

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16962 of 2020

Arising Out of PS. Case No.-281 Year-2019 Thana- NARPATGANJ District- Araria

BHARAT KUMAR DAS Son of Late Adhan Chandra Das Resident of Village - Bela Refugee Colony, Ward No. 3, P.S.- Narpat Ganj (Basmatiya O.P.), District - Araria.

... .. Petitioner

Versus

1. The State of Bihar
2. Safittulah Son of Ismail Resident of Village - Bela, P.S.- Narpatganj, District - Araria.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Ashok Kumar Keshari, Advocate Ms. Shilpi Keshri, Advocate
For the Opposite Parties	:	Mr. Choubey Jawahar, A.P.P.
For Respondent No. 2	:	Mr. Shardanand Mishra, Advocate Mr. Dhananjay Kumar Gupta, Advocate Mr. Rajiv Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. Judgment

Date : 23-03-2022

The petitioner is the informant of Narpatganj P.S. case No. 281 of 2019 registered on 08.05.2019, disclosing commission of the offences punishable under Section 302/120B and Section 34 of the Indian Penal Code.

2 Opposite party No. 2 is one of the sixty-six persons named in the F.I.R. who allegedly participated as a member of a mob which killed informant's father and brother. The opposite party No. 2 approached this Court seeking anticipatory bail under Section 438 of the Code of Criminal Procedure (hereinafter



referred to as 'Cr.P.C.') by making an application giving rise to Cr. Misc. No. 43593 of 2019, that was allowed by an order dated 16.07.2019 taking into account the submission made on his behalf that the main allegation was against Ramchandra Das (the co-accused) and the petitioner was implicated falsely, he being the *Mukhia* of the concerned *Gram Panchayat*.

3 This application has been filed under Section 439 (2) of the Cr.P.C. seeking cancellation of anticipatory bail granted to opposite party No. 2 mainly on the ground that he had concealed the fact that anticipatory bail application of similarly circumstanced nine accused persons was rejected by an order dated 05.07.2019 passed in Cr. Misc. No. 41562 of 2019. Subsequently, this Court rejected the anticipatory bail application of ten other co-accused persons by an order dated 31.07.2019 passed in Cr. Misc. No. 47611 of 2019. While rejecting the anticipatory bail application of the co-accused by the said order dated 31.07.2019 in Cr. Misc. No. 47611 of 2019, the Court noticed that an earlier order of the Court dated 05.07.2019 passed in Cr. Misc. No. 41562 of 2019 was not brought to the Court's notice while passing the order in case of the opposite party No. 2 dated 16.07.2019. Two other applications seeking anticipatory bail were rejected by this Court by orders dated 28.11.2019 and



21.10.2019 passed in Cr. Misc. No. 50907 of 2019 and 46903 of 2019 respectively, copies of which have been brought on record by way of Annexures- 5 and 6 to this application.

4 The opposite party No. 2 has entered appearance after service of notice and has filed a counter affidavit. The opposite party No. 2 is relying on the orders dated 18.01.2021 passed in Cr. Misc. No. 26180 of 2020, order dated 17.01.2020 passed in Cr. Misc. No. 72118 of 2019, and order dated 08.12.2021 passed in Cr. Misc. No. 5530 of 2021, whereby similarly circumstanced co-accused persons named in the F.I.R., who also had allegedly formed the mob have been allowed anticipatory bail. The opposite party No. 2 is also relying on an order dated 19.01.2021 passed in Cr. Misc. No. 34679 of 2020, whereby the main accused (Ramchandra Das) has been granted regular bail by this Court.

5 I have heard Ms. Shilpi Keshri, learned counsel for the petitioner, Mr. Shardanand Mishra, learned counsel for opposite party No. 2, and Mr. Choubey Jawahar, learned Additional Public Prosecutor for the State of Bihar.

6 Ms. Shilpi Keshri, learned counsel for the petitioner has vehemently argued that the privilege of anticipatory bail granted to the opposite party No. 2 by this Court deserves to be



withdrawn for the simple reason that similarly circumstanced co-accused persons had been refused such privilege, which fact was not brought to this Court's notice. She has argued that had it been within this Court's knowledge that other co-accused persons have been denied the privilege of anticipatory bail by the order dated 05.07.2019, this Court would not have allowed such privilege to opposite party No. 2. She submits that subsequently, this Court declined to grant anticipatory bail keeping in mind the fact that other co-accused persons had been refused such privilege. She accordingly contends in the aforesaid circumstance, that this Court should cancel the privilege of bail granted to opposite party No. 2 in exercise of power under Section 439(2) of the Cr.P.C. She has also argued that the gravity of the offence alleged against the opposite party No. 2 does not entitle him to the privilege of bail. She would further contend that persons who have been enlarged on regular bail/anticipatory bail are threatening the witnesses in respect of which an application has been filed before the learned Chief Judicial Magistrate, Araria, a copy of which has been brought on record by way of Annexure-7 to the application.

7 Mr. Shardanand Mishra, learned counsel appearing on behalf of the opposite party No. 2, has on the other hand submitted with reference to the statement made in the counter



affidavit filed on his behalf that the opposite party No. 2 did not have any knowledge about rejection of anticipatory bail application of other co-accused persons and, therefore, there is no question of any concealment. He has submitted that the counsel who represented opposite party No. 2 in Cr. Misc. No. 43593 of 2019 was not the counsel who represented in Cr. Misc. No. 41562 of 2019 and, therefore, learned counsel for opposite party No. 2 did not have any occasion to know about the rejection of anticipatory bail application of other co-accused persons by the said order dated 05.07.2019 passed in Cr. Misc. No. 41562 of 2019. He has denied the allegation made in the application to the effect that the petitioner is tampering with the evidence during the course of investigation. He has submitted with reference to the First Information Report that there is a general and omnibus allegation of participation of the petitioner and there is no specific allegation of any overt act against this petitioner. He contends that in the facts and circumstances of the present case, considering the nature of accusation, this Court may not cancel the privilege of bail granted to the petitioner exercising the power under Section 439(2) of the Cr.P.C.. He has further submitted that the petitioner has not been able to make out any ground for cancellation of bail on the basis of supervening circumstances



warranting cancellation of bail already granted.

8 In view of the nature of submissions advanced on behalf of the parties, it is deemed appropriate to briefly recount the case of the prosecution as disclosed in the First Information Report registered based on *Fardbayan* of the petitioner. He has alleged that the informant's neighbour Ramchandra Das and some other persons were made accused in a case of physical assault in which they were convicted. The informant's brother Pawan Das used to do *pairvi* in the said criminal case. Because of the animosity, on the eve of Holi, said Ramchandra Das had forcibly entered in the informant's house, had assaulted him and others and looted certain articles for which a criminal case was lodged. In the said case, one Santo Das, associate of Ramchandra Das was sent to jail. Thereafter, every day said Ramchandra Das and his associates would threaten the brother and father of the informant and pressurize them to withdraw the criminal case. He further alleged that on 07.05.2019, said Ramchandra Das organised a meeting and in the said meeting, a plan was hatched up to kill the informant and his family members. On 08.05.2019, when the informant's father and brother were on way back to their house in a motorcycle, they were ambushed by the accused Ramchandra Das and other 65 persons named in the F.I.R. who



attacked them variously leading to their death. The F.I.R. further disclosed that the informant rushed to the place of occurrence upon hearing the clamor when he noticed that all the accused persons were fleeing away from the place of occurrence. A plain reading of the F.I.R. would disclose that no specific allegation of any overt act is there against the petitioner. Ostensibly, considering the nature of accusation, opposite party No. 2 was granted anticipatory bail by this Court by an order dated 16.07.2019.

9 There is no allegation in the application seeking cancellation of bail that the opposite party No. 2 has criminal antecedent.

10 Be that as it may, in a proceeding under Section 439(2) of the Cr.P.C., it is impermissible for this Court to go into the correctness of the decision, whereby the opposite party No. 2 has been allowed anticipatory bail, as it will amount to reviewing its own order which is prohibited under Section 362 of the Cr.P.C. Reference may be made in this regard to the decisions of the Supreme Court in case of *Sankatha Singh and Ors. Vs. State of Uttar Pradesh (AIR 1962 SC 1208)*, *State of Orissa Vs. Ram Chander Agarwala and Ors. (AIR 1979 SC 87)* and *Simrikhia Vs. Dolley Mukherjee and Chhabi Mukherjee and*



Anr. (AIR 1990 SC 1605).

11 The question now remains as to whether the petitioner has been able to make out a case for cancellation of bail granted to the opposite party No. 2. The Supreme Court in the case of ***Dolat Ram and Ors. Vs. State of Haryana reported in (1995) 1 SCC 349*** has expounded that a rejection of bail in a non-bailable case at the initial stage and cancellation of bail so granted, have to be considered and dealt with on different basis. The Supreme Court explicitly held in the case of ***Dolat Ram*** (supra), that bail once granted should not be cancelled without considering whether any supervening circumstances have rendered it not conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail granted during the trial. Very cogent and overwhelming circumstances are necessary for an order directing cancellation of the bail already granted. The Supreme Court illustratively laid down following grounds for cancellation of bail in case of ***Dolat Ram*** (supra) as under :

(i) Interference or attempt to interfere with the due course of administration of justice,

(ii) Evasion or attempt to evade the due



course of justice,

(iii) Abuse of concession granted to the accused in any manner.

12 In addition to the aforesaid, the Supreme Court observed in the case of ***Dolat Ram*** (supra) that the satisfaction of the Court in relation to the possibility of an accused absconding on the basis of materials placed on record is yet another reason justifying cancellation of bail.

13 The views expressed by the Supreme Court in the case of ***Dolat Ram*** (supra) have been consistently relied on and followed in subsequent decisions of the Supreme Court. In case of ***Nityanand Rai Vs. State of Bihar and Anr.*** reported in **(2005) 4 SCC 178**, the Supreme Court, dealing with the issue of consideration of an application for cancellation of bail reiterated that such consideration stands on a different footing than one for grant of bail. The Supreme Court held that grounds for cancellation of bail should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail.

14 It is noteworthy that in the case of ***Nityanand Rai*** (supra), an order passed by this Court cancelling bail granted to



the appellant of that case was under challenge. Even before the release of the appellant on bail, the application was filed seeking cancellation of bail on various grounds including the ground that he was an influential man and had been manipulating the investigation for the past 10 years and was ultimately brought to trial only because of the change in the hierarchy of the police. It was also urged in that case that the appellant had suppressed the material facts while obtaining the bail from the High Court, inasmuch as, the appellant did not disclose that in the connected criminal trial, the co-accused had been found guilty of the offence under Section 302 of the I.P.C. A plea was also taken that the appellant and his musclemen had been threatening the witnesses and preventing the complainant from pursuing the case against the appellant. This Court had allowed for cancellation of bail mainly on the ground that there was a threat to the prosecution witnesses by the appellant and his musclemen and that the appellant had not brought to the notice of the Court that in the connected trial, the two co-accused had already been convicted by the trial court and were sentenced to life imprisonment. Dealing with the aforesaid contentions, the Supreme Court held in the case of *Nityanand Rai* (supra) that the appellant could not be held guilty of the suppression of the fact as



it was the duty of the prosecution to have brought to the notice of the Court about the conviction of other co-accused persons.

15 Considering its significance, it is considered apposite to reproduce paragraph 8 of the said decision in case of **Nityanand Rai** (supra) which reads as under :

8. Having considered the argument advanced on behalf of the appellant and the respondent, we think that the High Court was not justified in considering the application for cancellation of bail as if it was an application for grant of bail. Consideration of an application for grant of bail stands on a different footing than one for cancellation of bail. Grounds for cancellation of bail should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail, such is not the case made out in application for cancellation of bail. Of course, the complainant had alleged in the petition for cancellation of bail that the witnesses in the case had received threats from the appellant and his henchmen, this is supported by two complaints filed by him before the police dated 10-10-2003 and 13-10-2003. But as contended by the learned counsel for the appellant, these two complaints cannot be accepted ex facie because on the dates mentioned in those complaints the appellant was still in jail and was not yet released on bail though the High Court had granted him bail, therefore, the question of the appellant administering threats to the witnesses as alleged by the complainant cannot be accepted. The next ground on which the High Court considered it appropriate to cancel the bail is the fact that the



appellant had not brought to its notice that in the connected trial, two of the co-accused had been convicted for an offence punishable under Section 302. This fact has been denied by the appellant before us by pointing out from his bail application where in para 10 he had specifically mentioned about the conviction of the two accused persons. Be that as it may, it was the duty of the prosecution to have brought this fact to the notice of the High Court and the appellant cannot be held guilty of suppression of that fact. The third ground on which the bail was cancelled is an error committed by the Court itself in not noticing the fact that in the judgment of the trial court in the connected matter the trial court found material as to the participation of the accused in the offence. We are of the opinion that this also cannot be a ground for cancelling the bail already granted which was not challenged by any person be it the prosecution or the complainant. The factum that the learned Sessions Judge in the judgment convicting the two co-accused expressed certain views as to the involvement of the appellant in this crime cannot be a ground to cancel the bail. As contended by the learned counsel for the appellant, if really there was such material against the appellant before the Sessions Court in that trial, the procedure contemplated under Section 319 CrPC could have been invoked either by the complainant or the court itself which having not been done, at this stage that observation of the learned Sessions Judge or the evidence given by the witnesses in that trial in which the appellant was not an accused can be construed as material sufficient to cancel the bail.

16 At this juncture, yet another decision of Supreme Court in the case of ***Ranjit Singh Vs. State of Madhya Pradesh***



and Ors. reported in **(2013) 16 SCC 797** deserves to be noticed, wherein the Supreme Court reiterated with emphasis the distinction between the parameters for grant of bail and cancellation of bail. The Supreme Court also noticed the distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused had misconducted himself or certain supervening circumstances warranted such cancellation. If an order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court, the Supreme Court held in the case of **Ranjit Singh** (supra). It is considered appropriate to reproduce paragraph 19 of the said decision in the case of **Ranjit Singh** (supra) which reads as under :

“19. It needs no special emphasis to state that there is distinction between the parameters for grant of bail and cancellation of bail. There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court. We have already referred to various paragraphs of the order passed by the High Court. We have already held that the learned trial Judge has misconstrued the order passed by



the High Court. However, we may hasten to add that the learned Single Judge has taken note of certain supervening circumstances to cancel the bail, but we are of the opinion that in the obtaining factual matrix the said exercise was not necessary as the grant of bail was absolutely illegal and unjustified as the court below had enlarged the accused on bail on the strength of the order passed in Ranjeet Singh v. State of M.P. [Ranjeet Singh v. State of M.P., MCRC No. 701 of 2013, order dated 1-2-2013 (MP)] remaining oblivious of the parameters for grant of bail under Section 439 CrPC. It is well settled in law that grant of bail though involves exercise of discretionary power of the court, yet the said exercise has to be made in a judicious manner and not as a matter of course.”

17 Subsequently, in the case of ***X Vs. State of Telangana and Anr.*** reported in ***(2018) 16 SCC 511***, the Supreme Court again reiterated the view expressed in case of ***Dolat Ram*** (supra) to the effect that very cogent and overwhelming circumstances are *sine qua non* for an order directing cancellation of bail, already granted. The Supreme Court in the case of ***X Vs. State of Telangana and Anr.*** (supra) after having noticed the earlier decisions in the case of ***Central Bureau of Investigation, Hyderabad Vs. Subramani Gopalakrishnan and Anr.*** reported in ***(2011) 5 SCC 296*** and ***Dataram Singh Vs. State of Uttar Pradesh and Anr.*** reported in ***(2018) 3 SCC 22*** reiterated the significance of the



difference between the yardsticks for cancellation of bail and appeal against the order granting bail.

18 On the basis of what has been asserted in the application seeking cancellation of bail, as has been noted hereinabove, in the backdrop of the stand of the opposite party No. 2 taken in the counter affidavit, in my opinion, no case is made out for cancellation of bail granted to the opposite party No. 2.

19 I do not find any merit in this application which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

K.K.RAO/-

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