

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57924 of 2022

Arising Out of PS. Case No.-120 Year-2021 Thana- MAHILA P.S. District- Patna

XYZ D/o ABC Resident of Village - Karkat Bigha, P.S. - Paliganj, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Prakash Kumar @ Chintu Son of Uday Kumar Resident of Village - Dadupur, P.O. and P.S. - Bikram, Distt. - Patna, Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ghanshyam, Advocate
For the State	:	Mr. Anuj Kumar Shrivastava, A.P.P.
For the O.P. No. 2	:	Mr. Hansraj, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 21-12-2022 Heard learned counsel for the petitioner, learned A.P.P. for the State and learned counsel for the opposite party no. 2 who submits that with the change of learned counsel the stand of the present petitioner has also changed.

2. The learned counsel for the opposite party no. 2 submits that bail is a significant aspect of criminal litigation and is indisputably the most sought after litigation in the Court of law. The settled principles is that the bail is the rule and jail is an exception, but provision of cancellation of bail is an exception to the settled principles, as it robs the accused of his liberty, thus, it is said that when liberty of an accused is at stake, bail is the only way to protect it until the accused is acquitted or convicted.



3. It is important to keep in mind that there is a difference between a plea for cancellation of bail versus a plea challenging the order for grant of bail, though on the face of it, both situation seems to be the same, however, the grounds of challenging the both are completely different. In an application for cancellation of bail, the Court ordinarily looks for supervening circumstances, whereas in an application challenging the order for grant of bail, the grounds of challenge is the very order of the Court. The illegality of due process is challenged on account of improper or arbitrary exercise of discretion by the Court while granting bail. It is, thus, submitted that the difference lies in the fact that if there is any illegality in the order granting bail, the aggrieved can approach a superior forum for getting the order granting bail set aside, but if there is no illegality in the order granting bail then the aggrieved can seek cancellation of bail on the ground of misuse/concession granted to the accused while granting bail.

4. In the present case, the petitioner herein challenged the order granting bail before the Hon'ble Apex Court but the same was not interfered with, rather the Hon'ble Apex Court directed the petitioner to file an application seeking cancellation on the issue of misuse of the concession by the



opposite party herein, as alleged.

5. It is next submitted that the significance of bail lies in the fact that whenever any allegation is brought before the Court, based on which the accused seeks bail, the allegation remains in the realm of allegation i.e. neither the Judge nor the learned lawyer representing the accused nor the learned A.P.P. or the learned lawyer representing the victim have seen the occurrence, thus, it is only the material on record based on which a prima facie view is to be taken i.e. whether to grant bail or to reject, but then what strikes the Court is that there is no provision in the Cr.P.C. or any other law which compensates the accused in the event of his acquittal. Why bail is the rule and rejection is the exception perhaps lies in the fact --- that if an accused is denied bail how his period of incarceration be compensated in the event of acquittal and if the accused is finally convicted he will serve the sentence, but then this by no stretch of imagination leads to an irresistible conclusion that bail in each and every case has to be granted in breach of the law propounded.

6. The basic principles governing grant of bail are:-

- (i) The nature of the accusation weighing in the gravity and severity of the offence.
- (ii) The severity of punishment.



- (iii) Position of the accused i.e. whether the accused can exercise influence on the victim and the witnesses or not.
- (iv) Likelihood of the accused to approach or try to approach the victim or witnesses.
- (v) Likelihood of the accused absconding from the proceeding.
- (vi) Possibility of accused to tamper with evidence.
- (vii) Obstructing or attempting to obstruct the due course of justice.
- (viii) Possibility of repetition of offence if let out on bail.
- (ix) The prima facie satisfaction of the Court in support of the charge including frivolity of the charge.
- (x) The different and distinct fact of each case and nature of substantive and corroborative evidence.

7. It is thus submitted that it must be borne in mind that the factors that need to be considered when dealing with the question of cancellation of bail are different from the above listed consideration i.e. for grant of bail and, hence, it is said that the yardstick for grant of bail and cancellation of bail are on two different footings.

8. The Hon'ble Supreme Court in the case of ***Dolat Ram & Ors. Vs. The State Of Haryana*** reported in (1995) 1



SCC 349 has held that very cogent and overwhelming circumstances are necessary for cancellation of bail. Bail once granted should not be cancelled in a mechanical manner. Keeping this observation in view the Hon'ble Apex Court has adumbrated the following situations as supervening factors that may justify cancellation of bail. The point listed below are only illustrative and not exhaustive:-

- (i) Interference or attempt to interfere with due process of meeting ends of justice.
- (ii) Evasion or attempt to evade Court proceeding.
- (iii) Misuse of the concession granted to the accused by not following the terms agreed while on bail.
- (iv) Possibility of the accused absconding or fleeing to another country.
- (v) Likelihood of actual misuse of bail.
- (vi) Likelihood of the accused tampering with the evidence, obstructing the investigation or threatening witnesses.
- (vii) Other supervening circumstances which have rendered it no longer conducive to a fair trial allowing the accused to retain his freedom by being on bail.

9. It is next submitted that it is no doubt correct that cancellation of bail is not limited to the occurrence of



supervening circumstances for a Court to cancel the bail. The Hon'ble Apex Court in the case of *Ash Mohammad vs. Shiv Raj Singh @ Lalla Babu & Anr.* reported in *(2012) 9 SCC 446* has observed/held that there is no defined universal rules that applies in every single case, hence, in no way one can say with surety that once bail is granted to the accused, it can only be cancelled on the ground of likelihood of misuse of the bail.

10. It is further submitted that in *Prakash Kadam & Others vs. Ramprasad Vishwanath Gupta & Anr.* reported in *(2011) 6 SCC 189*, the Hon'ble Apex Court observed that while considering a matter dealing with cancellation of bail, the Court must consider the gravity and nature of the offence, the prima facie case against the accused, the position and status of the accused, if the allegations levelled against the accused are very serious in nature then his bail may be cancelled even if there has been no misuse of bail granted to him.

11. It is further submitted that in the case of *Nityanand Rai vs. State of Bihar* reported in *(2005) 4 SCC 178*, the Hon'ble Supreme Court held that grounds considered for cancellation of bail should be those which come into picture after the accused was set free on bail, moreover, the grounds



should not be such that it can be easily referred to the conduct of the accused while out on bail.

12. Thus, it can be culled out that Court has inherent power and discretion to cancel the bail of an accused even in the absence of supervening circumstances like:-

- (i) Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse.
- (ii) Where the past criminal records and conduct of the accused is completely overlooked while granting bail.
- (iii) Where bail has been granted on untenable grounds.
- (iv) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- (v) Where grant of bail was not appropriate in the first place given the very serious nature of charges against the accused which disentitles him from bail and thus cannot be justified.
- (vi) Where the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.
- (vii) Where the Court granting bail take into account irrelevant material of substantial nature and not trivial nature while ignoring relevant materials on record.



13. It is submitted that now the question which arises for consideration is whether the Court while hearing cancellation of bail can reappreciate the evidence on record.

14. Learned counsel submits that in the case of *Dinesh M.N. (S.P.) vs. State of Gujarat* reported in *(2008) 5 SCC 66*, the Hon'ble Apex Court observed – that although a Court should avoid reappreciation of evidence, however, when a plea for cancellation of bail is presented before the Court, then under Section 439(2) Cr.P.C., the Court can consider whether irrelevant materials were taken into consideration for granting bail, as the Court dealing with the plea for cancellation of bail may not know as to what extent the irrelevant material weighed with the Court for granting bail.

15. It is next submitted that in the case of *ABDUL BASIT ALIAS RAJU AND OTHERS VERSUS MOHD. ABDUL KADIR CHAUDHARY AND ANOTHER* reported in *(2014) 10 SCC 754*, the Hon'ble Supreme Court observed that once a Court finally disposes of the issue in consideration and grants relief of bail to the petitioner, the Court becomes functus officio and Section 362 Cr.P.C. applies, barring the review of the judgment.

16. Learned counsel for the petitioner submits that



no doubt the petitioner had challenged the order granting bail to opposite party no. 2 herein before the Hon'ble Apex Court and the Hon'ble Apex Court did not interfere with the order on merits but then an observation was made that in the event if it is found that the opposite party no. 2 herein is misusing the concession granted to him then appropriate orders can be passed and even bail can be cancelled.

17. It is submitted that the present application has been filed on the strength of the orders of the Hon'ble Supreme Court, learned counsel submits that the petitioner herein had alleged that she was studying in a rented house of her sister when she came in contact with a distant relative (petitioner) and slowly they fell in love. It is next alleged that they used to take out time and stayed like husband and wife and by way of an affidavit they had accepted the fact that they are married. Further, the petitioner even put vermilion on her head at one Vandevi temple, further the petitioner on pretext of introducing her to his parents brought her to Khagaul and kept her in a hotel where also he established physical relation and made obscene video, further when the parents and sister of the petitioner came to know about the relationship they started demanding Rs.20,00,000/- by way of dowry for giving legitimacy to the



marriage and when the informant refused she was tortured and threatened that the obscene video shall be made viral.

18. Learned counsel submits that this Court while hearing the case of the opposite party no. 2 on merits was pleased to grant bail to the opposite party no. 2 by order dated 28.06.2022 in Cr. Misc. No. 2512 of 2022. It is further submitted that one of the considerations by this Court while granting bail was that the petitioner herein had already married one Vikash Mishra on 10.12.2020 and for which an affidavit was sworn before the Notary with photograph of the informant and Vikash Mishra. Learned counsel next submits that the said plea was a false plea and the Court stood misled while considering the anticipatory bail of the opposite party no. 2 herein. It is also submitted that petitioner herein has not married any Vikash Mishra and the said Vikash Mishra has also in support of the said fact has sworn an affidavit.

19. Learned counsel for the opposite party no. 2 herein rebuts the said submission and submits that with change of counsel the stand of the petitioner herein has also changed. It is further submitted that if what has been submitted by the learned counsel for the petitioner is true nothing prevented the earlier learned counsel who was appearing in the said case to



make the said submission, it is next submitted that the said fact was in the knowledge of the learned counsel who was appearing for the petitioner herein in the earlier proceeding as specific pleading with respect to the said fact was made in the anticipatory bail application of the opposite party no. 2 herein but still the said pleading on behalf of the opposite party no. 2 herein was not rebutted by the learned counsel who was then appearing.

20. Learned counsel for the petitioner next submits that after release on bail, the opposite party no. 2 herein is threatening the petitioner that he will make obscene video viral and has also made the video viral on Whatsapp and Facebook. Learned counsel, thus, submits that the misuse of concession is a ground in itself to cancel the anticipatory bail of the opposite party no. 2 herein. Learned counsel next submits that at para 8 of the present application it has been pleaded that respondent-accused has made obscene video/film and also shared some clip to a social media platform to malign the petitioner. It is also submitted that the petitioner had also filed an application before the D.G.P., Bihar for taking action but no action was taken.

21. Learned counsel for the opposite party no. 2 herein rebuts the submission of the learned counsel for the



petitioner and submits that a bald statement has been made at para 8 that respondent-accused has made obscene video/film and also shared some clip on social media platform to malign the petitioner but the pleading is completely silent that on which social media platform the video was leaked nor the copy of the said video has been brought on the record. It is also submitted that it cannot be alleged with certainty that it was the opposite party no. 2 herein who had made the video viral which is an aspect of investigation. It is next submitted that no prudent person would indulge in an act and thus create evidence against himself. Learned counsel for the opposite party no. 2 further submits that it absolutely does not stand to reason that as to why the petitioner herein moved before the DGP, Bihar when she could have easily approached the concerned police station and could have reported the matter there and if the concerned police station would not have registered a complaint then in that event she could have moved an application before the Senior Superintendent of Police, Patna in terms of Section 154(3) of the Cr.P.C. but the same was not done. This also creates an impression that the petitioner is trying to somehow get the bail of the opposite party no. 2 cancelled.

22. The Court also by order dated 23.11.2022 had



sought a report from the Investigating Officer of Patna Mahila Police Station that as to whether the opposite party no. 2 after obtaining anticipatory bail by order dated 28.06.2022 in Cr. Misc. No. 2512 of 2022 is misusing the concession so granted i.e. whether opposite party no. 2 after grant of anticipatory bail has done any act which warrants cancellation of his anticipatory bail.

23. In view of the said order, the Sub-Inspector of Police, Mahila Police Station, Patna Smt. Usha Sinha has submitted her report contained in Memo No. 3194, dated 05.12.2022 in which she has specifically stated that the petitioner herein has not filed any complaint against the opposite party no. 2 after he was granted anticipatory bail.

24. The report submitted by the concerned police station where the present FIR was instituted in itself demonstrates that the present application is nothing but an attempt to get the anticipatory bail of the opposite party no. 2 herein cancelled at any cost.

25. Learned counsel for the opposite party no. 2, at the cost of repetition, submits that he has already made an elaborate submission which stands recorded hereinabove and further submits that it can be safely culled out that a Court has



to exercise its utmost caution while dealing with an application for cancellation of bail, as once bail cancelled, it will cause serious prejudice to the individual's liberty. As far as reappreciation of the fact in cancellation of bail are concerned, it is settled principle that a Court cannot do it as long as it is confined to the already dealt fact and material on record as considering the already dealt facts for cancelling the bail will amount to review and thus would be in breach of the provisions of Section 362 of the Cr.P.C.

26. Considering the submission made by the learned counsel appearing for the opposite party no. 2, the Court finds no merit in this application. Accordingly, this application is dismissed.

(Satyavrat Verma, J)

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