

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9292 of 2021

Arising Out of PS. Case No.-5 Year-2020 Thana- VIGILANCE District- Patna

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THE STATE OF BIHAR, THROUGH VIGILANCE INVESTIGATION
BUREAU, BIHAR, PATNA Patna.

... .. Petitioner

Versus

SANJAY KUMAR SRIVASTAVA @ SANJAY KUMAR S/o Late Yogendra
Prasad Srivastava Resident of Village-Bhagwanpur Hat, P.S.-Bhagwanpur
Hat, District-Siwan, Bihar, working as Computer Operator, Registry Office,
Gopalganj, District-Gopalganj.

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Anjani Kumar, Senior Advocate
Ms. Archana Palkar Khopde, Advocate
For the Opposite Party : Mr.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

6 15-12-2021 The State of Bihar through Vigilance Investigation

Bureau has filed the present application under Section 439(2) of
the Code of Criminal Procedure seeking cancellation of bail
granted to the sole opposite party by an order dated 03.06.2020
passed in Cr. Misc. No. 19575 of 2020, by this Court.

2. The case of the prosecution, as noted in the order
dated 03.06.2020, portrays that on the basis of complaint lodged
by the complainant before the Superintendent of Police-cum-
Officer Incharge, Nigrani Police Station, Patna, to the effect that
the petitioner was demanding illegal gratification of a sum of
Rs.15,000/- for registration of a will, which the complainant
contemplated to execute, the concerned Vigilance P.S. Case No.



05/2020 was registered. The petitioner was, admittedly, working on contractual basis as Computer Operator in the Registration Office, Gopalganj. A raiding team of the Vigilance Investigation Bureau was subsequently constituted, upon verification of the allegation made by the complainant. This Court had, noted from the post trap memorandum, prepared by the Vigilance team, that the petitioner and one Pappu Srivastava, a co-accused, were apprehended by the Vigilance sleuths, red handed. Considering the submission advanced on behalf of the opposite party that no money was recovered from the his possession during the trap and the amount was in fact recovered from the co-accused Pappu Srivastava, this Court had allowed him (the opposite party) privilege of regular bail, keeping in mind his incarceration since 13.02.2020.

3. Mr. Anjani Kumar, learned Senior Counsel appearing on behalf of the petitioner has submitted that said Pappu Srivastava has been allowed regular bail by this Court by an order dated 19.08.2020 passed in Cr. Misc. No. 20974 of 2020, wherein the said co-accused shifted the blame to the opposite party of this case. He has submitted that co-accused Pappu Srivastava was granted bail upon consideration of the submission that opposite party herein had handed over the



amount to said Pappu Srivastava from whose possession the amount in question was recovered. He has submitted that considering the gravity of offence and the fact that the opposite party had played the main role in commission of the offence, he did not deserve privilege of regular bail and in such circumstance, his bail granted by this Court deserves to be cancelled. He has relied on Supreme Court's decisions in case of ***Dinesh M.N. (S.P.) v. State of Gujarat***, reported in (2008) 5 SCC 66 and ***Prakash Kadam v. Ramprasad Vishwanath Gupta***, reported in (2011) 6 SCC 189. He has submitted that it is though true that consideration for cancellation of bail are different from consideration of grant of bail, however, the said proposition is not an absolute rule and will depend on the facts and circumstances of the case. He has urged that considering direct allegation against the petitioner of having accepted bribe money, the bail granted to him deserves to be cancelled.

4. In my opinion, the said decisions of this Court in case of ***Dinesh M.N. (S.P.)*** (supra) and ***Prakash Kadam*** (supra) do not support of the petitioner's case for the reason that in those cases the bail granted by the trial court was cancelled by the High Court, a superior court. In the challenge to the decision of the High Court, the Supreme Court observed in case of



Dinesh M.N. (S.P.) (supra) in paragraph 17 as under :-

“17. In support of the appeal, learned counsel for the appellant submitted that the parameters for grant of bail and cancellation of bail are entirely different as has been laid down by this Court in several cases. In the application for cancellation of bail there was no reference to any supervening circumstance and only analysis of the materials which were considered by the trial court to grant bail were highlighted. It is submitted that even if two views are possible, once the bail has been granted, it should not be cancelled. Reliance is placed on decisions of this Court in State (Delhi Admn.) v. Sanjay Gandhi [(1978) 2 SCC 411 : 1978 SCC (Cri) 223] , Bhagirathsinh v. State of Gujarat [(1984) 1 SCC 284 : 1984 SCC (Cri) 63] , Aslam Babalal Desai v. State of Maharashtra [(1992) 4 SCC 272 : 1992 SCC (Cri) 870] , Dolat Ram v. State of Haryana [(1995) 1 SCC 349 : 1995 SCC (Cri) 237] , Ramcharan v. State of M.P. [(2004) 13 SCC 617 : (2006) 1 SCC (Cri) 511] , Mehboob Dawood Shaikh v. State of Maharashtra [(2004) 2 SCC 362 : 2004 SCC (Cri) 551] , Nityanand Rai v. State of Bihar [(2005) 4 SCC 178 : 2005 SCC (Cri) 1159] , State of U.P. v. Amarmani Tripathi [(2005) 8



SCC 21 : 2005 SCC (Cri) 1960 (2)] and Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] . It is pointed out that the common thread passing through the aforesaid decisions is that there is no scope for cancellation of bail on reappraisal of evidence. It is pointed out that in Mehboob case [(2004) 2 SCC 362 : 2004 SCC (Cri) 551] and Amarmani case [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] the bail was cancelled as it was established that there were serious attempts to tamper with the evidence and to interfere and sidetrack the investigation and threaten the witnesses. It is pointed out that as laid down by this Court in Sanjay Gandhi case [(1978) 2 SCC 411 : 1978 SCC (Cri) 223] and Dolat Ram case [(1995) 1 SCC 349 : 1995 SCC (Cri) 237] the bail granted should not have been cancelled by way of reappraising evidence.”

5. The Supreme Court in case of *Dinesh M.N. (S.P.)*

(supra) further observed in paragraph 19 as under : -

“19. As is evident from the rival stands one thing is clear that the parameters for grant of bail and cancellation of bail are different. There is no dispute to this position. But the question is if the trial court while



granting bail acts on irrelevant materials or takes into account irrelevant materials whether bail can be cancelled. Though it was urged by learned counsel for the appellant that the aspects to be dealt with while considering the application for cancellation of bail and on appeal against the grant of bail, it was fairly accepted that there is no scope of filing an appeal against the order of grant of bail. Under the scheme of the Code the application for cancellation of bail can be filed before the court granting the bail if it is a Court of Session, or the High Court.”

6. In case of **Dinesh M.N. (S.P.)** (supra), the Supreme Court further observed in paragraph 23 as under : -

“23. Even though the reappreciation of the evidence as done by the court granting bail is to be avoided, the court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail.”

7. Mr. Anjani Kumar, learned Senior Counsel has placed heavy reliance on the observations made by the Supreme



Court in paragraph 24 and 25 in case of ***Dinesh M.N. (S.P.)***

(supra), which read thus : -

“24. In *Puran v. Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] it was noted as follows : (SCC p. 345, para 11)

“11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] . In that case the Court observed as under : (SCC p. 124, para 16)

‘16. ... If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail



and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.’

25. The perversity as highlighted in Puran case [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] can also flow from the fact that as noted above, irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature. In the instant case, the trial court seems to have been swayed by the fact that Sohrabuddin had shady reputation and criminal antecedents. That was not certainly a factor which was to be considered while granting bail. It was nature of the acts which ought to have been considered. By way of illustration, it can be said that the accused cannot take a plea while applying for bail that the person whom he killed was a hardened criminal. That certainly is not a factor which can be taken into account.”



8. In effect, the petitioner is seeking review of an order of this Court by filing the present application for cancellation of bail granted to the opposite party by the said order dated 03.06.2020 passed by this Court in Cr. Misc. No. 19575 of 2020, which is impermissible in view of the clear bar under Section 362 of the Code of Criminal Procedure. It is not permissible for this Court to enter into the correctness of its own order granting bail to the opposite party upon examining merits of the case afresh. The law has been clearly laid down by the Supreme Court in case of **Puran v. Rambilas**, reported in (2001) 6 SCC 338, which has been considered in case of **Dinesh M.N. (S.P.)** (supra) that the State had option to approach the superior Court, but not the same Court, if it was aggrieved by an order granting bail to an accused.

9. In my view, no case is made out for exercise of power under Section 439(2) of the Cr.P.C. This application is accordingly rejected.

(Chakradhari Sharan Singh, J)

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