
(2020) 08 JH CK 0279

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 214 of 2020

Kima Kumari @ Kima Singh

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 439(2)

Citation : (2020) 08 JH CK 0279

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Santosh Kumar, Priya Shrestha, Sanjay Kumar

Final Decision : Dismissed

Judgement

This criminal miscellaneous petition under Section 439 (2) of the Code of Criminal Procedure has been filed by the petitioner with a prayer for cancellation of bail granted to the opposite party Nos.2 to 4 by this Court vide order dated 13.06.2019 passed in A.B.A. No.2518 of 2019.

It is submitted by the learned counsel for the petitioner that vide order dated 02.05.2019 passed in A.B.A. No.2518 of 2019 upon the opposite party Nos.2 to 4 not pressing the prayer for grant of bail for the petitioner No.3 of A.B.A. No.2518 of 2019 namely Raushan Singh @ Raushan Kumar Singh who is the opposite party No.4 of the instant Cr.M.P., the prayer for grant of anticipatory bail of the said petitioner No.3 of A.B.A. No.2518 of 2019 namely Raushan Singh @ Raushan Kumar Singh was rejected as not pressed but on the next date of listing of A.B.A. No.2518 of 2019 the same could not be pointed out by any of the parties before this Court and because of oversight the prayer for anticipatory bail of all the three petitioners was allowed. It is further submitted that though it could not be pointed out by any of the parties on 13.06.2019 before this court but by that date the process under Section 82 Cr.P.C. was also issued against the opposite party Nos.2 and 3 of the instant Cr.M.P. as the same was issued on 07.06.2019. Hence, it is submitted that the bail granted to the opposite party

Nos.2 to 4 by this Court vide order dated 13.06.2019 passed in A.B.A. No.2518 of 2019 be cancelled.

Mr. Sanjay Kumar- learned counsel for the opposite party Nos.2 to 4 fairly submits that he also overlooked to submit before this Court on 13.06.2019 that he has already withdrawn the prayer for anticipatory bail on behalf of the opposite party No.4 herein who was the petitioner No.3 of A.B.A. No.2518 of 2019 namely Raushan Singh @ Raushan Kumar Singh but he submits that since the opposite party Nos.2 and 3 herein who were the petitioner Nos.1 and 2 of the said anticipatory bail application were themselves not aware of any process under Section 82 Cr.P.C. having issued against them and they have not misconducted in any manner making them liable for cancellation of the bail. Hence, it is submitted that the bail granted to the opposite party Nos.2 and 3 herein who are the petitioner Nos.1 and 2 of the said anticipatory bail application ought not to be cancelled.

It is pertinent to mention here that it is a settled principle of law that bail can ordinarily 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. The above 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, as has been held by the Hon'ble Supreme Court of India in the case of Raghbir Singh v. State of Bihar, (1986) 4 SCC 481.

Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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 the trial as has been held by the Hon'ble Supreme Court of India in the case of Dolat Ram v. State of Haryana, (1995) 1 SCC 349.

After carefully going through the materials in records, it is crystal clear that there

is no allegation against the opposite party no. 2 and 3 of any misconduct after they have been granted the privilege of anticipatory bail.

It is crystal clear that due to inadvertence and error of record, privileges of anticipatory bail was granted to the opposite party No.4 herein who was the petitioner No.3 of A.B.A. No.2518 of 2019 namely Raushan Singh @ Raushan Kumar Singh. Accordingly the bail granted to the opposite party No.4 herein who was the petitioner No.3 of A.B.A. No.2518 of 2019 namely Raushan Singh @ Raushan Kumar Singh vide order dated 13.06.2019 passed in A.B.A. No.2518 of 2019 is cancelled. The opposite party No.4 herein who was the petitioner No.3 of A.B.A. No.2518 of 2019 namely Raushan Singh @ Raushan Kumar Singh is directed to surrender before the trial court within a week and in case he fails to surrender within a week the trial court is directed to take all coercive steps for his apprehension for facing the trial.

Keeping in view the fact that the opposite party Nos.2 and 3 herein who are the petitioner Nos.1 and 2 of the said anticipatory bail application have not misconducted in any manner making them liable for cancellation of the bail granted to them, this Court is of the considered view that this is not a fit case where the bail granted to the opposite party Nos.2 and 3 herein who are the petitioner Nos.1 and 2 of the said anticipatory bail application be cancelled. Accordingly the prayer for cancellation of bail of the opposite party no. 2 and 3 is rejected.

This criminal miscellaneous petition is disposed of accordingly. Let a copy of this order be communicated to the learned court below through FAX @ Rs.50/- per page to be borne by the petitioner.