

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27953 of 2026

Arising Out of PS. Case No.-47 Year-2021 Thana- BHEJA District- Madhubani

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Birendra Yadav son of Rameshwar yadav Residents of village - Koriyadhanth
Po- Mahpatia, Ps- Bheja, Dist- Madhubani.

... .. Petitioner

Versus

1. The State of Bihar
2. Suresh yadav @ Suresh Prasad Yadav Son of late Sahdeo yadav Residents of
village - Koriyadhanth , PS- Bheja, Dist- Madhubani

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Jaishankar Kumar Yadav, Advocate
For the State	:	Mr. Binod Kumar, APP
For the Opp. Party No.2	:	Mr. Umesh Prasad Singh, Sr. Advocate Mr. Jitendra Kumar Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 01-07-2026

Heard learned counsel for the petitioner, learned
Additional Public Prosecutor for the State and learned Senior
Counsel for the opposite party no. 2.

2. This application, under Section 483(3) of the
Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), has been
filed by the petitioner for cancellation of the regular bail granted
to the opposite party no.2, namely Suresh Yadav @ Suresh
Prasad Yadav, by the learned District & Additional Sessions
Judge-III, Jhanjharpur, *vide* order dated 13.03.2026 passed in
Sessions Trial No.404 of 2024, arising out of Bheja P.S. Case



No.47 of 2021 (G.R. No.903 of 2021), instituted for the offences punishable under Sections 147, 148, 149, 323, 324, 307, 302, 504, 506 and 120-B of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution case, as set out in the *fardbayan* of the informant recorded at the Darbhanga Medical College & Hospital on 31.05.2021, is that on 30.05.2021 at about 3:00 P.M., on the land of the informant, the 24 named accused persons along with 10-15 unknown persons, forming an unlawful assembly armed with guns and *farsa*, began constructing a house and when the younger brother of the informant, namely, Lalan Yadav, his uncle Mahavir Yadav and his cousin objected to the same, the accused persons abused and assaulted them.

4. It is specifically alleged that the opposite party no. 2 fired from his gun at the deceased Lalan Yadav with the intention to kill, the bullet striking him in the abdomen and penetrating inside, on which he fell unconscious. Further the co-accused Balkishore, Ramesh, Dileep and Joginder also fired several rounds. Subsequently, the injured were taken to the Primary Health Centre and thereafter referred to the D.M.C.H., where, in the course of treatment, Lalan Yadav passed away.

5. The opposite party no.2 had earlier moved



bail applications, the first bail petition of the opposite party no. 2, being Bail Petition No.349 of 2024, was rejected by the learned court below. Thereafter, his prayer for bail before a Co-ordinate Bench of this Court in Criminal Miscellaneous No. 26944 of 2025, titled '*Suresh Yadav @ Suresh Prasad Yadav vs. The State of Bihar*', was rejected on 07.05.2025. Subsequently, a further bail petition was filed by the opposite party no.2 before the learned Court below on 12.01.2026, which was not pressed. It is on a fresh petition moved before the Court below that the impugned order dated 13.03.2026 came to be passed.

6. At the outset, the learned counsel for the petitioner submits that the bail granted to the opposite party no.2 is erroneous since there is a specific and direct allegation against him of firing the fatal gunshot, which struck the deceased Lalan Yadav in the abdomen and caused his death, and that this overt act distinguishes him from the other co-accused, which the learned court below failed to appreciate.

7. It is further submitted that, after his release, the opposite party no.2 resumed threatening and intimidating the petitioner and his family members to withdraw the case, and is creating fear and obstruction in the peaceful possession of the petitioner side over the land in question. It is further submitted



that the grant of bail runs contrary to the earlier refusals, namely Bail Petition No.349 of 2024, which was rejected by the Court below and Criminal Miscellaneous No.26944 of 2025, which was rejected by a Coordinate Bench of this Court on 07.05.2025.

8. Learned counsel for the petitioner submits that the learned Trial Court while granting bail to the opposite party no.2 has considered the fact that several witnesses were declared hostile and remaining witnesses would require more time to be examined during the trial. In this regard, it has been submitted that turning hostile of the witnesses, in a case of this nature, itself indicates intimidation, coercion or undue influence, and such nature of case ought to have been treated as a circumstance warranting cancellation of bail and not as a ground for granting bail to the main assailant of the deceased.

9. Adverting to the order-sheet of the Trial Court dated 12.02.2026 and 24.02.2026, it has categorically been submitted by learned counsel for the petitioner that the cross-examination of the informant (P.W.-14) himself was deferred on multiple occasions at the instance of the accused side. Further, while the informant himself was yet to be examined, the learned Trial Court *vide* order dated 13.03.2026 has enlarged the opposite party no.2 on bail. Furthermore, it is argued that the



grant of bail to the opposite party no.2 is likely to hamper the other remaining witnesses, who are yet to be examined in the trial. Therefore, it is the argument of learned counsel for the petitioner that the grant of bail is perverse and cannot be sustained.

10. The learned counsel for the petitioner has emphasized that in the present case, a large group of persons variously armed with different weapons, had entered into the land of the petitioner and tried to construct a house and upon resistance, they not only assaulted the petitioner and his family members but also shot at the brother and uncle of the informant and in the said firing, the brother of the informant had died, which is specifically alleged against the opposite party no.2. Therefore, it is argued that considering the gravity of offence the learned Trial Court ought not to have granted bail to the opposite party no.2.

11. In support of this submission, the learned counsel for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court rendered in the case of *X vs. State of Rajasthan & Anr.* reported as **2024 SCC OnLine SC 3539**, wherein it was, *inter alia*, observed as under:-

“14. Ordinarily in serious offences like rape,



murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. *Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.*

16. *We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”*

12. Learned counsel for the petitioner has next



submitted that the learned Trial Court has erred in granting bail since a Coordinate Bench of this Court had earlier rejected the bail application of the opposite party no.2 and therefore, the grant of bail by the Trial Court once the same has been rejected by this Court, is in violation of judicial discipline, comity and judicial hierarchy.

13. In support of the aforesaid submission, he has relied upon the following decisions:-

i. *State of Maharashtra v. Captain Buddhikota*

Subha Rao reported as *1989 Supp (2) SCC 605*;

ii. *Bimla Devi v. State of Bihar & Ors.*, reported as *(1994) 2 SCC 8*;

iii. *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr.*, reported as *(2004) 7 SCC 528*.

14. It has lastly been submitted that a bail order which is perverse, illegal or passed without application of judicial mind is liable to be set aside by the superior Court, and such a power being distinct from the power to cancel bail for misuse of liberty, no supervening misuse needs to be shown in



such a case. In support of the aforesaid submission, he has relied upon the following decisions:-

- i. Puran v. Rambilas & Anr.* reported as (2001) 6 SCC 338,
- ii. Dinesh M.N. (S.P.) v. State of Gujarat,* reported as (2008) 5 SCC 66,
- iii. Mahipal v. Rajesh Kumar @ Polia & Anr.* reported as (2020) 2 SCC 118,
- (iv) Sunil Kumar v. State of Bihar & Anr.,* reported as (2022) 3 SCC 245 and
- (v) State of Karnataka vs. Darshan Etc.* reported as 2025 SCC OnLine SC 1702 = Neutral Cittaion 2025 INSC 979.

15. *Per contra*, the learned counsel for the opposite party no.2 has supported the impugned order granting bail and submitted that the considerations governing the cancellation of bail stand on a footing entirely different from those governing its grant, and that bail once granted is not to be cancelled in a routine, mechanical or punitive manner in the absence of misuse of the liberty, breach of the conditions, interference with the investigation or the trial, threat to the



witnesses, an attempt to abscond, or the procurement of bail by fraud. It has been emphasized that none of the above grounds are made out in the present case to cancel the bail granted to the opposite party no.2.

16. It is submitted that the present application also does not disclose any cogent supervening circumstance arising after the grant of bail, and is, in substance, a challenge to the correctness of the original order, upon the very same material that was before the learned Court below, repackaged as an application for cancellation, which is impermissible. Further, the order granting bail was passed in the exercise of judicial discretion, keeping in view the order of this Court dated 07.05.2025 and its direction to expedite the trial.

17. It is further submitted that, out of the fourteen witnesses examined before the grant of bail, P.Ws. 1, 5, 6, 7, 8, 10, 11, 12 and 13 were declared hostile by the prosecution while the opposite party no. 2 was still in custody, so the apprehension that the witnesses would turn hostile after his release is unfounded. It is categorically submitted that the allegation of suppression of material facts and of threats are general, bald, unsupported by material particulars, and therefore, the same is without any substance.



18. It is submitted that there is a long-standing land dispute between the parties with case and counter-case between them. It has also been submitted that the son of the opposite party no. 2 had lodged Bheja P.S. Case No. 53 of 2021, and, while the opposite party no.2 was in custody, his cousin had lodged Bheja P.S. Case No.69 of 2024 alleging the murder of the father of the opposite party no. 2. Therefore, it is the submission of learned counsel for the opposite party no.2 that on the contrary the conduct of the petitioner side does not call for any indulgence from this Court.

19. Learned counsel for the opposite party no.2 has placed reliance upon a case rendered in the case of ***Dolat Ram & Ors. v. State of Haryana***, reported as ***(1995) 1 SCC 349***, and also upon the case of ***State (Delhi Admn.) v. Sanjay Gandhi***, reported as ***(1978) 2 SCC 411***, for the proposition that the cancellation of bail requires cogent and overwhelming supervening circumstances and cannot be ordered upon a mere re-appreciation of the material that was before the Court at the time of considering the bail petition. He has further placed reliance upon the case of ***Bhagirathsinh Judeja v. State of Gujarat***, reported as ***(1984) 1 SCC 284***, for the proposition that bail is not to be cancelled mechanically and in the case of ***Babu***



Singh & Ors. v. State of U.P., reported as (1978) 1 SCC 579, *Union of India v. K.A. Najeeb*, reported as (2021) 3 SCC 713, for the propositions that a renewed prayer is maintainable on a change of circumstance, the prolonged incarceration and the slow progress of the trial justify the grant of bail.

20. I have heard learned counsel for the parties and considered their submissions. I have also perused the materials on record, including the impugned order dated 13.03.2026, by which the opposite party no.2 has been granted bail.

21. Upon hearing learned counsels for the parties and on a conspectus of the materials on record, the moot question that arises for consideration in the present application is whether the impugned order dated 13.03.2026 is illegal, perverse, founded upon irrelevant considerations, so as to warrant its annulment by this Court. The present application, in substance, rests principally upon this question.

22. The facts, shorn of unnecessary detail and insofar as they bear upon the present controversy, may be noticed at the outset. The opposite party no.2 stands named in the F.I.R. with the specific and direct allegation of having fired the gunshot which struck the brother of the informant, namely,



Lalan Yadav, in the abdomen and caused his death. The first bail petition of the opposite party no.2, being Bail Petition No.349 of 2024, was rejected by the learned Court below. Thereafter, his prayer for bail was rejected by a Coordinate Bench of this Court *vide* order dated 07.05.2025 passed in Criminal Miscellaneous No.26944 of 2025, wherein, advertng to the direct allegation of firing against him and to the nature and gravity of the offence, this Court declined to enlarge him on bail and directed the learned Court below to expedite the trial and conclude the same expeditiously. From the perusal of the paragraph no. 01 of the impugned Order it appears that a subsequent bail petition filed by the opposite party no.2 on 12.01.2026 before the learned Court below was not pressed, whereafter, upon a fresh petition, the impugned order dated 13.03.2026 came to be passed enlarging the opposite party no.2 on bail.

23. Paragraph nos. 7 and 8 of the order dated 07.05.2025 passed in Criminal Miscellaneous No.26944 of 2025 by the Coordinate Bench of this Court, by which the earlier prayer for bail of the opposite party no.2 was rejected, read as under:-

“7. Having heard learned counsel for the parties and considering the nature and gravity of the offence as also there being



direct allegation of firing against the petitioner, this Court is not inclined to grant bail to the petitioner.

8. Accordingly, the prayer for bail of the petitioner, above named, is rejected with a direction to the court below to expedite the trial and conclude the same expeditiously.”

24. The impugned order dated 13.03.2026 passed by the learned District & Additional Sessions Judge-III, Jhanjharpur, by which the opposite party no.2 was subsequently, enlarged on bail, reads as under:-

- “1. The Ld. Counsel for the petitioner Suresh Yadav has not pressed his bail petition filed on 12.01.2026. Further the Ld. Counsel has filed fresh bail petition on behalf of the accused in custody namely Suresh Yadav, S/o Late Sahdeo Yadav, R/o Village - Koriyadhanth, P.S.- Bheja, District- Madhubani, in connection with Bheja P.S. case No- 47/2021 Gr. No.- 903/2021 U/s- 147, 148, 149, 323, 324, 307, 302, 504, 506, 120(B) IPC & 27 Arms Act.
2. Heard Sri Parshu Ram Mishra, learned counsel for the petitioner, and Sri D.S. Jha learned APP for the State.
3. The learned counsel of the petitioner has submitted that the petitioner has filed BP No. 349/2024 which was rejected and Criminal Misc No. 26944/2025, filed in Hon'ble Court was rejected on 07.05.2025. It has further been submitted that the petitioner is quite



innocent, has committed no offence and has falsely been implicated in this case. It has also been submitted that the petitioner carries five cases out of which he has been acquitted in three cases and has been on bail in two cases. He has further submitted that the petitioner is in judicial custody since 14.08.2024. He has further submitted that out of thirty six charge sheeted witnesses, fourteen witnesses including informant and his family members have already been examined in which ten witnesses have been declared hostile by the prosecution. He has further submitted that there is land dispute and case and counter case between the parties. He has further submitted that co accused with similar allegation have been granted bail in this case by Hon'ble Patna High Court in Criminal Misc. No.20237 of 2023 dated 27.06.2025 and in Criminal Misc. No.13424 of 2025 dated 11.04.2025. It has further been submitted that the petitioner is a local man and is ready to furnish the satisfactory bailors, if he be enlarged on bail. The learned counsel prays to allow the petition.

4. *The learned APP opposed the bail petition and prayed to reject it.*
5. *The prosecution case in short is that FIR has been lodged against 24 named and 10-15 unknown accused persons with allegation that they have reached on a land which is used to plough by younger brother and other relative of the informant. When relatives of*



the informant forbid them then the petitioner and others had attacked by Farsa and done firing.

6. *Perused the case record, case diary, submissions of both the parties, other materials available on record and found that Hon'ble Court while disposing the bail petition of the petitioner Suresh Yadav in Criminal Misc. No. 26944/2025 dated 07.05.2025 had directed to the Court below to expedite the trial and in compliance of Hon'ble Court order out of thirty six charge sheeted witnesses, fourteen witnesses including informant and his family members have been examined in this case in which ten witnesses have been declared hostile and seeing the number of charge sheeted witnesses, it appears that in examination of all thirty six witnesses it will take time. On further perusal, I find that informant has already been examined and bailable warrant has been issued against other absent witnesses. On further perusal I find that petitioner is in custody since 14.08.2024 and other co-accused with similar allegation have already been granted bail by Hon'ble Court in Criminal Misc. No. 20237 of 2023 dated 27.06.2025 and in Criminal Misc. No. 13424 of 2025 dated 11.04.2025. Admittedly there is land dispute and case and counter case between the parties.*
7. *In the facts and circumstances mentioned above and keeping in view the period of*



custody, the petitioner Suresh Yadav is directed to be released on bail on furnishing bail bonds of Rs. 10000/- with two sureties of like amount, to the satisfaction of the learned trial court concerned and with further condition that 1. The petitioner will remain physically present till disposal of the case and absent on two consecutive dates, the privilege granted will be cancelled. 2. The petitioner will not influence the witnesses in any manner. 3. The petitioner will cooperate in trial.”

25. Before advertng to the rival contentions, it would be apposite to notice the settled law governing the subject matter. The law draws a clear distinction between the cancellation of bail on account of supervening circumstances or misuse of liberty by the accused, on the one hand, and the annulment or setting aside, by a superior Court, of an order granting bail which is unjustified, illegal or perverse, on the other. In *Puran v. Rambilas (supra)* the Hon'ble Supreme Court held that the concept of setting aside an unjustified, illegal or perverse order granting bail is totally distinct from cancellation of bail on the ground that the accused has misconducted himself or that some supervening circumstance has arisen. The distinction was lucidly explained by the Hon'ble Supreme Court in the case of *Neeru Yadav v. State of U.P & Anr.*, reported as



(2014) 16 SCC 508, in the following words:-

“12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”
(emphasis supplied).

26. The illustrative circumstances in which an order granting bail may itself be set aside were summarized by the Hon'ble Supreme Court in the case of **Deepak Yadav v. State of U.P. & Anr.**, reported as (2022) 8 SCC 559, as under:-



“33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

33.1 Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”
(emphasis supplied).



27. The position has been reiterated by the Hon'ble Supreme Court in the case of *Ajwar v. Waseem & Anr.*, reported as **(2024) 10 SCC 768**, in the following words:-

*“27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. **Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order.** In *P v. State of M.P.* (2022) 15 SCC 211 decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) CrPC in the following words : (SCC p. 224, para 24)*

“24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer



conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court.”

Considerations for setting aside bail orders.

28. *The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to*



state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.

29. *In Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321, a three-Judge Bench of this Court, has observed that the power to grant bail under Section 439 CrPC is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. **But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well-established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate court would be well within its power to set aside and cancel the bail.** (Also refer: *Puran v. Rambilas* (2001) 6 SCC 338; *Narendra K. Amin v. State of Gujarat* (2008) 13 SCC 584.”*

28. Recently, the Hon'ble Supreme Court, in the case of *State of Karnataka v. Sri Darshan etc. (supra)*, has exhaustively surveyed the entire jurisprudence on the subject and has held as under:-

“18. Let us now examine the jurisprudence on when bail may be annulled or cancelled. Two distinct categories have emerged in this regard:



(A) Annulment of Bail due to legal infirmity in the order; and

(B) Cancellation of Bail, i.e., revocation of bail due to post-grant misconduct or supervening circumstances.

(A). Annulment of bail orders

18.1. This refers to the appellate or revisional power to set aside a bail order that is perverse, unjustified, or passed in violation of settled legal principles. It is concerned with defects existing at the time the bail was granted, without reference to subsequent conduct.

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20.4. Filing of charge sheet or lengthy list of witnesses does not justify grant of bail.

20.4.1. It is well settled that the mere filing of a charge-sheet does not confer an indefeasible right to bail. Likewise, the mere prospect of a prolonged trial cannot, by itself, outweigh the gravity of the offence, the incriminating material gathered during investigation, or the likelihood of tampering with witnesses.

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22.4. An order that overlooks material evidence or proceeds on an erroneous premise is perverse, and such perversity forms a valid ground for cancellation or setting aside of bail.” (emphasis supplied).

29. From the aforequoted judgments, the following propositions of law emerge. *Firstly*, the cancellation of bail already granted requires cogent and overwhelming supervening circumstances, such as misuse of the liberty,



tampering with the evidence, intimidation of the witnesses or evasion of justice, and cannot be founded upon a mere re-appreciation of the material which was before the Court at the time of the grant. *Secondly*, the annulment, by the superior Court, of an order granting bail which is illegal, perverse, founded upon irrelevant considerations or passed in ignorance of the relevant material, is concerned with the defects existing at the time of the grant itself, and may be exercised irrespective of any subsequent misconduct on the part of the accused. It is upon this twofold touchstone that the present application falls to be examined.

30. Upon a close perusal of the impugned order dated 13.03.2026 with the order dated 07.05.2025 passed by the Coordinate Bench of this Court, it is evident that the impugned order came to be passed on substantially the same material which was available before this Court when the prayer for bail of the opposite party no.2 was rejected on merits, upon a consideration of the direct allegation of firing against him and of the nature and gravity of the offence. The only developments in the *interregnum* were the examination of fourteen of the thirty-six charge-sheeted witnesses and the passage of time. Neither of these, singly or cumulatively, constitutes a substantial change in



the fact situation, having a direct impact upon the earlier decision of this Court. It is settled beyond doubt that a Court subordinate in the judicial hierarchy may not, on the same material, grant a relief, which the superior Court has categorically and expressly declined.

31. As long ago as in *State of Maharashtra v. Captain Buddhikota Subha Rao*, reported as *1989 Supp (2) SCC 605*, the Hon'ble Supreme Court had held that judicial discipline, propriety and comity demands that the orders passed by the Trial Court reversing earlier orders or taking a different view than the superior Courts in subsequent bail applications, must record a substantial change in the facts situation.

32. In *Bimla Devi (Smt.) v. State of Bihar*, reported as *(1994) 2 SCC 8*, where a Magistrate had granted bail to an accused of murder despite the rejection of two successive bail applications by the High Court, the Hon'ble Supreme Court observed as under:-

“2. In view of the fact that the Judicial Magistrate at a later stage has himself cancelled the bail, it is not necessary for us to pass any order with regard to the petitioner's prayer for cancellation of bail but the disturbing feature of the case is that though two successive applications of the accused



for grant of bail were rejected by the High Court yet the learned Magistrate granted provisional bail. The course adopted by the learned Magistrate is not only contrary to settled principles of judicial discipline and propriety but also contrary to the statutory provisions. (See in this connection Shahzad Hasan Khan case (1987) 2 SCC 684. The manner in which the learned Magistrate dealt with the case can give rise to the apprehensions which were expressed by the complainant in her complaint, which was treated by this Court as a writ petition and is being dealt with as such. In the course that we are adopting, we would not like to comment upon the manner in which the learned Magistrate dealt with the case any more at this stage. We, in the facts and circumstances stated above, direct that a copy of this order be sent to the Chief Justice of the Patna High Court for taking such action on the administrative side as may be deemed fit by him.”

33. The same principle was applied by the Rajasthan High Court in ***Padam Chand Jain v. State of Rajasthan***, reported as ***1990 SCC OnLine Raj 57***, in terms apposite to the present case, wherein it was held:-

“7. The question is as to whether if on certain material without any change of circumstances and it may be stated that filing of charge-sheet cannot be considered to be a change of



*circumstance, this court had disallowed bail, whether the propriety demands and whether it was proper for the learned Sessions Judge to allow the bail to the accused? It may be stated that the practice of this court is that if an application under Sec. 438 or 439 Cr. P.C. is dealt with by a Judge of this Court and then the second bail application of that accused is filed, then the said bail application is to be placed before the same judge who has already dismissed his bail application. **I have no doubt in my mind that on the same material if this Court has already dismissed an application for bail filed by an accused, the learned Sessions Judge should not allow that bail application.** The Supreme Court in the case of State of Maharashtra v. Captain Buddhikota Subha Rao (J), which was a case where some bail applications were put in the High Court, one set of bail applications was dismissed by one learned Judge of the High Court, but other bail application made thereafter to the other Judge who had enlarged the accused on bail only after two days after the dismissal of earlier bail application and it was nobody's case that during those two days drastic changes had taken place necessitating the release of the accused on bail. The Court said that*



'Before the ink was dry on Puranik, J's order it was upturned by the impugned order. It is not as if the Court passing the impugned order was not aware of the decision of Puranik, J. in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts and changed circumstances? What is important to realise is that in Criminal Application No. 375 of 1989; the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made there in. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic change which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the



release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all the earlier orders including the one rendered by Puranik, J. only a couple of days before in the absence of any substantial change in the fact-situation. I am therefore of the opinion that in the fact-situation of the present case where the earlier bail application had been dismissed by this Court, the judicial propriety demanded that the learned Sessions Judge should not have allowed the bail to the accused-non-petitioner.”

(emphasis supplied).

34. In *Kalyan Chandra Sarkar (supra)*, the Hon'ble Supreme Court, while emphasising the requirement of indicating reasons for the grant of bail, particularly where the accused stands charged of a serious offence, held in categorical terms that the Court entertaining a successive bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected, and to record what the fresh grounds are which persuade it to take a view different from



the one taken in the earlier applications. It has been held as under:-

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 and Puran v. Rambilas [(2001) 6 SCC 338.



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20. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26-7-2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of the superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character.” (emphasis supplied).

35. The vice of the omission of the Court granting bail to advert to the reasons which impelled the superior



Court to decline bail was recently explained by the Hon'ble Supreme Court in the case of *Mohseen v. State of U.P. & Anr.*, reported as **2026 SCC OnLine SC 919**, wherein it has been held as under:-

“23. The first and most fundamental infirmity in the impugned order is the complete absence of any engagement with the order dated 27.01.2025 passed by this Court in SLP (Crl) No.18256 / 2024 whereunder the first bail of the respondent no.2 was cancelled. The impugned order does not advert to the reasons that impelled this Court to cancel bail, nor does it identify any supervening circumstances or changed factual matrix that might justify a departure from the position adopted by this Court in the earlier round.

24. While there is no absolute bar against a High Court granting bail to an accused whose bail was previously cancelled by this Court, the grant of bail must be supported by reasons demonstrating either a change in circumstances or the existence of fresh grounds not considered by this Court at the time of cancellation.” (emphasis supplied).

36. Tested on the anvil of the aforesaid principles, the impugned order cannot be sustained. The impugned order does not advert to, much less discuss, the reasons which impelled the Coordinate Bench of this Court to decline bail to the opposite party no.2, namely, the specific and



direct allegation of firing the fatal shot and the nature and gravity of the offence. The impugned order falls totally silent on whether any substantial change in circumstance had intervened between the rejection of the prayer for bail by this Court on 07.05.2025 and the passing of the impugned order on 13.03.2026. The import of the impugned order, therefore, becomes that the learned Trial Court has, in effect, reviewed the order of the Coordinate Bench of this Court dated 07.05.2025, a course wholly impermissible in law. The Hon'ble Supreme Court in *M/s Netsity Systems (P) Ltd. v. State (NCT of Delhi)*, reported as **2025 SCC OnLine SC 2079**, while deprecating a similar course, has enumerated the grounds of interference by the superior Court, namely, perversity, illegality, inconsistency with law and relevant factors not been taken into consideration, and has emphasised the level of weightage which the decisions of the superior Courts must be accorded by the Courts below.

37. The matter, however, does not rest there. The principal consideration which has decisively weighed with the learned Trial Court, as is manifest from paragraph 6 of the impugned order, is that out of the fourteen witnesses examined, ten witnesses had been declared hostile by the prosecution, and that the examination of the remaining witnesses would consume



time. In the considered opinion of this Court, the hostility of the prosecution witnesses is not a consideration germane to the grant of bail, and reliance thereupon has introduced into the impugned order an element which is wholly irrelevant in law. It is well settled that at the stage of considering a prayer for bail, the Court cannot enter into the credibility and reliability of the witnesses examined by the prosecution, which is an exercise reserved exclusively for the trial.

38. Indeed, far from furnishing a ground for enlargement, the wholesale turning hostile of the witnesses, in a trial arising out of a broad daylight occurrence in which a direct and specific allegation of firing the fatal gunshot stands attributed to the opposite party no.2, is a circumstance which ought to have excited the caution and vigilance of the learned Trial Court rather than allayed it.

39. The decision in *Kalyan Chandra Sarkar (supra)* is instructive on this facet of the matter as well. In that case, a large number of witnesses examined after the accused therein was enlarged on bail had turned hostile, and the High Court had, nonetheless, granted bail upon the grounds of the period of incarceration and the large number of witnesses yet to be examined. The Hon'ble Supreme Court, while setting aside



the order of the High Court, held as under:-

“18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in the case Puran v. Rambilas (2001) 6 SCC 338 “Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. ... That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.” We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the



threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.

19. *The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard, he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent*



with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial." (emphasis supplied).

40. A similar view has been taken by the Karnataka High Court in the case of ***Sayyad Ali v. State of Karnataka, Criminal Appeal No.100417 of 2022 (Neutral Citation No.2022:KHC-D:10665)***, decided on 30.09.2022, wherein, declining bail to an accused of murder notwithstanding that several prosecution witnesses had turned hostile.

41. The submission of learned counsel for the opposite party no.2 that the witnesses turned hostile whilst the opposite party no.2 was still in custody, and that the apprehension of the remaining witnesses being won over is



therefore unfounded, does not carry the matter any further. The question, at this stage, is not whether the hostility of the witnesses is attributable to the opposite party no.2, the question is whether such hostility could, in law, constitute a cogent ground for his enlargement on bail. For the reasons indicated hereinabove, it could not. In any event, the informant (P.W.-14) and the remaining witnesses are yet to be fully examined, and the apprehension expressed on behalf of the petitioner that the release of the opposite party no.2, who is alleged to be the main assailant, would imperil the remainder of the trial, cannot be said to be fanciful.

42. Equally untenable is the second consideration which weighed with the learned Trial Court, namely, that the examination of all the thirty-six charge-sheeted witnesses would consume time. As held by the Hon'ble Supreme Court in *Kalyan Chandra Sarkar (supra)*, and as reiterated in *State of Karnataka v. Sri Darshan (supra)*, the mere prospect of a prolonged trial or a lengthy list of witnesses cannot, by itself, outweigh the gravity of the offence and the material collected in the course of the investigation, and the grant of bail solely on the ground of the passage of time or the period of incarceration vitiates the order. What is more concerning is that the direction



of this Court dated 07.05.2025 to the learned Court below was to expedite the trial and conclude it expeditiously, which the learned Trial Court has, instead, converted the pendency of the very trial which it was directed to expedite into a ground for enlarging the opposite party no.2 on bail. A direction for the expeditious conclusion of the trial cannot be permitted to be stood on its head in this manner.

43. The course adopted by the learned Trial Court also runs counter to the principle laid down by the Hon'ble Supreme Court in *X v. State of Rajasthan (supra)*, extracted hereinabove, that in serious offences like murder, once the trial has commenced and the prosecution has begun examining its witnesses, the Court should be loath to entertain the bail application of the accused, and that the trial, once commenced, should be allowed to reach its final conclusion. In the present case, the trial had not merely commenced but had progressed to a substantial stage, fourteen of the thirty-six witnesses have been examined, and the cross-examination of the informant (P.W.-14) has been deferred at the instance of the accused side, which is evident from the order-sheets of the Trial Court dated 12.02.2026 and 24.02.2026. It was at this very stage that the learned Trial Court chose to enlarge the opposite party no.2 on bail.



44. The reliance placed by the learned Trial Court upon the orders of this Court granting bail to the co-accused in Criminal Miscellaneous No.20237 of 2023 and Criminal Miscellaneous No.13424 of 2025, on the plea of parity, is equally misconceived. As per the F.I.R., it is the opposite party no.2 who fired the gunshot which struck the deceased Lalan Yadav in the abdomen and caused his death. The allegation against the opposite party no.2 is, therefore, not only direct and distinct but also graver than that against the co-accused who have been enlarged on bail. It is settled that parity cannot be claimed where the role attributed to the accused is different and more serious, as has been held by the Hon'ble Supreme Court in *Neeru Yadav (supra)*, wherein the mechanical application of the doctrine of parity, in disregard of the material distinguishing the case of the accused, was itself held to render the order perverse. It bears repetition that the Coordinate Bench of this Court had, on 07.05.2025, declined bail to the opposite party no.2 upon the very footing of the direct allegation of firing against him, thereby distinguishing his case. The learned Trial Court, in extending the benefit of parity notwithstanding that categorical consideration, has once again sat in review over the order of this Court.

45. For the foregoing reasons, this Court is of the



considered opinion that the impugned order dated 13.03.2026 is perverse, founded upon considerations which are irrelevant in law and in disregard of the reasons that weighed with the Coordinate Bench of this Court as recorded in the Order dated 07.05.2025 and having failed to record any substantial change in circumstance, and therefore, the impugned order cannot be sustained.

46. In the result, the present application is allowed in the following terms:-

- i. The impugned order dated 13.03.2026 passed by Sri Anil Kumar Ram, the District & Additional Sessions Judge-III, Jhunjharpur, in Sessions Trial No.404 of 2024, arising out of Bheja P.S. Case No.47 of 2021, enlarging the opposite party no.2, Suresh Yadav @ Suresh Prasad Yadav, on bail, is set aside.
- ii. The bail granted to the opposite party no.2 *vide* the impugned order dated 13.03.2026 is hereby cancelled and the bail bonds furnished by him also stand cancelled. The opposite party no.2 shall surrender before the learned Trial Court within a period of two weeks



from today, failing which the Superintendent of Police, Madhubani shall take all necessary steps to secure his arrest.

47. Before parting with the case, this Court is constrained to observe the manner in which the District & Additional Sessions Judge-III, Jhanjharpur has dealt with the prayer for bail of the opposite party no.2. Despite the rejection of the prayer for bail by a Coordinate Bench of this Court on 07.05.2025, upon a categorical consideration of the direct allegation of firing and of the gravity of the offence, the Trial Court proceeded, on substantially the same material and without recording any substantial change in circumstance, enlarged the opposite party no.2 on bail, which are irrelevant in law. In the case of *M/s Netsity Systems (P) Ltd. (supra)*, the Hon'ble Supreme Court, upon finding that the Courts below had granted and sustained bail in disregard of the findings recorded by the superior Courts, directed the judicial officers concerned to undergo special judicial training at the Judicial Academy, with particular focus on the conduct of judicial proceedings in matters where the decisions of the superior Courts are involved and the level of weightage to be accorded thereto.

48. *Prima facie*, the impugned order appears to



have been passed on the same material on which earlier the bail of the opposite party no.2 had been rejected by a Coordinate Bench of this Court and without adverting either to the reasons recorded in the said order or to any substantial change in circumstance. In the opinion of this Court, such a course reflects a disregard of judicial discipline and propriety and the District & Additional Sessions Judge, III, Jhanjharpur has acted recklessly, which this Court cannot countenance.

49. In these circumstances, the Office is directed to forthwith send a copy of this order, along with the relevant records, to Sri Anil Kumar Ram, the District & Additional Sessions Judge-III, Jhanjharpur, who shall submit his show cause, within four weeks from today and explain as to why appropriate proceedings, including a recommendation for special judicial training at the Bihar Judicial Academy in the light of the directions of the Hon'ble Supreme Court in *M/s Netsity Systems (P) Ltd. (supra)*, be not initiated against him.

50. The Show-cause must be filed by Sri Anil Kumar Ram, the District & Additional Sessions Judge-III, Jhanjharpur, within four weeks from today.

51. List this case after five weeks under the heading "For Orders" for consideration of show-cause.



52. It is made clear that the observations made hereinabove are confined to the consideration of the present application and shall not be construed as an expression of any opinion on the merits of the case, which shall be decided by the learned Trial Court uninfluenced by the same.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	03.07.2026
Transmission Date	03.07.2026

