

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52589 of 2023

Arising Out of PS. Case No.-741 Year-2020 Thana- KAHALGAON District- Bhagalpur

PRIYA SHAH D/O Bhola Shah R/O C/O Kameshwar Thakur, Saket Puri
Road No.1, Hanuman Nagar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Santosh Dubey S/O Late Yugal Kishore Dubey R/V- Devipur, P.S- Nouhatta,
Distt.- Rohtas. At present Ghogha Bazar, P.S- Ghogha, Distt.- Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Archana Sinha @ Archana Shahi, Advocate
For the Opposite Party/s : Mr. Harendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

- 9 19-04-2024 1. Heard learned counsel for the petitioner and
learned counsel for the opposite party no.1. No one appears for
the opposite party no.2 inspite of service of notice.
2. The instant application has been filed on behalf of
the petitioner praying for cancellation of grant of regular bail to
the opposite party no.2 vide order dated 3.5.2023 passed in Cr.
Misc. no. 11441 of 2023.
3. The opposite party no.2 moved this Court for grant
of regular bail in connection with Sessions Trial no.292 of 2021
arising out of Kahalgaon P.S. Case no.741 of 2020 registered
under sections 376, 354A, 354, 504, 506 and 420 of the Indian
Penal Code.



4. By order dated 3.5.2023 passed in Cr. Misc. no.11441 of 2023, this Court was pleased to grant bail to the opposite party no.2. Paragraph no.8 of the order dated 3.5.2023 is reproduced herein below for ready reference:

"8. Having heard learned counsel for the parties and taking into consideration the allegations in the FIR, the petitioner having remained in custody for more than two years since 21.11.2020 and non bailable warrants having been issued for appearance of the remaining prosecution witnesses, the petitioner is directed to be enlarged on bail in connection with S.T no. 292 of 2021 (arising out of Kahalgaon P.S. Case no. 741 of 2020) on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Addl. Sessions Judge 1. Bhagalpur."

5. Learned counsel for the petitioner while pressing the instant application has submitted that the opposite party has got bail from this Court by placing wrong facts as the relationship between the parties were not consensual. It was also incorrectly stated that there is no chance of the trial concluding in the near future as the petitioner has already given her evidence and her cross-examination has also concluded. It was further submitted that one of the witnesses namely Rohit Singh



came in collusion with the opposite party no.2 and refused to depose. The opposite party by using his influence has pressurized the Government witnesses not to appear in the trial. He is not only giving threats to the petitioner but is also pressurizing her counsel not to appear on her behalf. Suppressing all these material facts, the opposite party no.2 has got regular bail, cancellation of which is prayed for in the instant application.

6. Having heard learned counsel for the parties and having perused the material on record, it would transpire that the earlier prayer for bail of the petitioner was rejected vide order dated 15.2.2022 passed in Cr. Misc. no.31030 of 2021. Taking note of the fact that the petitioner was in custody since 21.11.2020, direction was given to the learned trial Court to expedite the trial. While considering the second application for bail of the petitioner in Cr. Misc. no.11441 of 2023, this Court on 3.5.2023 besides taking into account that the petitioner had remained in custody for over two years since 21.11.2020 also took into account the contents of the letter no.57 dated 12.4.2023 of the Additional District and Sessions Judge I, Bhagalpur with respect to the stage of the trial. It was stated therein that two witnesses have been examined on behalf of the



prosecution and non-bailable warrants have been issued against the remaining witnesses. In view of these facts, bail was granted vide order dated 3.5.2023 passed in Cr Misc. no.11441 of 2023, cancellation of which is prayed for by the petitioner herein.

7. So far as the grounds for cancellation of bail are concerned, primarily two grounds have been raised ie the opposite party no.2 by using his influence has pressurized the witnesses not to appear and depose in the trial and secondly he is not only threatening the petitioner but also learned counsel for the petitioner not to appear on her behalf. It may be stated here that so far as the grounds for cancellation of bail raised on behalf of the petitioner as stated herein above are concerned, except for making a bald allegation in the petition, no material has been brought on record by the petitioner to substantiate the allegations for example, by any petition or complaint etc. having been filed by the petitioner before either the Investigating Officer of the case, any police authority or before the Court concerned.

8. The Hon'ble Supreme Court in the case of ***Deepak Yadav vs. State of Uttar Pradesh and Another [(2002) 8 SCC 559]***, with respect to cancellation of bail held as follows:

"31. This Court has reiterated in several instances that bail once granted, should not be



cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted)."

9. Further, the Hon'ble Supreme Court in the case of ***Manoj Kumar Khokhar vs. State of Rajasthan and Another [(2022) 3 SCC 501]*** relying on the judgment in the case of Mahipal vs. Rajesh Kumar [(2020) 2 SCC 118] mentioned about the appellate court assessing the correctness of an order granting bail compared to examining the application for cancellation of bail, in paragraph no.29 held as follows:

"29. Recently in Bhoopendra Singh v. State of Rajasthan, this Court made observations with respect to the exercise of appellate power to determine whether bail has been granted for valid reasons as distinguished from an application for cancellation of bail i.e. this Court distinguished between setting aside a perverse order granting bail vis-à-vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. Quoting Mahipal v Rajesh Kumar, this Court observed as under:



16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted."

10. In view of the facts and circumstances of the case stated herein above as also in view of the law laid down by the Hon'ble Supreme Court in the judgments mentioned above, in the opinion of this Court, the petitioner has not made out any case for cancellation of bail of Opposite Party no.2. The Court finds no merit in the instant application.

11. The application is dismissed.

(Partha Sarthy, J)

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