

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52764 of 2017

Arising Out of PS. Case No.-346 Year-2014 Thana- NAUBATPUR District- Patna

Sudarshan Prasad, S/o late Mahesh Prasad, R/o Village Raganiyabag, P.S. Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Umer Yadav, S/o Abadh Yadav
3. Bhim Yadav, S/o Umer Yadav, Both R/o Village Singhara Kopa, P.S. Dulhin Bazaar, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Patanjali Rishi

For the Opposite Party/s : Mr. Mritunjay Kumar Nirala

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

11 09-04-2019 Heard learned counsels for the petitioner, opposite party and the State.

The present application has been filed for cancellation of anticipatory bail of opposite party nos. 2 and 3 by learned Additional District and Sessions Judge, VI, Patna in A.B.P. No.3712 of 2017 in connection with Naubatpur P.S. Case No.346 of 2014.

The prosecution case got initiated on the written report of Sudarshan Prasad submitted to the S.H.O., Naubatpur P.S., which is to the effect that the son of the informant, Chandan Kumar was married with Anisha Devi, the daughter of



opposite party no.1 in the year 2008. The son and daughter-in-law of the informant used to reside in a rented house of one Ram Naresh Sharma at Naubatpur. It is alleged that the daughter-in-law of the informant, Anisha Devi had illicit relationship with co-accused Pappu Kumar and several times, the son of the informant saw his wife in compromising position with Pappu Kumar. The son of the informant also informed the informant about the illicit relation of his wife with co-accused Pappu Kumar. It is further alleged that due to illicit relationship, the daughter-in-law of the informant and co-accused Pappu Kumar along with opposite party no.2, Umer Yadav and opposite party no.3, Bhim Yadav used to assault the son of the informant and on 13.07.2017, all the accused persons above-named assaulted the son of the informant and gave life threat to him. On 14.07.2014, the dead body of the son of the informant was recovered from the rented house where he used to reside. Hence, it is alleged that all the four accused persons particularly opposite party nos.2 and 3 killed the son of the informant.

It appears that on conclusion of investigation, the opposite party nos.2 and 3 were not sent up for trial, but since the informant had serious doubt over the investigating agency, he filed protest petition, hence differing with the final form



cognizance was taken against opposite party nos. 2 and 3. But, considering the nature of serious accusation levelled against the opposite party nos.2 and 3 and the material collected during investigation, the learned Additional Sessions Judge, VI Patna vide order dated 03.08.2017 passed in A.B.P. No.3712 of 2017 granted bail to the opposite party nos.2 and 3.

It is submitted by the learned counsel for the petitioner that right from the registration of the present case, the petitioner made several applications not only before the investigating agency but also before the learned Court below, but despite that fact the investigation of this case was not conducted properly and maliciously opposite party nos.2 and 3 were not sent up for trial.

It is submitted by the learned counsel for the opposite party nos.2 and 3 that on conclusion of investigation, since no cogent material were collected against them hence, they were not sent up for trial. It is further submitted that opposite party nos.2 and 3 are willing to appear regularly before the learned Court below.

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 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, (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 and not exhaustive, but 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 individual and hence, it must not be lightly resorted to.

None of the above quoted ground is applicable in the present case and the petitioner has sought to cancel the bail of



opposite party nos. 02 and 03 on the ground that the investigation of this case was not conducted properly and maliciously opposite party nos. 02 and 03 were not sent up for trial.

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 witnesses 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. ”

The learned Court below, on the basis of materials available on record, granted bail to opposite party nos. 02 and 03 and there is nothing on record to suggest that the accused misused the privilege of bail or violated any of the conditions which are put under consideration while cancelling the bail.

Considering the rival submission of the parties, it is well settled law that the bail of accused is granted after considering the nature of accusation, the factum that there is no likelihood of the accused of misusing the privilege of bail and the accused absconding after granting bail.



In view of the discussions made above, this Court finds no ground for cancellation of bail of opposite party nos. 02 and 03.

However, the trial Court is expected to conclude the trial as expeditiously as possible, preferably within a period of nine months.

However, the learned Court below is at liberty to cancel the bail bonds of the opposite party nos. 2 and 3, in two eventualities, (i) if the opposite party nos.2 and 3 default for three consecutive occasions, or (ii) if the learned Court below comes to a definite conclusion that opposite party nos.2 and 3 are tampering with the evidence or they are not allowing fair trial to proceed.

(Dinesh Kumar Singh, J)

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