

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2611 of 2018

Arising Out of PS. Case No.-365 Year-2018 Thana- SIWAN MUFFASIL District- Siwan

1. Asaraf Ali, Son of Rasul Mian
2. Saif Ali, Son of Asaraf Ali
3. Shaheed Ali, Son of Asaraf Ali
4. Arif Ali, Son of Asaraf Ali
5. Shamina Khatoon, Daughter of Rasul Mian
6. Raushan Tara wife of Asaraf Ali
All Resident of Village- Tarwa, P.S. Siwan Muffasil, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Law Department,
Government of Bihar
2. Sarfaraj Khan, Son of Late Mumtaj Khan Resident of Village- Tarwa, P.S.
Siwan Muffasil, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ramchandra Sahni, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA -7
for the Informant	:	Md. Anisur Rahman, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-03-2019

Heard learned counsel for the petitioners, learned
counsel for the State and learned counsel for the informant.

2. By way of the present application preferred under
Articles 226 and 227 of the Constitution of India, the petitioners
have challenged the order dated 12.09.2018 passed by the Sessions
Judge, Siwan in Criminal Revision No. 221 of 2018 preferred by
the petitioners against the order dated 31.08.2018 passed by the
learned Chief Judicial Magistrate, Siwan in connection with Siwan



Muffasil P.S. Case No. 365 of 2018 by which the learned Chief Judicial Magistrate had cancelled the bail bond of the petitioners and issued non-bailable warrant of arrest against them. By the aforesaid order dated 12.09.2018, the learned Sessions Judge, Siwan has rejected the revision application at the admission stage.

3. The brief facts of the case are that the petitioners were made accused in Muffasil P.S. Case No. 365 of 2018 dated 27.06.2018 registered under Sections 147, 148, 149, 341, 323 and 307 of the Indian Penal Code.

4. In Muffasil P.S. Case No.365 of 2018, it has been alleged by the informant Sarfraz Khan that on 27.06.2018, at 2:00 p.m., on account of a dispute relating to drainage, the petitioners and three others, namely, Javed @ Disco, son of Rasul Mian, Irfan Ali and Javed both sons of Asaraf Ali being variously armed with *lathi*, *danda*, iron rod, bricks and stones attacked upon him. The accused Javed @ Disco assaulted with iron rod on the back of the head of Mumtaz Khan because of which his condition became critical and he fell down. He was taken to Sadar Hospital, Siwan for treatment from where he was referred to Patna. He has further alleged that in the alleged incident he and one Gabbar Khan also sustained injuries and they are being treated in the Sadar Hospital, Siwan.



5. After institution of the first information report, petitioner no.3 Shaheed Ali and petitioner no. 4 Arif Ali were arrested and remanded to judicial custody. The other four petitioners, namely, Asaraf Ali, Saif Ali, Samina Khatoon and Raushan Tara surrendered on 02.07.2018 and prayed for bail. The arrested accused Shaheed Ali and Arif Ali also prayed for bail. Their applications for bail were heard together and the learned Chief Judicial Magistrate, Siwan vide order dated 02.07.2018, granted them bail. Subsequently, the injured Mumtaj Khan died in course of treatment in hospital at Patna whereafter an application was filed by the investigating officer on 05.07.2018 for adding section 302 of the Indian Penal Code to the first information report, which was allowed by the learned Chief Judicial Magistrate.

6. After addition of Section 302 of the Indian Penal Code in the first information report, an application under Section 437(5) of the Code of Criminal Procedure was filed by the informant of the case for cancellation of bail of the petitioners. A plea was taken by the informant that due to change in nature of the offence, the petitioners had become disentitled to the liberty granted to them in relation to the offences under which the first information report was initially instituted. The contention on their



behalf was that keeping in mind the seriousness of the offence allowing the accused persons to remain on bail would cause great prejudice to the case of the prosecution. The learned Chief Judicial Magistrate issued show cause notice to the petitioners and after hearing both the parties, he cancelled the bail granted to the petitioners, vide order dated 31.08.2018, mainly on the ground that after the grant of bail the injured, Mumtaz Khan had died and Section 302 was added to the first information report.

7. Being aggrieved by the aforestated order dated 31.08.2018, the petitioners filed a revision application, vide criminal Revision No. 221 of 2018, in the court of Sessions Judge, Siwan, which was rejected, vide impugned order dated 12th September, 2018.

8. Learned counsel appearing for the petitioners submitted that there was no material before the court on the basis of which the bail to the petitioners could have been cancelled. The learned Chief Judicial Magistrate erroneously cancelled the bail merely on the ground that the injured Mumtaz Khan died in course of treatment whereafter a graver offence under Section 302 of the Indian Penal Code was added in the first information report. He contended that the learned Magistrate, while passing the order on the application under Section 437 (5) of the Code of Criminal



Procedure failed to apply his mind as to whether the petitioners were entitled to continue on bail even in the changed circumstances or not. He pleaded that the petitioner had not misused the privilege of bail and there was no allegation that they had even touched the body of the deceased. Hence, the learned Magistrate ought not to have cancelled their bail bond. He urged that the learned Magistrate failed to appreciate the ratio laid down by this Court in the matter of **Sita Ram Singh vs. State of Bihar** since reported in **2002 (1) PLJR 693**. He has argued that the learned Sessions Judge while passing the impugned order also failed to appreciate the facts and law involved in the case in correct perspective and has simply reiterated the order passed by the Magistrate and rejected the application filed by the petitioners.

9. *Per Contra*, learned counsel appearing for the State submitted that in view of the limitations prescribed under Section 437(1) of the Code of Criminal Procedure, no illegality can be found with the order passed by the court of Magistrate whereby the application filed by the informant under Section 437(5) of the Code of Criminal Procedure was allowed and the bail granted to the petitioners was cancelled. He contended that only after six days of the alleged occurrence, the victim Mumtaj Khan had died in course of treatment and looking to the gravity to the offence the



learned Magistrate had rightly cancelled the bail bond. Since the order passed by the learned Chief Judicial Magistrate was justified, no illegality can be found with the order passed by the revisional court whereby the revision application preferred by the petitioners has been rejected.

10. Learned counsel for the informant has supported the contentions advanced by the learned counsel for the State.

11. Having heard learned counsel for the parties and carefully perused the record, I find that while granting bail to the petitioners, vide order dated 02.07.2018, learned Chief Judicial Magistrate, Siwan had observed that save and except Section 307 of the Indian Penal Code all other sections are bailable in nature. The allegation of causing injury to the injured Mumtaz Khan on the back of his head with iron rod is confined against the accused Javed @ Disco. On perusal of the first information report, no specific case under Section 307 of the Indian Penal Code appears to be made out against the petitioners.

12. Having made the aforesaid observations, the learned Chief Judicial Magistrate had granted bail to the petitioners, vide order dated 02.07.2018, however, after the death of the injured Mumtaz Khan, when an application was filed under Section 437(5) of the Code of Criminal Procedure for cancellation of bail he has



observed that after the death, upon the application filed by the Investigating Officer, section 302 of the Indian Penal Code has been added in the first information report. On the basis of the materials on record, it appears that the accused persons have committed a heinous offence.

13. Having made the afroesaid observations, he has cancelled the bail granted to the petitioners earlier and issued non-bailable warrant of arrest against them.

14. Apparently, the bail granted to the petitioners earlier has been cancelled by the learned Chief Judicial Magistrate in a mechanical manner on the ground of subsequent addition of a graver offence under Section 302 of the Indian Penal Code in the first information report without considering whether even in the altered situation, the petitioners deserved to be granted bail or not. The learned Session Judge, Siwan, while passing the impugned order has simply reiterated the order passed by the court of Chief Judicial Magistrate, Siwan.

15. In **Sita Ram Singh** (supra) relied upon by the petitioners under the similar circumstances, while quashing the order whereby the bail was cancelled by the learned ACJM on the ground of subsequent addition of Section 302 of the Indian Penal Code, this Court held as under:-



“12. The aforesaid judgment clearly holds that on a serious change in the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence and in such circumstances, **the correct approach for the court concerned would be to apply its mind afresh as to whether the accused is entitled for grant of bail, in the changed circumstances. If the court finds that the accused is still entitled for bail keeping his past conduct etc. in mind, the prayer for cancellation can be rejected otherwise the bail granted for the minor offence may justifiably be cancelled and the accused be taken in custody.**

13. In view of aforesaid legal position, this Court finds that the learned ACJM acted in a mechanical manner in cancelling the bail of the petitioners only on ground of subsequent addition of section 302 of the IPC without further considering whether, even in the altered situation, the petitioners deserve to be granted bail or not. As held earlier the ground of tampering was improperly applied for cancellation of petitioners' bail. For all these reasons, this Court finds the impugned order dated 18.1.2001 fit to be quashed. It is therefore, quashed but the interest of justice further requires that the matter be remitted back to the learned Magistrate for reconsidering the



applications for cancellation of bail of both the petitioners in accordance with law and the observations noticed in this judgment. Interest of justice also warrants pointing out that for bail on merits the case of the two petitioners may stand on different footings and this aspect should also be kept in mind by the learned Magistrate while reconsidering the matter as per law.” (emphasis mine)

16. Keeping in mind the discussions made, hereinabove and the ratio laid down in **Sita Ram Singh** (supra), the impugned order passed by the learned Sessions Judge, Siwan in Criminal Revision No. 221 of 2018 whereby the revision application preferred against the order dated 31.08.2018 passed by the learned Chief Judicial Magistrate, Siwan in connection with Siwan (Muffasil) P.S. Case No. 365 of 2018 cannot be sustained. For the same reason, the order dated 31.08.2018, passed by the learned Chief Judicial Magistrate, Siwan in connection with Siwan (Muffasil) P.S. Case No. 365 of 2018 also cannot be sustained. They are set aside, accordingly.

17. The matter is remitted back to the Jurisdictional Magistrate for re-considering the application for cancellation of bail of the petitioners in accordance with law and the observations made in **Sita Ram Singh** (supra). The learned Jurisdictional Magistrate shall be required to apply his mind afresh and



appreciate as to whether the accused persons are entitled for bail, in the changed circumstances. If the court would find that the accused persons are still entitled for bail keeping in mind their past conduct etc. the prayer for cancellation of bail may be rejected otherwise the bail granted earlier may be cancelled.

18. With the aforesaid observations, the application is allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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