

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51963 of 2024

Arising Out of PS. Case No.-163 Year-2023 Thana- RAMGARH District- Kaimur (Bhabua)

Arbaj Ansari Son Of Asagar Ansari Village- Matiyari, Ps- Ramgarh, Dist- Kaimur At Bhabua

... .. Petitioner/s

Versus

1. The State of Bihar
2. Istiak Ansari Son Of Abdulhai Ansari @ Abudl Ansari Village- Matiyari, Ps- Ramgarh, Dist- Kaimur At Bhabua
3. Fayaz Ansari Son Of Abdulhai Ansari @ Abdul Ansari Village- Matiyari, Ps- Ramgarh, Dist- Kaimur At Bhabua

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
		Mr. Anil Kumar, Advocate
For the State	:	Mr. Jagdhar Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

8 24-01-2025 Heard Learned Counsel for the petitioner, Learned Counsel for the State and Learned Counsel for Opposite party nos.2 & 3.

2. Learned Counsel for the petitioner has filed the present application for cancellation of bail granted to Opposite party nos.2 & 3 by this Court *vide* order dated 29.11.2023 passed in Cr. Misc. No.74745 of 2023 by which Opposite party nos.2 & 3 of the present application has suppressed the material facts before this Court. Counsel further submits that in the said case, FIR has been lodged under sections 341, 323, 337, 338, 307 & 34 of the Indian Penal Code and later on, section 302 of



the I.P.C has been added due to death of one of the victim. In this regard, police has completed the investigation and submitted the charge-sheet bearing Charge-sheet No.162 of 2023 dated 26.08.2023 against Opposite party nos.2 and 3 under section 302 of the I.P.C. and thereafter, cognizance was taken under section 302 of the I.P.C on 01.09.2023 in this case. But, in-spite of this fact, Cr. Misc. No.74745 of 2023 has been filed on behalf of Opposite party nos.2 and 3 in which they have suppressed the material fact about the death of the victim. They neither mentioned in their bail application about addition of section 302 of the I.P.C. nor submission of charge-sheet and taking cognizance under section 302 of the I.P.C.

3. Learned Counsel for the petitioner further submits that in-compliance of the order passed in Cr. Misc. No.74745 of 2023, Opposite party nos.2 and 3 have taken bail. Subsequently, it came to the knowledge of the present petitioner that bail has been obtained by Opposite party nos.2 and 3 of this case by suppressing the material facts. Thereafter, the petitioner has filed the present application for cancellation of bail of Opposite party nos.2 and 3.

4. Learned Counsel for the State submits that appropriate order may be passed in this case.



5. Learned Counsel for Opposite party nos.2 & 3 who appeared after receiving *Vakalatnama* submits that there is no wrong done by Opposite party nos.2 & 3 and if there is any, then that is only an inadvertent mistake. Counsel submits that in the rejection order, every fact has been disclosed with regard to the filing of the charge-sheet and cognizance taken. Counsel further submits that as per Annexure-A of the counter affidavit, in the rejection order, it has come that I.O. has prayed to add section 302 of the I.P.C. Counsel in support of his argument, has relied on one judgment i.e. in the case of ***Abdul Basit @ Raju & Ors. Vs. Mohd. Abdul Kadir Chaudhary & Anr.*** reported in ***(2014) 10 SCC 754*** in which it has been said according to him that power as to cancellation of bail- power of that Court to review bail order and set aside the same on the ground of it being illegal or contrary to law.

6. In response thereof, Learned Counsel for the petitioner placed a judgment in case of ***Himanshu Sharma Vs. State of Madhya Pradesh*** passed in ***SLP (Crl.) No(s). 786 of 2024*** in which the cancellation of bail has to be heard by the same Bench and not by other. He also submits that cancellation of bail application is basically an application on the ground of accused mis-conduct and does not amount to review of the



order.

7. After hearing the parties and perusal of the documents, it transpires to this Court that power of cancellation of bail has been mentioned under section 439(2) of the Criminal Procedure Code, 1973. It also transpires to this Court that much prior to filing of the bail application, it was well within the knowledge of Opposite party nos.2 & 3 that they are charge-sheeted under section 302 of the I.P.C. and cognizance has been taken against them in the same section. Atleast from the order of rejection, it becomes crystal clear to them that section 302 of the I.P.C has been directed to be added.

8. It also transpires to this Court that Opposite party nos.2 & 3 who have been granted regular bail by this Court have not whispered in their bail application that FIR has been lodged under section 302 of the I.P.C. and charge-sheet has been submitted under section 302 of the I.P.C. as well as cognizance has been taken under section 302 of the I.P.C.

9. This Court is of the firm view that bail has been granted to Opposite party nos.2 & 3 only by way of misrepresentation to this Court. Accordingly, this Court is hereby cancel the bail granted to Opposite party nos.2 & 3 by this Court *vide* order dated 29.11.2023 passed in Cr. Misc.



No.74745 of 2023.

10. Trial Court is directed to issue arrest warrant against Opposite party nos.2 & 3 in view of cancellation of their bail.

11. Accordingly, this application is hereby allowed.

(Dr. Anshuman, J)

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