

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15851 of 2018

Arising Out of PS. Case No.-56 Year-2016 Thana- FATUHA District- Patna

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Veera Devi, W/o Late Brij Nath Singh, R/o Village- Fatehpur, P.S.- Raghapur,
District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Subodh Rai, S/o Basdeo Rai, R/o Village- Rustampur, P.S.- Raghapur,
District- Vaishali.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Pathak., Advocate Mr. N.K.Agrawal, Senior Advocate
For the Opposite Party No.2	:	Mr. P.K.Sahi, Senior Advocate Mr. Bhola Kumar, Advocate
For the State	:	Mr. Sri Shyam Kumar Singh, APP138

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

- 7 29-08-2018 1. The petitioner is informant of Fatuha Police Station Case No.56 of 2016 registered for the offences under Sections 302, 307, 427, 120(B) of the Indian Penal Code as well as under Section 27 of the Arms Act.
2. By filing this application under Section 439(2) of the Code of Criminal Procedure the petitioner has sought for cancellation of bail granted to Opposite Party No.2, *Subodh Rai*, accused of the aforesaid case by the learned court below in Sessions Trial No.146 of 2017, arising out of aforesaid Police case.
3. Perused the explanation of the court below received in pursuance of order dated 01.08.2018. The same is accepted.



4. The prayer is on the ground that the learned court below has not properly considered, the seriousness of the accusation and the severity of the punishment which is likely to be awarded against Opposite Party No.2 in the event of conviction on the basis of available material, while granting bail to Opposite Party No.2.

5. According to F.I.R., four persons including the Opposite Party No.2 indiscriminately fired from A.K.47 while the informant along with other family members and her husband was going on a vehicle, as a result of firing the husband of the informant sustained injury near his neck. Thereafter, he was dragged out of the vehicle and several shots were fired to ensure his death. Further allegation is that on the order of co-accused, *Sunil Rai*, Opposite Party No.2 fired causing injury at the stomach and thigh of *Puja Devi*.

6. Submission of learned counsel for the petitioner is that the postmortem report would reveal that several firearm injuries were found by the Doctor and the injury found on the person of *Puja Devi* is consistent with the prosecution allegation. Moreover, the court below should have taken into consideration that co-accused, *Sunil Rai* was refused bail by this Court vide order passed in Criminal Miscellaneous No.27993 of 2016 on



16.11.2016 and again on 02.08.2017 passed in Criminal Miscellaneous No.16455 of 2017, vide *Annexure-2 series*.

7. While refusing prayer for bail to co-accused, *Sunil Rai*, a Bench of this Court has observed in para-8 as follows:-

“No doubt, the investigation against the petitioner has already been completed and the petitioner does not have any criminal antecedent but in the present case, A.K.47 rifles have been used and taking note of seriousness of the offence as well as allegation levelled against the petitioner, I am not inclined to release him on bail. Hence, his prayer for bail in connection with Fatuha P.S. Case No.56 of 2016 pending in the court of Sri Jabin Jamal, Judicial Magistrate 1st Class, Patna City, Patna stands rejected.”

8. There is no doubt that allegation against Opposite Party No.2 is almost similar to that of co-accused, *Sunil Rai* in the F.I.R. However, the impugned order reveals that the statement of witnesses recorded in para Nos.22, 23, 24 and 33 was considered. The witnesses stated that at the time of occurrence Opposite Party No.2 was present at the motor garage getting his motor repaired and was not at the place of occurrence. This weighed with the learned court below. The court below further recorded that political rivalry was reason for the implication of the Opposite Party No.2 in the case. The court below further considered the confessional statement of co-accused, *Rana*



Ranvijay Singh and *Munna Singh* before the Police, wherein they did not name Opposite Party No.2, rather stated that they had committed the murder.

9. Learned counsel for the Opposite Party No.2 has drawn the attention of the Court that even *Puja Devi*, one of the injured has not stated that firing of this Opposite Party No.2 had caused injury to her (though the informant alleges so), vide her statement recorded in para-12 of the supplementary case diary. His contention is that law is well settled that consideration for grant of bail and consideration for cancellation of bail stands on different footing. His submission is that non-consideration of some aspect of the case while granting bail and consideration of material on the record which was considered for granting bail cannot be a ground to cancel the bail granted, if the bail order is supported by reasons based of material on the record. In the present case, the court below has accepted the plea of alibi of Opposite Party No.2 which is based on evidence on the record. The court below has accepted the political rivalry for consideration of grant of bail which is also based of material on the record as well as court below has considered the confessional statement of co-accused, wherein name of the Opposite Party No.2 did not surface.



10. In ***Manjit Prakash & Others versus Shobha Devi and Another reported in AIR 2008 S.C. 3032***, the Hon'ble Supreme Court held that consideration for cancellation of bail and rejection of bail stand on different footing. Some of the illustration were mentioned therein which included *misuse of privilege of bail, interference in the course of investigation, attempt to tamper with the evidence, threat to the witness or indulgement in similar activities which would hamper a smooth investigation coupled with likelihood of his fleeing away in another country or going underground or becoming unavailable to the investigating agency.*

11. Submission of the learned counsel for the Opposite Party No.2 is that none of the aforesaid ground are available herein because investigation of the case is already complete and there is no such allegation against Opposite Party No.2.

12. Learned counsel for the petitioner contents that in ***Kalyan Chandra Sarkar versus Rajesh Ranjan @ Pappu Yadav and Another reported in 2004 (7) SCC 528***, the Hon'ble Supreme Court added that while granting bail the court should consider the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence.

13. ***In Manjit Prakash case*** (supra) para Nos.11 and 13 of the



judgment the Supreme Court observed as follows:-

Para 11- Even though the re-appreciation of the evidence as done by the Court granting bail is to be avoided, the Court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the Court for accepting the prayer for bail.

Para 13- The perversity as highlighted in Puran's case (2001 (6) SCC 388) can also flow from the fact that as noted above, irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature.

14. On careful consideration of material on record what I notice that the court below has not considered the rejection of prayer for bail to co-accused by this Court. However, what weighed the mind of the court is that:-

(a) There is material on the record that Opposite Party No.2 was not present at the time of occurrence.

(b) In the confessional statement, the co-



*accused persons admitted their complicity,
however, they did not name the petitioner.*

15. The aforesaid reasoning of the court below cannot be faulted with as based on irrelevant material. Hence, I am not inclined to interfere with the impugned order. Accordingly, this application stands dismissed as devoid of any merit.

(Birendra Kumar, J)

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