

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 39 of 2021

- Narsingh Sahu S/o Ramgopal Sahu, Aged About 57 Years, R/o Parsuli, Police Station Arjuni, District Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh

---- Applicant

Versus

1. Toman Lal Sahu S/o Prahlad Ram Sahu, Aged About 27 Years, R/o Bazar Chowk Fagundah, Police Station Gurur, District Balod Chhattisgarh., District : Balod, Chhattisgarh
2. Prahlad Sahu S/o Shri Punuram Sahu, Aged About 62 Years, R/o Village Fagundah, Police Station Gurur, District Balod Chhattisgarh., District : Balod, Chhattisgarh
3. State Of Chhattisgarh Through Station House Officer, Police of Police Station Gurur, District Balod Chhattisgarh., District : Balod, Chhattisgarh

----Respondents/Non-applicants

For Applicant – Shri Anil Gulati, Advocate.

For Respondents No. 1 and 2 – Shri B.P. Singh, Advocate.

For State/Respondent No.3 – Shri Sameer Oraon, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-07-2021

1. This application under Section 439(2) of the Cr.P.C. has been brought praying for cancellation of bail granted to respondent No.1 in MCRC No.3224 of 2020 vide order dated 05-08-2020.

2. It is submitted by learned counsel for the applicant that earlier respondent No.1 had filed bail application which was registered as MCRC No.4594 of 2019 which was dismissed as withdrawn on 16-09-2019 and liberty was granted to file repeat application after four months. It is submitted that respondent No.1 filed the repeat application which was registered as MCRC No.3224 of 2020 by concealing the fact regarding dismissal of his previous application by another Bench of this Court. This Court by order dated 05-08-2020 has granted bail to respondent No.1.

It is submitted by learned counsel for the applicant, that respondent No.1 has played fraud upon the Court by concealing the fact of dismissal of his

previous bail application and also that respondent No.2 who is father of respondent No.1 has sworn affidavit in support of the bail application making concealment of the rejection of the earlier bail application, whereas, he was the person who had filed similar affidavit in support of previous bail application. Therefore, a separate application has been filed under Section 340 of the Cr.P.C. against him . It is submitted that the bail granted to respondent No.1 in MCRC No.3224 of 2020 by order dated 05-08-2020 be cancelled and respondent No.2 be proceeded against under Section 340 of the Cr.P.C.

3. Learned counsel for respondents No.1 and 2 opposes the application and the submission made by the applicant's counsel. It is submitted that second application was presented in the pandemic situation. The prosecutrix had appeared on notice in the hearing of subsequent bail application, but she did not disclose about the rejection of previous application for grant of bail. The second application was filed after passing of one year, therefore, it may be a bonafide mistake on the part of the private respondents, which may be condoned and this application for bail cancellation and the application under Section 340 of the Cr.P.C. may be dismissed.

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

5. Rule 120 of the High Court of Chhattisgarh Rules, 2007 provides format in which the bail application should be filed and the format for application under Section 439 of the Cr.P.C. clearly requires the applicant to mention that the application filed is first, second or subsequent. In case of **Shazad Hasan Khan v. Ishtiaq Hasan Khan**, (1987) 2 SCC 684 it was held and directed that after rejection of the earlier bail application, subsequent bail applications are to be placed before the same judge who passed the earlier order. This case has been discussed in the judgment of this Court in **Rahul Kesharwani Vs. State of Chhattisgarh**, 2020CriLJ 1380 by the Division Bench of this Court, it was observed in paragraph 27 of this judgment that -

“27. The net result as to the outcome of the above discussion makes us to formulate the law and declare as follows:

(i) The 'successive/subsequent' bail application by the same accused either under Section 438 or 439 CrPC shall be placed before the very same learned Judge who decided similar application earlier.

(ii) Rejection of the anticipatory bail of an accused by a learned Judge will not make it obligatory to have the application for regular bail filed by the said accused under Section 439 CrPC to be listed before the very same learned Judge and it could be posted before the Judge who is dealing with such matters, as per the roster.

(iii) The bail application preferred by one of the accused, either under Section 438 or 439 CrPC, need not be insisted to be posted before the very same Judge who decided the bail application of a co-accused arising out of the same crime number, of the same police station and it could be posted before the learned Judge who is dealing with such matters, as per the roster.”

6. In view of the law settled by the Apex Court and by the Division Bench of this Court, compliance of this direction was necessary and compulsory for the private respondents while filing the MCRC No. 3224 of 2020. As the affidavit in MCRC No.4594 of 2019 and in MCRC No.3224 of 2020 both have been sworn by the same person, i.e., respondent No.2, therefore, there is no room to hold that it was any mistake or any slip of memory. Therefore, on this basis, this view can be formed that concealment of the fact of rejection of the previous bail application was deliberate. Hence, in view of these observations and the conclusion drawn, it is clear that respondents No.1 has been benefited with grant of bail by this Court after suppression of the fact regarding previous bail application which was a deliberate Act. Hence, the application under Section 439(2) of the Cr.P.C. is hereby allowed. The bail granted to respondent No.1 in MCRC No.3224 of 2020 is hereby cancelled. He is directed to surrender before the trial Court on or before 10th of August, 2021.

7. As regards the application filed under Section 340 of the Cr.P.C., Registry is directed to make an enquiry in accordance with sub-section 1 of Section 340 of the Cr.P.C. and do the needful in accordance with law.

8. The petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil