

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32403 of 2018

Arising Out of PS. Case No.-19 Year-1998 Thana- CHAKIA District- East Champaran

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Ajay Kumar Son of Late Jagdish Singh resident of Village - Ghanghati, P.S.
Chakia, District - East Champaran.

... .. Petitioner

Versus

1. The State Of Bihar
2. The State of Bihar through the Director, Prosecution, Department of Home,
Government of Bihar, Patna
3. Pradeep Chaudhur Son of Late Sunardeo Chaudhur resident of village -
Ghanghti, P.S. Chakiya, District - East Champaran.

... .. Opposite Parties

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with

CRIMINAL MISCELLANEOUS No. 30501 of 2018

Arising Out of PS. Case No.-19 Year-1998 Thana- CHAKIA District- East Champaran

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Ajay Kumar Son of Late Jagdish Singh resident of Village - Ghanghati, P.S.
Chakia, District - East Champaran.

... .. Petitioner

Versus

1. The State Of Bihar
2. The State of Bihar through the Director, Prosecution, Department of Home,
Government of Bihar, Patna
3. Laliteshwar Prasad Singh @ Bhola S/o Anand Deo Chaudhur
4. Krishnakant Singh @ Chutun S/o Late Anand Deo Chaudhur
5. Manoj Kumar S/o Late Kapildeo Narayan Singh @ Kapildeo Chaudhur
6. Ramdeo Chaudhur @ Ramdeo Singh S/o Late Jata Chaudhur
7. Dinesh Choudhur S/o Late Muneshwar Chaudhur All residents of village -
Ghanghati, P.S. Chakia, District - East Champaran.

... .. Opposite Parties

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 32403 of 2018)

For the Petitioner/s : Mr.Sanjay Kumar Tiwari

For the Opposite Party/s : Mr.Sri Shivesh Chandra Mishra

(In CRIMINAL MISCELLANEOUS No. 30501 of 2018)

For the Petitioner/s : Mr.Sanjay Kumar Tiwari

For the Opposite Party/s : Mr.Sri Rajendra Singh Shastriji

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

C.A.V. ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

- 13 01-05-2019 1. Both the above stated petitions have been filed under Section 482 of the Cr.P.C. for cancellation of bail granted to the opposite party no. 3 in Cr. Misc. No. 32403 of 2018 as well as opposite party nos. 3 to 7 in Cr. Misc. No. 30501 of 2018 by a co-ordinate Division Bench of this court vide order dated 09.12.2016 passed in Criminal Appeal (DB) No. 1100 of 2016 with Criminal Appeal (DB) No. 1110 of 2016.
2. The above stated opposite parties were convicted and sentenced by the learned Additional Sessions Judge-XI, East Champaran, Motihari in Sessions Trial No. 374 of 1998 arising out of Chakia P.S. Case No. 19 of 1998 for the offences punishable under Section 302 and other minor sections of the I.P.C. Against the above stated judgment of conviction and sentence order, two separate appeals i.e. Criminal Appeal (DB) No. 1100 of 2016 and Criminal Appeal (DB) No. 1110 of 2016 were preferred by the above stated opposite parties and a co-ordinate Division Bench of this court vide order dated 09.12.2016 granted bail to above stated opposite parties till



pendency of aforesaid criminal appeals.

3. The applicant-petitioner in both the above stated petitions is son of informant of Chakia P.S. Case No. 19 of 1998 corresponding to Sessions Trial No. 374 of 1998. The informant of aforesaid Chakia P.S. Case No. 19 of 1998 filed petition for Special Leave to Criminal Appeal No. 7281-7283 of 2017 before the Hon'ble Apex Court for cancellation of bail granted by co-ordinate Division Bench of this court vide order dated 09.12.2016 but the Hon'ble Apex Court vide order dated 01.05.2017 disposed of the above stated special leave petitions permitting the applicant of special leave petitions to approach the High Court for cancellation of bail. It is pertinent to note here that applicant of above stated special leave to appeals had taken ground before the Hon'ble Apex Court for cancellation of bail that after being released from the jail custody, the above stated opposite parties were extending threat to him as well as his other family members. Moreover, the Hon'ble Apex Court permitted the applicant of aforesaid Special Leave Petitions to raise his grievance before this court on the grounds raised by him before the Hon'ble Apex Court. It is also pertinent to note here that on 24.10.2017, the applicant of aforesaid special leave petitions, namely, Jagdish Singh in injured condition gave his



ferdbeyan to police that Laliteshwar Prasad Singh and Krishnakant Singh (opposite parties no. 3 and 4 respectively in Cr. Misc. No. 30501 of 2018) along with Shubhnarayan Choudhur having entered into his house assaulted him by means of dagger and on the basis of aforesaid ferdbeyan, Chakia P.S. Case No. 286 of 2017 was registered on 03.11.2017. It is also pertinent to note here that on 06.12.2017 Shobha Devi, wife of above stated Jagdish Singh gave her ferdbeyan to police that opposite party no. 3, namely, Laliteshwar Prasad Singh in Cr. Misc. No. 30501 of 2018 along with four other persons committed the murder of her husband. The aforesaid Shobha Devi, specifically, stated in her ferdbeyan that Laliteshwar Prasad Singh and others had got bail by this court after conviction and her husband had preferred appeal before the Hon'ble Supreme Court for cancellation of bail and that was the reason the above stated persons committed the murder of her husband. On the basis of aforesaid ferdbeyan, Chakia P.S. Case No. 326 of 2017 was registered. It is pertinent to note here that in both the above stated cases, police after investigation has already submitted charge sheet.

4. After institution of above stated cases, the son of deceased Jagdish Singh preferred both the above stated petitions



before this court praying therein for cancellation of bail granted by co-ordinate Division Bench of this court vide order dated 09.12.2016 to the private opposite parties.

5. Learned counsel appearing for the applicant-petitioner submitted that admittedly, the private opposite parties were convicted by learned Additional Sessions Judge for commission of murder of daughter of Jagdish Singh but they were granted bail by a co-ordinate Division Bench of this court vide order dated 09.12.2016 against which the informant of Chakia P.S. Case No. 19 of 1998 preferred petitions for special leave for cancellation of bail but he was permitted by the Hon'ble Apex Court to approach this court. He, further, submitted that as a matter of fact, the informant of Chakia P.S. Case No. 19 of 1998 preferred petitions for Special Leave to Appeal before the Hon'ble Apex Court on the ground that after being released from jail, the opposite parties were giving threatening of dire consequences to the informant of aforesaid Chakia P.S. Case No. 19 of 1998 and on the basis of complaint petition filed by the aforesaid informant Jagdish Singh, Chakia P.S. Case No. 11 of 2017 under Sections 147, 148, 149, 307, 395, 420, 386, 387 of the I.P.C. and 27 of the Arms Act was registered against the private opposite parties and on the ground



of aforesaid threatening as well as institution of Chakia P.S. Case No. 11 of 2017, the informant Jagdish Singh preferred petitions for Special Leave to Appeal for cancellation of bail granted to the opposite parties. He further submitted that however, after disposal of above stated petitions for special leave, the opposite party no. 3 Laliteshwar Prasad Singh @ Bhola and opposite party no. 4, namely, Krishnakant Singh @ Chutun in Cr. Misc. No. 30501 of 2018 and one Shubhnarayan Choudhur again assaulted the informant Jagdish Singh because the informant Jagdish Singh had dared to file cancellation petition before the Hon'ble Apex Court and for the aforesaid occurrence, Chakia P.S. Case No. 286 of 2017 was registered under Sections 341, 323, 324, 504/34 of the I.P.C. on 03.11.2017. He, further, submitted that subsequently, the aforesaid Jagdish Singh was killed by Laliteshwar Prasad Singh and four others for which Chakia P.S. Case No. 326 of 2017 was registered against them on 06.12.2017 and thereafter, the son of aforesaid Jagdish Singh filed the present petitions on 23.05.2018. He submitted that above stated facts clearly reveal a glaring example of misuse of privilege of bail. He submitted that aforesaid informant Jagdish Singh was killed because he dared to file petition before the Hon'ble Apex Court for



cancellation of bail of the private opposite parties and, therefore, in the aforesaid circumstances, the private opposite parties cannot be permitted to enjoy the privilege of bail because they might commit the murder of present petitioner as well as his other family members.

6. On the other hand, learned counsel appearing in Cr. Misc. No. 32403 of 2018 refutes the above stated submissions of learned counsel of the petitioner arguing that the present petitions are not maintainable as by exercising power vested under Section 482 of the Cr.P.C., this court cannot cancel the bail granted by this court because before cancellation of bail there must be an enquiry regarding the allegation made in petition for cancellation of bail. He, further, submitted that opposite party no. 3, namely, Pradeep Chaudhur in Cr. Misc. No. 32403 of 2018 was made accused only in Chakia P.S. Case No. 11 of 2017 and admittedly, he was not made accused either in Chakia P.S. Case No. 286 of 2017 or in Chakia P.S. Case No. 326 of 2017. He, further, submitted that moreover, there was no specific allegation against the above stated opposite party no. 3 in Chakia P.S. Case No. 11 of 2017. Therefore, even if the arguments advanced on behalf of the petitioner is accepted in toto, then also, it cannot be said that opposite party no. 3 in Cr.



Misc. No. 32403 of 2018 has misused the privilege of bail.

7. Learned counsel appearing in Cr. Misc. No. 30501 of 2018 submitted that no doubt, the opposite party no. 3, namely, Laliteshwar Prasad Singh @ Bhola has been made accused in all the above stated three cases but admittedly, opposite party no. 4, namely, Krishnakant Singh @ Chutun was made accused only in Chakia P.S. Case No. 11 of 2017 as well as in Chakia P.S. Case No. 286 of 2017 but he was not made accused in Chakia P.S. Case No. 326 of 2017 which was lodged for murder of informant Jagdish Singh. He, further, submitted that similarly, the opposite party no. 5, namely, Manoj Kumar was made accused only in Chakia P.S. Case No. 11 of 2017. He, further, submitted that opposite party no. 3 namely, Laliteshwar Prasad Singh has already been granted bail by the learned Single Judge in Chakia P.S. Case No. 326 of 2017 and, therefore, even if it assumed that he was made accused in Chakia P.S. Case No. 326 of 2017, then also, bail granted to him vide order dated 09.12.2016 passed in Cr. Appeal (DB) No. 1100 of 2016 with Cr. Appeal (DB) No. 1110 of 2016 cannot be cancelled and if the petitioner has any grievance, he may file cancellation petition for cancellation of bail granted to the opposite party no. 3 in Chakia P.S. Case No. 326 of 2017 because on the ground of



institution of subsequent case, the bail granted in previous case cannot be cancelled.

8. Having heard the contentions of both the parties, we went through the record. We find that informant of Chakia P.S. Case No. 19 of 1998 corresponding to Sessions Trial No. 374 of 1998 preferred petitions for Special Leave to Appeal for cancellation of bail of private opposite parties granted by a co-ordinate Division Bench of this Court in Cr. Appeal (DB) No. 1100 of 2016 with Cr. Appeal (DB) No. 1110 of 2016 vide order dated 09.12.2016 on the ground that opposite parties of the present petitions were giving threatening to him as well as his other family members. It is obvious from perusal of the record that after disposal of aforesaid petitions for Special Leave to Appeal, the petitioner of aforesaid Special Leave to Appeal was badly assaulted by the FIR named accused of Chakia P.S. Case No. 286 of 2017 and subsequently, he was killed by the FIR named accused of Chakia P.S. Case No. 326 of 2017. It is pertinent to note here that opposite party no. 3, namely, Laliteshwar Prasad Singh in Cr. Misc. No. 30501 of 2018 was made accused in both the above stated cases whereas opposite party no. 4, namely, Krishnakant Singh @ Chutun in Cr. Misc. No. 30501 of 2018 was made accused in Chakia P.S. Case No.



286 of 2017 but he was not made accused in Chakia P.S. Case No. 326 of 2017. So far as the remaining opposite parties are concerned, they were not made accused either in Chakia P.S. Case No. 286 of 2017 or in Chakia P.S. Case No. 326 of 2017. The aforesaid fact clearly goes to show that opposite parties no. 3 and 4 in Cr. Misc. No. 30501 of 2018 not only threatened the informant of Chakia P.S. Case No. 286 of 2017 but also assaulted him and later on he was killed because he had filed petition for special leave for cancellation of bail granted to them. Therefore, in our view, it is a clear cut case of misuse of privilege of bail in respect of opposite party no. 3, namely, Laliteshwar Prasad Singh @ Bhola and opposite party no. 4, namely, Krishnakant Singh @ Chutun in Cr. Misc. No. 30501 of 2018 and only because of that they have secured bail in Chakia P.S. Case No. 326 of 2017, it cannot be said that petitioner has no right to make prayer for cancellation of bail granted to them vide order dated 09.12.2016 passed in Cr. Appeal (DB) No. 1100 of 2016 with Cr. Appeal (DB) No. 1110 of 2016. Therefore, in our view, the bail granted to opposite party no. 3, namely, Laliteshwar Prasad Singh @ Bhola and opposite party no. 4, namely, Krishnakant Singh @ Chutun in Cr. Misc. No. 30501 of 2018 is liable to be cancelled.



9. So far as the remaining opposite parties are concerned, we do not find any ground for cancellation of their bail because general allegation of threatening was levelled against them in Chakia P.S. Case No. 11 of 2017.

10. It has been argued on behalf of the private opposite parties that the present petitions are not maintainable under Section 482 of the Cr.P.C. but we are not in agreement with the aforesaid submission because there is no provision in Criminal Procedure Code for cancellation of bail granted in criminal appeal. Moreover, this court has wide power under Section 482 of the Cr.P.C. and this court can exercise the power vested under Section 482 of the Cr.P.C. to prevent the abuse of process of the court.

11. It has also been argued on behalf of the private opposite parties that bail granted to private opposite parties cannot be cancelled on the ground of institution of subsequent case, particularly, in the circumstance when the opposite parties have already secured bail in subsequent case but again, we are not in agreement with the aforesaid contention because for cancellation of bail the subsequent events can be taken into consideration. So far as the argument advanced on behalf of the private opposite parties that before cancellation of bail there



must be an enquiry regarding the allegation levelled against the opposite parties is concerned, in our view, when the cases for assault and murder of the deceased were registered and the police having investigated the aforesaid cases submitted charge sheet in those cases, there is no need of further enquiry.

12. On the basis of aforesaid discussions, we are of the view that opposite party no. 3, namely, Laliteshwar Prasad Singh @ Bhola and opposite party no. 4, namely, Krishnakant Singh @ Chutun in Cr. Misc. No. 30501 of 2018 have no right to enjoy the privilege of bail and accordingly, the bail granted to them vide order dated 09.12.2016 passed in Cr. Appeal (DB) No. 1100 of 2016 with Cr. Appeal (DB) No. 1110 of 2016 is, hereby, cancelled. Accordingly, both the aforesaid opposite parties are directed to surrender before the trial court within eight weeks from today, failing which the learned trial court shall take appropriate step to procure the attendance and remand of above stated opposite party no. 3, namely, Laliteshwar Prasad Singh @ Bhola and opposite party no. 4, namely, Krishnakant Singh @ Chutun in Cr. Misc. No. 30501 of 2018.

13. So far as prayer for cancellation of bail of remaining private opposite parties are concerned, we do not find any ground to cancel the bail granted to the remaining private



opposite parties, namely, Pradeep Chaudhur, Manoj Kumar, Ramdeo Chaudhur @ Ramdeo Singh and Dinesh Choudhur vide order dated 09.12.2016 passed in Cr. Appeal (DB) No. 1100 of 2016 with Cr. Appeal (DB) No. 1110 of 2016 and accordingly, prayer for cancellation of bail of above stated private opposite parties is, hereby, rejected.

14. In the aforesaid manner, order dated 09.12.2016 passed in Cr. Appeal (DB) No. 1100 of 2016 with Cr. Appeal (DB) No. 1110 of 2016 stands modified to the above stated extent and both the above stated present petitions stand disposed of.

(Hemant Kumar Srivastava, J)

Rajendra Kumar
Mishra, J: I agree

(Rajendra Kumar Mishra, J)

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