

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57363 of 2018

Arising Out of PS. Case No.-80 Year-2018 Thana- BARHARA District- Bhojpur

Bablu Singh @ Diwakar Singh S/o Kameshwar Singh, R/o Vill.- Paiga,
P.S.- Barhara, District- Bhojpur.

... .. Petitioner

Versus

1. The State Of Bihar
2. Ram Bhuan Singh,
3. Shyam Bhuan Singh, both Sons of Raj Mahal Singh,
4. Shyam Singh S/o Banshi Singh,
5. Bholu Singh @ Abhishek Singh S/o Shyam Bhuan Singh,
All are R/o Vill.- Paiga, P.S.- Barhara, District- Bhojpur.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr.Rajendra Nath Sinha, Advocate Mr. Prabhu Narayan Sharma, Advocate Mr. Binod Kumar No. 2, Advocate
For the State	:	Mrs.Reena Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3. 13-12-2019 Heard learned counsel for the petitioner and
learned A.P.P. for the State.

2. Despite waiting for some time, no one has
appeared on behalf of opposite party nos. 2 to 5, though the
name of learned counsel appears on the cause-list.

3. Petitioner, in this case, is aggrieved by and
dissatisfied with the order dated 15.03.2018 and 19.03.2019
passed by learned Chief Judicial Magistrate, Ara, Bhojpur
in Barhara P.S. Case No. 80/2018 by which learned Chief
Judicial Magistrate has been pleased to grant regular bail to



accused nos. 2 to 5 in a case registered under Section 307 and other sections of the I.P.C. and Section 27 of the Arms Act after death of the injured Section 302 I.P.C. has also been added.

4. Learned counsel for the petitioner – informant has submitted before this court that the learned C.J.M. has shown hot haste in granting regular bail to the accused – opposite party no. 2 to 5 and without calling for the case diary and the injury reports the bail was granted on the same day when accused nos. 1, 2 and 3 – opposite party nos. 2, 3 and 4 surrendered before the learned C.J.M. and prayed for grant of bail. Later on the accused nos. 4 & 5 were also granted bail on surrender.

5. Referring to the First Information Report, learned counsel submits that on perusal thereof, it would appear that the alleged occurrence took place on 02.03.2018, father of the informant who had got severely and repeatedly assaulted by accused no. 1 Ram Bhuan Singh was initially taken to Patna Medical College & Hospital but was later on admitted in another hospital and the fardbeyan of the informant was recorded by police on



05.03.2018 giving rise to this case registered under the aforesaid provisions of the Indian Penal Code and the Arms Act. Father of the informant later on succumbed to his injuries and died. Accused no. 1, 2 and 3 – opposite party nos. 2, 3 and 4 surrendered in the court of learned C.J.M. on 15th March, 2018 and then they were enlarged on bail despite there being specific allegation against the accused persons assaulting the father of the informant. As stated above, even injuries report were not called for.

6. It is further submitted that other two accused later on surrendered and were also enlarged on bail on 19.03.2018. It is pointed out that the learned 2nd Additional District Judge, Bhojpur (Ara) also failed to appreciate the contention of the learned counsel for the petitioner who was seeking cancellation of bail and by citing inapplicable judgments and principles, the learned 2nd Additional District Judge has rejected the prayer of the petitioner for setting aside of the order passed by C.J.M. and thereby cancellation of bail. It is submitted that the learned 2nd Additional Sessions Judge could not appreciate that the petitioner in this case was contending that learned C.J.M. had not



exercised his discretion to grant bail judiciously and that was the reason for the petitioner to seek cancellation of bail. The learned A.D.J. has gone on the issue of misuse of the privilege of bail which is altogether a different consideration. In this regard, learned counsel has relied upon the recent judgment of the Hon'ble Supreme Court in the case of **Aslam Babalal Desai Vs. State of Maharashtra** reported in **AIR 1993 SC 1**; **State of Maharashtra Vs. Walchand Hiralal Shaha and Another** reported in **1996 Cr.L.J. 1102**; **Gurumurti Digal Vs. Ashok Kumar Digal and Anr.** reported in **1992 Cr. L.J. 1917**; **Bharatbhai Bhimabhai Bharwad Vs. State of Gujarat and Others** reported in **2019 SCC Online SC 945 = 2019 (10) SCALE 138** and **State of U.P. through CBI Vs. Amarmani Tripathi (2005) 8 SCC 21**.

7. Learned A.P.P. for the State has upon thoroughly going through the case diary submitted before this court that there was specific allegation that Ram Bhuwan Singh had assaulted by iron rod on the head of the deceased and materials collected in course of investigation duly corroborated this allegation. The post-mortem report



shows severe head injuries which may be caused by repeated blow. Thus, there are specific allegations against accused No. 1 Ram Bhuan Singh. He had repeatedly assaulted the deceased causing severe head injuries and the post-mortem report reveals the following injuries found on the head of the deceased:

“Following ante-mortem external and internal injuries were found-(1) one head stiched wound of 7½” length, semilunar in shape on Rt. Side of head with convacity towards Rt. ear, 2” behind from Rt. Eyebrow corner and 1” Rt. from midline. On dissection – In general all viscera were found congested. Stomach contained about 200 ml straw colour fluid. Bladder was empty. Haematoma under scalp was found in frontal, parietal, temporal an Rt. occipital region. Bone was absent in 4” x 1½” antero-posteriorly on Rt. side of skull surrounded by comminuted fracture of 5” x 4 ½” involving Rt. frontal, Rt. temporal and Rt. parietal bone. Extradural haematoma of 3” diameter was found on Rt. Parietal region. Brain was depressed on Rt. side. Suledural haematoma was found on both side of brain, more on Rt. side and Rt. base.

Opinion – (1) Time since death – 12 to 24 hrs. approx.

(2) cause of death – Head injury.

(3) Nature of violence – Hard and blunt object and its impact, however opinion regarding injury no (1) can be obtained from the surgeon concerned.”

8. It is his submission that in the aforesaid



circumstance the learned C.J.M. has definitely acted in haste in granting bail to the accused no. 1 – opposite party no. 2.

9. So far as other accused are concerned, learned A.P.P. submits that there were general and omnibus allegations that they had assaulted the informant and others on the body but no injuries have been found to corroborate that allegation, and therefore to that extent so far as the bail of opposite party nos. 3 to 5 are concerned, are not required to be interfered with.

10. Having heard learned counsel for the petitioner and learned A.P.P. for the State as also on perusal of the records, this court finds substance in the submission of learned counsel for the petitioner and learned A.P.P. for the State. Apparently learned Chief Judicial Magistrate has acted in haste as without calling for the case diary and ascertaining the allegations against accused no. 1 – opposite party no. 2 he has proceeded to grant bail on the same day when he surrendered. There are specific allegations of giving repeated iron rod blow on the head of the deceased against the accused no. 1. The inquest report and post-



mortem report support this. There are witnesses who have supported the prosecution case against Ram Bhuwan Singh in particular. The kind of reasoning given by learned C.J.M. who granted bail to the accused are totally irrelevant and the manner in which he has tried to play down the allegations by raising surmises and conjectures cannot be appreciated by this court.

11. The gravity of the offence alleged, the quantum of punishment prescribed under that provision of the I.P.C. and other relevant materials which were required to be looked into have not at all been considered. It is, thus an arbitrary exercise of power by the then learned C.J.M., Ara.

12. Recently, in the case of **Bharatbhai Bhimabhai Bharwad Vs. State of Gujarat and Others** reported in **2019 SCC Online SC 945 = 2019 (10) SCALE 138**, the Hon'ble Apex Court has considered the case of the appellant in the light of another decision of the Hon'ble Apex Court in the case of **State of U.P. through CBI Vs. Amarmani Tripathi (2005) 8 SCC 21**, in which it has been held that the court while granting bail should exercise it's



discretion in judicious manner by taking into consideration the relevant facts. In paragraph 10 of it's judgment the Hon'ble Supreme Court has been pleased to observe as under:-

“10. It is well settled that the consideration applicable for cancellation of bail and consideration for challenging the order of grant of bail on the ground of arbitrary exercise of discretion are different. While considering the application for cancellation of bail, the Court ordinarily looks for some supervening circumstances like; tampering of evidence either during investigation or during trial, threatening of witness, the accused is likely to abscond and the trial of the case getting delayed on that count etc. Whereas, in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration is whether there was improper or arbitrary exercise of discretion in grant of bail. The appellant has challenged the very grant of bail on the ground of arbitrary exercise of discretion ignoring the relevant materials to be considered in the application for bail. Since the High Court proceeded under the footing as if the appellant had filed the application only for cancellation of bail for which, the consideration is different, the impugned order is liable to be set aside and the matter is remitted to the High Court for consideration of the matter afresh.”

13. In the present case, the petitioner has invoked the inherent power of this court under Section 482 of the Code of Criminal Procedure and the order granting bail is



under challenge, therefore this Court has examined the impugned order on the touchstone of judicious exercise of discretion. This Court has perused the case diary. There are specific allegation of repeated assault having been given by the accused no. 1 – opposite party no. 2. The injuries duly corroborate the allegation. The deceased was lying in the hospital on 15.03.2018 and was battling for survival, he later on succumbed to his injury and died. The learned C.J.M. had no reason to act in such haste to grant bail to the accused nos. 1, 2 & 3 simultaneously with their surrender. Before exercising his discretion he was obliged to look into the nature of allegations, material collected in course of investigation particularly the nature of injury etc., but the learned C.J.M. did not think it just and proper to look into those materials. The learned A.D.J. also failed to appreciate the submissions of the informant and proceeded to consider the matter as if it is a case to be considered keeping in view the factors for cancellation of bail.

14. In that view of the matter, this court is of the considered opinion that the order granting bail to accused no. 1 Ram Bhuan Singh – opposite party no. 2 cannot pass



the test of judicious discretion in the matter of grant of bail. This court, therefore, sets-aside the impugned order to the extent of granting bail to accused no. 1 – opposite party no. 2, cancels his bail bond and directs that opposite party no. 2 be taken into custody forthwith.

15. So far as the other accused – opposite party nos. 3 to 5 are concerned, in the nature of the submissions recorded hereinabove, this court would not interfere with the order granting bail to them.

16. The Superintendent of Police, Bhojpur, Ara is directed to take accused no. 1 – opposite party no. 2 namely, Ram Bhuan Singh, son of Raj Mahal Singh, Resident of village – Paiga, P.S. - Barhara, District – Bhojpur in custody and produce in the court below. The impugned order to that extent are set-aside. Let this order be communicated to Superintendent of Police, Bhojpur through Fax.

17. The manner in which the learned Chief Judicial Magistrate, Bhojpur, Ara has conducted the proceeding it reflects on the manner in which he has discharged his duties recklessly granted bail on the same day to an accused named in the F.I.R. with specific



allegations for an offence alleged under Section 307 I.P.C. who had given repeated blow on the head of the deceased which ultimately caused death of the injured, let this matter be brought to the notice of the Hon'ble the Chief Justice to consider taking appropriate decision in the administrative side against the concerned Chief Judicial Magistrate.

18. The application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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