
(2012) 01 CHH CK 0085
In the Chhattisgarh High Court
Case No : Criminal M.P. No. 962 of 2010

Gore Lal Rajput

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(1), 437(5), 439, 439(1), 439(2)
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34

Citation : (2012) 01 CHH CK 0085

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Sameer Singh, for the Appellant; Rajendra Tripathi, Panel Lawyer for Respondent No. 1 and Ravindra Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—The petitioner is father of deceased-Jagdish Rajput. On 15-3-2010, the dead body of the deceased was found on a road. His motor-cycle was also found near the dead body. Murg Intimation was recorded and investigation commenced. After the investigation, it was found that it was a case of murder. The police, therefore, registered the offences punishable under sections 302, 120-B and 201/34 IPC vide Crime No. 27/2010 of Police Station-Saragaon, District-Janjgir-Champa (C.G.) and a charge-sheet was filed. The respondent No. 2 is one of the accused. She moved first bail application u/s 439 of Cr.P.C. vide M. Cr. C. No. 1302/2010 on 5-6-2010. This application was dismissed as withdrawn vide order dated 24-6-2010 with liberty to file another application after filing of the charge-sheet. Thereafter, the charge-sheet was filed and the second bail application of respondent No. 2. i.e. M. Cr. C. No. 2022/2010 was filed on 6-8-2010 and she was admitted to bail vide order dated 18-8-2010. The petitioner has filed this petition for cancellation of bail granted to respondent No. 2. The petitioner has taken mainly two grounds. The first ground is that the persons of respondent No. 2 had threatened the witnesses and pressurized them to enter into compromise, and a written report was lodged on 7-6-2010. The

second ground is that on 4-10-2010 again threatening was given and another F.I.R. was lodged on the same day.

2. Mr. Sameer Singh, learned counsel appearing on behalf of the petitioner, argued that the above incidents would show that the respondent No. 2 is misusing the liberty, therefore, her bail should be cancelled.

3. On the other hand, Mr. Ravindra Agrawal, learned counsel appearing on behalf of respondent No. 2 opposed the above argument and submitted that false reports were lodged by the petitioner. The first report dated 7-6-2010 was lodged when the respondent No. 2 was in jail and the second report was lodged just to make ground for cancellation of bail.

4. Mr. Rajendra Tripathi, learned counsel appearing on behalf of the State, submitted that about the F.I.R. dated 4-10-2010, police has submitted a Khatma report and about the F.I.R. dated 7-6-2010, which was for the incident dated 2-6-2010, a charge-sheet has already been filed.

5. I have heard learned counsel for the parties at length and have also perused the entire material placed by them.

6. Perusal of the F.I.R. No. 192/2010 dated 17-6-2010 which was registered on the written report dated 7-6-2010 for the incident of 2-6-2010 would show that this report was lodged against Benjamin Toppo (husband of respondent No. 2) and one - Mannu Manikpuri. The respondent No. 2 was arrested on 3-5-2010 and she was released on bail on 18-8-2010. Admittedly, on 2-6-2010 she was in jail, therefore, there cannot be any direct involvement of respondent No. 2 in the alleged incident of 2-6-2010 as she was in jail at that time. On 7-6-2010 Gore Lal submitted written reports to many authorities. The copy of report has been filed as Annexure-P-6. In this report, along with the incident of 2-6-2010, another incident of 6-6-2010 was mentioned and it was prayed that action be taken against Benjamin Toppo, Mannu Manikpuri and one-Santosh Kumar. I find that the name of Santosh Kumar is not mentioned in the written report of the same day on which F.I.R. No. 192/2010 was registered on 17-6-2010. Further in written report dated 7-6-2010 (subject-matter of F.I.R. No. 192/2010) though allegations are made that the husband of respondent No. 2 stated that they have managed for grant of bail, but no objection to this effect was filed by the petitioner before the bail Court.

7. Mr. Agrawal has drawn my attention to another report made by the petitioner to the concerned authorities on 5-10-2010. In this report nothing has been mentioned about the incident of 4-10-2010. Had there been any incident on 4-10-2010, as alleged, normally description of the same would have come in report dated 5-10-2010. Likewise, the facts mentioned in report dated 5-10-2010 relating to alleged incident dated 3-10-2010 which are not mentioned in the First Information Report dated 4-10-2010. Mr. Sameer Singh could not explain the above anomalies referred to in various written reports lodged by the petitioner.

8. Order sheets of concerned Session Trial No. 117/2010 have been filed. It appears that till 15-9-2011, 13-14 witnesses were already examined and even after service of notice on the petitioner for his appearance on 15-9-2011, he did not turn-up to the Court and bailable warrant was directed to be issued for his appearance on 19-12-2011. Mr. Sameer Singh could not explain as to why the petitioner is not turning-up before the Sessions Court even after service of repeated notices.

9. In *The State through the State (Delhi Administration) Vs. Sanjay Gandhi*, the Supreme Court held that "rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another". It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances it would no longer be conducive to a fair trial to allow the accused to retain his freedom during the trial."

10. In *Aslam Babalal Desai Vs. State of Maharashtra*, the Supreme Court observed that:--

As stated in *Raghubir Singh and Others Vs. State of Bihar*, , the grounds for cancellation under sections 437(5) and 439(2) are identical, namely, bail granted u/s 437(1) or (2) or 439 (1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

11. I have examined the case in light of the above principles. On consideration of the entire facts and circumstances of the case on the above principles, I do not find present to be a fit case in which bail granted to respondent No. 2 should be cancelled.

12. The petition, therefore, is liable to be dismissed and is accordingly dismissed. It is made clear that any observation made in the order shall not affect the merits of concerned session trial or the subject trial of F.I.R. No. 192/2010.