

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.53963 of 2015**

Arising Out of PS. Case No.-488 Year-2014 Thana- DARBHANGA COMPLAINT CASE  
District- Darbhanga

Dr. (Prof) Shree Narayan Jha, S/o late Babu Hari Narayan Jha, R/o  
Balbhadrapur, P.S. Laheria Sarai, District Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sri Manmohan Chaudhary, Son of late Dhairya Narayan Chaudhary Resident of Village- Jamsam, Police Station- Pandaul, District Madhubani,.At Present R/o Plot No. 44 Shivkunjban, sanjay Nagar-B, Jhotwara Jaipur,State of Rajashthan ,Posted in Air Force at Jaipur.
3. Pranay kumar Jha@Pikku, Son of late Ramanand Jha Resident of Village- Bhawanipur, P.s Pandaul, Distt Madhubani.

... .. Opposite Party/s

**Appearance :**

|                            |   |                                                      |
|----------------------------|---|------------------------------------------------------|
| For the Petitioner/s       | : | Mr. Suresh Singh<br>Mr. Jai Prakash Verma            |
| For the Opposite Party/s : |   | Mr. Md. Aslam Ansari (App)<br>Mr. Rakesh Kumar Singh |

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 10-12-2018**

Heard Mr. Suresh Singh, learned counsel for the petitioner and Mr. Rakesh Kumar Singh, learned counsel for the O.P. Nos. 2 and 3.

The present application has been filed for cancelling the anticipatory bail granted to the O.P. Nos. 2 and 3 vide order dated 10.8.2015 passed in Cr. Misc. No. 32838 of 2015 on two grounds, firstly, that a statement was made in paragraph no. 3 of the criminal miscellaneous application to the effect that the O.P. Nos. 2 and 3 do not have any criminal antecedent and secondly,



that a wrong submission was made that the case lodged by the daughter of O.P. No. 2, namely, Manisha Choudhary, being Darbhanga Mahila P.S. Case No. 40 of 2014 was lodged on 22.4.2014, at earlier point of time and considering the same, O.P. Nos. 2 and 3 were granted anticipatory bail by the impugned order.

Learned counsel for the petitioner submits that the petitioner is the father-in-law of the daughter of O.P. No. 2 whereas O.P. No. 3 is the brother-in-law (Sala) of O.P. No. 2.

Factual matrix of the case is that the petitioner filed Complaint Case No. 488 of 2014 on 21.4.2014 against O.P. Nos. 2 and 3 and other family members levelling accusation under Sections 147,323,341,452,384,379,380,427 and 504/34 of the IPC, wherein ultimately process was directed to be issued after cognizance being taken for the offences punishable under Sections 323,341 and 392/34 of the IPC. Thereafter, O.P. Nos. 2 and 3 preferred anticipatory bail in said complaint case vide Cr. Misc. No. 32838 of 2015, wherein, in paragraph 3 of the petition, specific statement was made that O.P. Nos. 2 and 3 do not have any criminal antecedent, whereas, it is submitted by learned counsel for the petitioner that on the day the bail application was preferred, O.P. Nos. 2 and 3 were also accused in Laheria Sarai



P.S. Case No. 305 of 2014 which was registered on 7.7.2014 under Sections 376,354 and 120B/34 of the IPC and in Complaint Case No. 734 of 2014 filed on 24.5.2014, wherein process was directed to be issued after cognizance being taken under Sections 323,341 and 392/34 of the IPC.

It is submitted by learned counsel for the petitioner that O.P. Nos. 2 and 3 have misused the privilege of bail as subsequent to the grant of bail as they have been made accused in Laheriasarai P.S. Case No. 176 of 2016 registered for the offences punishable under sections 147, 148, 149,3 23, 452, 380,387,504 and 506 of the IPC and Laheriasaria P.S. Case No. 398 of 2016 registered for the offences punishable under Sections 384,327,380,427,500,501 and 507/34 of the IPC and Sections 66A, 84A ad 84C of the I.T. Act, 2000, wherein final report has been submitted on completion of investigation, though cognizance has subsequently been taken after differing with the final form. It is further submitted that O.P. No. 2 and 3 have evicted the petitioner from his own house which suggests that they have misused the privilege of bail. Learned counsel for the petitioner, in this regard, has relied upon an order passed in Cr. Misc. No. 11273 of 2018 and 17470 of 2015 wherein for making false statement with regard to criminal antecedent, the two co-



ordinate benches of this Court cancelled the bail of the petitioners of the said criminal miscellaneous applications. Reliance has further been placed on the case of Union of India Vs. Rajendra Singh and Ors. reported in (2000) 3 Supreme Court Cases 581 wherein it has been held that fraud vitiates all the judicial acts.

The O.P. Nos. 2 and 3 were granted anticipatory bail in Complaint Case No. 488 of 2014 on the sole ground that the case lodged by the daughter of O.P. No. 2 namely Manisha Choudhary, being Darbhanga Mahila P.S. Case No. 40 of 2014 was lodged prior in time whereas the Complaint Case No. 488 of 2014 was lodged on 21.4.2014 but in fact, Darbhanga Mahila P.S. Case No. 40 of 2014 was registered on 22.4.2014, hence, on behalf of O.P. Nos. 2 and 3, not only a false statement was made in paragraph 3 of the bail application with regard to the criminal antecedent but material fact was also suppressed that they were also accused in two other cases being Laheria Sarai P.S. Case No. 305 of 2014 registered on 7.7.2014 under Sections 376,354 and 120B/34 of the IPC and the Complaint Case No. 734 of 2014 registered on 24.5.2014. Hence, O.P. Nos. 2 and 3 have obtained anticipatory bail by playing fraud and therefore, the bail bonds of O.P. Nos. 2 and 3 be cancelled.

It is submitted by learned counsel for the O.P. Nos. 2



and 3 that daughter of O.P. No. 2, namely Manisha Choudhary was married with the son of the petitioner, namely, Ashish Narayan but subsequently she was tortured at the hands of the petitioner and other in-laws family members, as a result, Darbhanga Mahila P.S. Case No. 40 of 2014 was lodged against the petitioner and other co-accused with accusation under Sections 323, 494, 498A and 504/34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. The said FIR was registered on 22.4.2014 whereas the Complaint Case No. 488 of 2014 was filed on 21.4.2014 but in paragraph 6 of the said written report, it was specifically mentioned by the daughter of O.P. No. 2, namely, Manisha Choudhary that she lodged a case in Mahila Police station on 15.4.2014 when the Officer Incharge of the Mahila Police Station took attempts to reconcile the issue. The said statement in paragraph 6 reads as follows:

“MERE SASURAL AVAM PATI KE  
KHILAF MAINE 15.4.2014 KO MAHILA THANA  
ME EK AVEDAN PRASTUT KAR DIYA THA  
JISPE THANA ADHYAKSH EVAM MAHILA  
SAMITI DONO PAKSHO KI SULAH KARANE  
ME LAGI HUI THI.”

It is further submitted by learned counsel for the O.P.  
Nos. 2 and 3 that O.P. No. 3 Pranay Kumar Jha alias Pikku is not



accused in Complaint Case No. 734 of 2014.

So far as second case is concerned, the same got initiated on the filing of Complaint Case No. 1014 of 2014 by one Sakeela Khatoon on 3.7.2014, which was transmitted to the concerned police station in exercise of jurisdiction under Section 156(3) of the Cr.P.C. and on the basis of that, Laheriasarai P.S. Case No. 305 of 2014 was registered on 7.7.2014 but it is being claimed that the same were pending on the day when O.P. Nos. 2 and 3 were granted anticipatory bail. Moreover, O.P. No. 2 was not aware of the same. The two cases lodged subsequent to the grant of anticipatory bail are Laheriasarai P.S. Case No. 176 of 2016 and Laheriasarai P.S. Case No. 398 of 2016 which have been lodged by the petitioner. It is further submitted that the prosecution against O.P. No. 2 arising out of Complaint Case No. 734 of 2014 has been quashed by this Court vide order dated 5.1.2018 passed in Cr. Misc. No. 44675 of 2014, considering the relationship between the petitioner and O.P. No. 2, while Laheriasarai P.S. Case No. 305 of 2014 registered on 7.7.2014, was actually lodged maliciously at the behest of the petitioner wherein accusation was found false and on completion of investigation, final form was submitted on 27.2.2015, though later, differing with the final form, cognizance was taken by the



learned Magistrate on 11.4.2016. Hence, on the day when the privilege of pre-arrest bail was granted to the O.P. Nos. 2 and 3, i.e. on 10.08.2015, final form was submitted against O.P. Nos. 2 and 3, finding the accusations not true, against them. Meaning thereby that the accusations were dropped against the O.P. Nos. 2 and 3, by the police on conclusion of investigation. Though, subsequently, after differing with the final form, the learned Court, in seisin of the matter, took cognizance of the offences, as against the O.P. Nos. 2 and 3. Hence, in the interregnum, between the period when final form was submitted against the O.P. Nos. 2 and 3, whereby, they were not sent up for trial, till the date of order taking cognizance being passed, the accusations or the F.I.R. was inexistent. It was during this period when the privilege of pre-arrest bail was granted to the O.P. Nos. 2 and 3.

The Criminal Miscellaneous application through which O.P. Nos. 2 and 3 were granted anticipatory bail, was supported with an affidavit sworn by the mother of O.P. No.2, being an old lady and it appears that by inadvertence statement was made in paragraph 3 of the petition that O.P. Nos. 2 and 3 have no criminal antecedent. Virtually on the date of filing of Cr. Misc. No. 32838 of 2015, only one case was pending, i.e. Complaint Case No. 734 of 2014 in which prosecution has



already been quashed while the other case being Laheriasarai P.S. Case No. 305 of 2014 was not pending on that day. Hence, it cannot be said, keeping in view the relationship between the petitioner and the O.P. Nos. 2 and 3, that any fraud has been committed by the O.P. Nos. 2 and 3.

Considering the rival submissions of the parties, it appears from the facts that both sides have lodged numerous cases against each other in the background of the fact that the petitioner's son has been married with the daughter of O.P. No. 2. It further appears that instead of resolving the domestic dispute, they are multiplying the litigation by lodging cases against each other. Hence, this Court is reluctant to interfere in the matter. Moreover, it appears that on the day Cr. Misc. No. 32838 of 2015 was preferred on behalf of O.P. Nos. 2 and 3 for grant of anticipatory bail, O.P. No. 3 was not accused in Complaint Case No. 734 of 2014 and so far as O.P. No. 2 is concerned, prosecution arising out of the said complaint case has now been quashed.

It also appears from the rival submissions of the parties that both the case against the O.P. Nos. 2 and 3 were lodged at earlier point of time, before the filing of the anticipatory bail application, being Cr. Misc. No. 32838 of 2015



but there is nothing on record to suggest tht O.P. Nos. 2 and 3 had the knowledge of the two cases or they appeared in those cases prior to filing of the aforesaid Criminal Miscellaneous application on 17.7.2015.

So far as the cases referred by the petitioner wherein on the basis of false statement with regard to criminal antecedent of the accused the bail has been cancelled, the litigation had not arisen in the background of matrimonial dispute. There is difference between the cases which are regular criminal cases and the cases being filed as retaliatory measure by the husband's family when they apprehend that the wife is going to file or has filed case with accusation under Section 498A of the IPC hence it has to be considered in an altogether different perspective. As such, cases are basically filed due to hatred developed between the families due to matrimonial discord.

It is well settled law that the parameters of grant of bail and its cancellation are quite different. In the case of Biman Chatterjee Vs. Sanchita Chatterjee and Anr. (2004) 3 Supreme Court Cases 388, the bail was sought to be cancelled on the ground that in spite of the undertaking, the husband failed to compromise and did not keep the wife with him wherein the Supreme Court held that the bail cannot be cancelled on the



ground alien to the grounds mentioned cancellation under Section 437(3) of the Cr.P.C. Paragraph 7 reads as follows:

“7. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided



for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law.”

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 cases. 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 as has been held in the case of State (Delhi Administration) Vs. Sanjay Gandhi, AIR 1978 SC 961.

No doubt, it is well settled that bail can be cancelled in case (i) 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. as has been held in the case of Mehboob Dawood Shaikh Vs. State of Maharashtra, (2004) 2 Supreme Court Cases 362.

Though the two cases have been lodged subsequent to the grant of bail to O.P. Nos. 2 and 3 but those cases have been lodged by the petitioner himself who is none else than the father-in-law of daughter of O.P. No. 2, which prima facie, suggests that those cases have been lodged in sheer vengeance and in the backdrop of seriously litigated relationship, having arisen out of matrimonial discord. In the circumstances, this Court feels that O.P. Nos. 2 and 3 were granted bail, primarily on considering the fact that the complaint case was lodged as a retaliatory measure, though an error has crept in the order to the effect that it was recorded therein that the case lodged by the daughter of O.P. No. 2 was earlier in point of time, which is not a correct fact, but that cannot be a ground for cancelling the bail since the FIR lodged by the daughter of O.P. No. 2 clearly stipulates that she lodged a case before the Mahila police station much prior to the complaint lodged by the petitioner.

So far as other ground, whereby it is alleged that a wrong statement was made in paragraph 3 of the bail petition of



O.P. Nos. 2 and 3 to the effect that they do not have any criminal antecedent, is concerned, there is nothing on record to suggest that O.P. Nos. 2 and 3 were aware about those two cases lodged against them. Moreover, O.P. No. 3 was not accused in one of the cases. That apart, prosecution arising out of one of the cases has been quashed keeping in view of the litigated relationship between the parties and in other case on the day they were granted bail the police submitted final form finding the accusation false though differing with the final form, cognizance of the offences was subsequently taken against the O.P. Nos. 2 and 3. Though it is true that once the final form is submitted, whereby the police do not send up the accused for trial, it gets concluded, only with the acceptance or differing with such report by the learned Court in seisin of the matter. But by any stretch of imagination, it cannot be said that the accusations exist during the interregnum, so as to be counted for the purpose of pendency of criminal case or as an antecedent.

Accordingly, this application is dismissed.

**(Dinesh Kumar Singh, J)**

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