

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 980 of 2019

- Hemant Mishra S/o Shri Jeewan Mishra, Aged About 32 Years
Occupation Booking Agent, R/o Abhishek Vihar, Mangla, Bilaspur District
Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. The State of Chhattisgarh, Through The Station House Officer, Police
Station Civil Lines, Bilaspur Chhattisgarh., District : Bilaspur,
Chhattisgarh
2. Pradeep Singh S/o Shri Bajrang Singh, aged about 22 Years, R/o In
front of Electricity Office Tifra, Police Station Sirgitti District Bilaspur
Chhattisgarh., District : Bilaspur, Chhattisgarh

----Respondents

For Petitioner – Shri Ajay Kumrani, Advocate.

For State/Respondent No.1 – Shri Ghanshyam Patel, Govt. Advocate.

For Respondent No.2– Shri Maneesh Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

14-08-2019

1. This petition has been brought under Section 439(2) of the Cr.PC.
praying for cancellation of anticipatory bail granted to respondent No.2 in
MCRCA No.406 of 2019 by order dated 01-04-2019.
2. It is submitted on behalf of the petitioner that the petitioner was injured
and unconscious. The incident of assault that took place upon him in which
respondent No.2 was one of the participants, therefore, the witness Kamalkant
Pandey has lodged the FIR against the unknown persons. When the petitioner
came to consciousness he gave the statement to the police naming
respondent No.2 and others as the accused persons. The applicant had to
made strenuous efforts even by filing writ petition in this Court to get the FIR
registered in this case. Praying for cancellation of bail granted to respondent
No.2 it is submitted that there is ample and clinching evidence present against
the respondent No.2 to show that he was involved in commission of the offence
against the petitioner. The injury that was caused to the petitioner was found to

be grievous in nature, therefore, the respondent No.2 was not entitled for grant of anticipatory bail. On this ground it is prayed that the anticipatory bail granted to respondent No.2 be cancelled.

3. Respondent No.1 opposes the petition, however, it is submitted that if the Court pleases to cancel the anticipatory bail granted to respondent No.2 in that case respondent No.1 has no objection.

4. On behalf of respondent No.2 it is submitted that this Court has after considering on all the facts, evidence and circumstances of this case has been pleased to grant anticipatory bail to respondent No.2. Therefore, the grounds which are raised in this petition under Section 439(2) of the Cr.P.C. which are only based on facts and evidence cannot be entertained. Even if it is so that the petitioner has suffered some grievous injury, in that case, trial can be held on that charge, but it cannot be made a reason to pray for cancellation of bail.

Reliance has been placed on the order of this Court dated 27-07-2015 passed in **Cr.M.P. No. 469 of 2015** (Savita Khande and another Vs. State of Chhattisgarh and another), wherein the coordinate Bench has placed reliance on the judgment of **Jayendra Saraswathi Swamigal v. State of T.N.**, (2005) 2 SCC 13; **Gurcharan Singh v. State (Delhi Administration) and other**, (1978) 1 SCC 118; **Puran Vs. Rambilas and another**, (2001) 6 SCC 338 and **Abdul Basit alias Raju and others vs. Mohd. Abdul Kadir Chaudhary and another**, (2014) 10 SCC 754. It was held that the ground raised in that case was this, that bail order was granted in favour of the accused by suppression and misrepresentation of the facts and that the order considering bail reflects consideration on irrelevant material, would amount to review or recall of bail order which is impermissible under Section 362 of the Cr.P.C. Hence, it is prayed that the application be rejected.

5. Heard learned counsel for the parties and perused the documents.

6. This Court has in order dated 01-04-2019 passed in MCRCA No.406 of 2019 after discussing the arguments from both the sides and mentioning the case has observed that the case diary reveals that the victim has suffered simple injuries and there is no injury caused by any sharp edged weapon. Further, the call details of the mobile of the applicant/respondent No.2 was produced which have shown that respondent No.2 was present in some other place, on this basis the application for grant of anticipatory bail was allowed. In this application the petitioner has reagitated the grounds which were already submitted by the State/respondent No.1 at the time of consideration on earlier bail. The grounds raised that the petitioner suffered grievous injury, a fracture on his skull is present in the case diary and the documents submitted in that respect along with the application are documents of consultation and investigation in some private hospital. But, on that basis there is no report that the injury caused to the petitioner was fatal in nature, it may attract the offence under Section 325 of the IPC that also is an offence of bailable nature. Therefore, the prayer made in this application amounts to prayer for review of the order passed by this Court, which cannot be entertained in view of principle laid down by Superior Court and this Court which have been discussed in detail in the matter of Savita Khande and another Vs. State of Chhattisgarh and another (supra) by coordinate Bench of this Court. Therefore, after due consideration, I do not find any substance in this application which is rejected at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge