

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23911 of 2023

Arising Out of PS. Case No.-2 Year-2022 Thana- BARHARIA District- Siwan

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Jalim Alam @ Jalim, Son of Late Nasrullah Resident of village - Narayanpur,
Police Station - Thawe, District - Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sabir Ali @ Sakir Ali, Son of Ali Ahmad Resident of village - Gaushi Hata,
Police Station - Barharia, District - Siwan.
3. Ishrat @ Ishrat Ali, Son of Najrul Haque Resident of village - Gausihata,
Police Station - Barharia, District - Siwan.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar, Advocate
For the Opposite Party/s : Mr. Mohammad Sufyan, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 26-04-2023 Learned counsel for the petitioner is permitted to

remove the defect(s), if any, as pointed out by the office, within

a period of four weeks from today.

Heard Mr. Praveen Kumar, learned counsel for the
petitioner and learned Additional Public Prosecutor for the
State.

Supplementary affidavit has been filed and the same
is taken on record.

The application has been filed for cancellation of bail
granted to opposite party Nos. 2 and 3 on the ground that the
submissions advanced on behalf of the opposite parties were not



in consonance with the post mortem report and the statement recorded under Section 161 Cr.P.C.

Submissions has been made on behalf of learned counsel for the petitioner, who vehemently submitted that while granting bail to the opposite party Nos. 2 and 3 this Court had observed that the deceased had sustained only one injury, however, from the post mortem report it appears that the deceased had sustained three injuries. He further submits that the occurrence has taken place in the saw mill of one Sheikh Alimullah and he has categorically stated that all the accused persons, including the petitioners, brutally assaulted the deceased resulting into his death. He has further drawn the attention of this Court to order passed by the learned co-ordinate Bench in Cr. Misc. No. 4116 of 2023 and with reference to the order, submission has been made that the prayer of similarly circumstanced co-accused has been rejected with a liberty to renew his prayer after framing of charge or after six months from the date of this order, if no progress is made in the trial.

Prima facie, from the statement of Seikh Alimullah, it is evident that no specific allegation has been levelled, rather general and omnibus allegation has been levelled against all the accused persons. So far the injury is concerned, though it



appears that there was stitches over the occipital region and ENT bleed was also found, however, that injury may be resulted into a single blow.

It is needless to observe that it remains trite that normally very cogent and overwhelming circumstances or grounds are required to cancel the bail bond already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439(2) of the Code of Criminal Procedure.

There is difference between cancellation of bail and challenging the order for grant of bail. It is observed that in an application for cancellation, the grounds are mainly based on supervening circumstances/ factors, whereas in an application challenging the order for grant of bail, the grounds of challenge is the legality of the order touching the merit of the order.

This Court has given anxious consideration to the submissions made on behalf of the petitioner, however, this Court is not persuaded upon the submissions made on behalf of the petitioner.

Having regard to the aforesaid submissions, this Court does not find any reason or occasion to issue notice to the opposite party Nos. 2 and 3, having found no merit.



The application is dismissed.

(Harish Kumar, J)

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