

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7637 of 2013**

Arising Out of PS. Case No.-7 Year-2012 Thana- SAHARSA District- Saharsa

The State Of Bihar Through The Superintendent Of Police Saharsa, At
Saharsa, District Saharsa

... .. Petitioner/s

Versus

Jata Shankar Jha @ Banti Jha S/O Shambhu Nath Jha Resident Of Village-
Bihra, P.S.- Bihra, District- Saharsa

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs.Dr. Indihar Kumari

For the Opposite Party/s : Mr.

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

2 14-08-2019 Heard learned counsel for the parties.

The present application has been filed for cancellation of bail of Opposite Party, Jata Shankar Jha alias Banti Jha granted vide order dated 1.8.2012 passed in Cr. Misc. No. 21261 of 2012 in connection with Saharsa P.S. Case No. 7 of 2012.

The Opposite party preferred Cr. Misc No. 21261 of 2012 with a prayer for anticipatory bail in a case registered for offences punishable under Sections 302/34 of the Indian Penal Code.

It was alleged that the petitioner was found fleeing away from the place from where the dead body of the son of the informant was recovered. During investigation, it was found that the victim committed suicide.



Considering the suspicious nature of accusation, the opposite party was granted anticipatory bail.

The present application for cancellation of bail of the Opposite Party has been filed on the ground that he was threatening the informant. However, learned counsel for the petitioner, very fairly, concedes that no case has been lodged against the opposite party subsequent to grant of anticipatory 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 opposite party. 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 Raghubir Singh and Ors. Vs. State of Bihar reported in (1986) 4 Supreme Court 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 opposite party 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, 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. 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 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 weighed and considered and the whole purpose of the same is that the accused may not abscond or tamper with the evidence. In the entire cancellation application, there is no such averment that any case has been lodged against the opposite party



subsequent to grant of anticipatory bail or no any of the substantial grounds, as mentioned above has been given, calling for interference by this Court.

In view of the discussions made above, this Court finds no reason to cancel the bail of opposite party 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 in different cases, as quoted above.

This application is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

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