

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36822 of 2018

Arising Out of PS. Case No.-23 Year-2018 Thana- PHULWARIYA District- Gopalganj

Shambhu Lal S/o Late Bindeshwari Lal, resident of Village- Kunwar Bathua,
P.S. Phulwaria, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Jitendra Mishra, S/o Bhrigunath Mishra, resident of Village- Birsa Bathua,
P.S. Phulwaria, District- Gopalganj.
3. Lal Bachan Mishra, S/o Late Vikarna Mishra, resident of Village- Birsa
Bathua, P.S. Phulwaria, District- Gopalganj.
4. Rajesh Kumar Gupta, S/o Achhelal Gupta resident of Village- Rampur, P.S.-
Phulwaria, District- Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Akhilesh Kumar
For the Opposite Party/s : Mr. Ashok Kumar Singh 1

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-01-2019

Heard learned counsel for the parties.

The present application has been filed for cancellation of bail of O.P. Nos. 2 to 4 granted vide order dated 21.3.2018 passed by the learned Ist Additional Sessions Judge, Gopalganj in ABP No. 204 of 2018 in connection with Phulwaria P.S. Case No. 23 of 2018 registered for the offences punishable under Sections 363,365,420,467,468 and 120B of the IPC.

The prosecution case as per the written report of the petitioner-informant Shambhu Lal submitted to the SHO, Phulwaria Police Station as contained in Annexure 1, is to the effect that on 26.12.2017, the O.P. Nos. 2 and 3 abducted the



son of the petitioner, who was under treatment for mental ailment, and got executed a sale deed through him in favour of O.P. No. 4. It is further alleged by the petitioner that on return of his son, he came to know about the sale deed executed in favour of O.P. No. 4.

It is submitted by learned counsel for the petitioner that all these facts were not considered by the learned court below while considering the bail application of the O.P. Nos. 2 to 4. Moreover, from the report being submitted by the S.I. of Police Ram Mohan Rai dated 5.4.2018 to the SDO, Hathua, it appears that the accused persons are threatening the petitioner.

From the impugned order, it appears that for the occurrence of 26.12.2017 the FIR was registered on 24.1.2018. Moreover, there is nothing on record to suggest that the sale deed in question has been challenged before the appropriate forum for getting the alleged sale deed cancelled.

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 O.P. Nos. 2 to 4. 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 only 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 Raghbir 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 or becomes 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 O.P. Nos. 2 to 4 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, 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 Bhagirathsinh Vs. State of Gujrat (1984) 1 Supreme Court Cases 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 judged and the whole purpose is that the accused may not abscond or tamper with the evidence. In the entire cancellation application, there is no such averment made that the petitioner has abused the conditions of bail.

In view of the discussions made above, this Court finds no reason to cancel the bail of O.P. Nos. 2 to 4 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 as quoted above.

This application is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

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