan Kumar, S/o Late Heera Singh, R/o Niyamat Chak, P.S. Gaurichak, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nikhil Kumar Agrawal
For the Opposite Party/s : Mr. Umeshnand Pandit

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 01-08-2018 Heard learned counsel for the parties.

The present application has been filed for cancellation of bail of O.P. No. 2, Shiv Pujan Singh @ Pujan Singh @ Pujan Kumar.

O.P. No. 2 preferred Cr. Misc No. 61560 of 2017 with a prayer for anticipatory bail in a case registered for offences punishable under Sections 420 and 120B of the Indian Penal Code.

The factual matrix of the case is that the petitioner filed a written report before the SHO, Gaurichak Police Station on 29.10.2017 as contained in Annexure 1, alleging therein that he was running business of real estate under the name and style of Bajaj Buildcon Pvt. Ltd. and was in need of land for the said



business. In the said process, the petitioner came in contact with co-accused Ram Dayal Singh. Ram Dayal Singh and other co-accused claimed themselves to be the brokers in the land deal and conveyed to them about the land appertaining to Thana No. 65, Plot No. 759, Khaa No. 867, P.S. - Gaurichak, Patna measuring an area of two bighas. The accused persons made the petitioner informant to believe that one Ajay Singh, Son of Vasudeo Singh is the absolute owner of the said land. Subsequently, the petitioner was allowed to meet Ajay Singh along with other co-accused persons. It is also alleged that O.P. No. 2 convinced the petitioner that Ajay Singh is desirous of selling the land in question, which is his ancestral land. Consequently, the petitioner purchased the land for consideration of Rs. 32,40,000/- and, accordingly, sale deed was executed and registered on 4.12.2010 by Ajay Singh in favour of the petitioner. On 28.10.2017, when the petitioner went on the land for starting construction of boundary wall along with labourers and material, then Lalbabu Singh and Dayanand Singh obstructed the construction on the ground that the said land belongs to them. They also conveyed to the petitioner-informant that Ajay Singh is not the son of Vasudeo Singh, whereafter, the petitioner realized that he has been cheated, leading to lodging of the criminal case. It is also alleged that in the said case O.P. No. 2



was a witness to the sale deed.

In the said case registered at the behest of the petitioner with accusation under Sections 420 and 120B of the IPC, O.P. No. 2 preferred Cr. Misc. No. 61560 of 2017 with a prayer for anticipatory bail. Considering the fact that the thrust of accusation is against Ajay Singh and O.P. No. 2 is simply a witness to the sale deed, O.P. No. 2 was granted anticipatory bail by this Court vide order dated 19.12.2017 passed in Cr. Misc. No. 61560 of 2017.

It is submitted by learned counsel for the petitioner that O.P. No. 2 conspired with Ajay Singh since O.P. No. 2 was aware that Ajay Singh is not the son of Vasudeo Singh nor the owner of the land in question, rather, in fact he is son of Sugambar Singh. It is further submitted by learned counsel for the petitioner that name of O.P. No. 2 is not Shiv Pujan Singh rather he is Pujan Singh, son of Late Heera Singh.

Learned APP, however, submits that the thrust of accusation is against Ajay Singh and there is no accusation of misuse of the privilege of bail.

The parameters for grant of bail and its cancellation are quite different. The entire application does not suggest any accusation of misuse of the anticipatory bail by the O.P. No. 2. 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 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. However, it was made clear that these grounds are illustrative not exhaustive but cancellation of bail stands on a different footing 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 get the bail of O.P.



No. 2 cancelled 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 Bhagiratthsinh Vs. State of Gujrat (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, (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.”

While granting bail, the nature of accusation is being judged and the whole purpose is that the accused may not abscond or tamper with the evidence. In the entire cancellation application, there is no such averment made that the petitioner has abused the conditions of bail.

It appears from the records that in the entire written report the accusation is that the sale deed was executed by Ajay Singh. The petitioner met Ajay Singh, and after being convinced, he made payment to Ajay Singh, hence, the thrust of accusation is against Ajay Singh. But it appears that O.P. No. 2 was granted bail vide order dated 19.12.2017 passed in Cr. Misc. No. 61560 of 2017 and subsequent thereto vide order dated 21.2.2018 passed in Cr. Misc. No. 4331 of 2018 the anticipatory bail application of Ajay Singh was dismissed and thereafter being emboldened, the present application for cancellation was registered on 14.5.2018.

In view of the discussions made above, this Court finds no reason to cancel the bail of O.P. No. 2 as the petitioner has not been able to make out any case for cancellation of bail, particularly, to put the present case within the broad parameters for cancellation of bail as laid down by the Supreme Court as quoted



above.

This application is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

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