
(2022) 11 JH CK 0026

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2137 Of 2017

Prabha Toppo

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Citation : (2022) 11 JH CK 0026

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : A.K.Das, Mahesh Kumar Sinha, Prabha Toppo

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

This petition has been filed for setting aside the order dated 18.05.2017 passed by learned Judicial Magistrate, 1st Class, Ranchi in Misc. Case No.02 of 2015 arising out of Mahila P.S.Case No.19 of 2011, corresponding to G.R. No.3806 of 2011 whereby the prayer for cancellation of bail granted to the O.P.No.2 has been rejected by the learned court.

Mr. A.K.Das, the learned counsel for the petitioner submits that O.P.No.2 has been granted bail in A.B.A. No.314 of 2012 by order dated 06.08.2012 and the same was granted on the undertaking that the O.P.No.2 shall keep the petitioner with all dignity. He submits that the O.P.No.2 has not complied the said undertaking. He further submits that the petitioner again filed the petition before this Court in which direction was issued to make enquiry about the allegation about the non-compliance of the undertaking given by the O.P.No.2 in the A.B.A petition. He submits that the mother of the O.P.No.2 has also stated in that enquiry before the learned court that O.P.No.2 has not complied with the undertaking given in the A.B.A. petition. He further submits that the O.P.No.2 is unnecessarily lingering the trial. He submits that the learned court has rejected the cancellation of bail petition by order dated 18.05.2017 on the ground that

the trial is going on and the case is at the stage of evidence.

On the other hand, Mr. Mahesh Kumar Sinha, the learned counsel appearing on behalf of the O.P.No.2 submits that the petitioner is residing in the house of the O.P.No.2. He further submits that the trial has already proceeded and five witnesses have been examined.

In view of the above submission of the learned counsel appearing for the parties it appears that on the terms and conditions whereby on the undertaking given by the petitioner the A.B.A. petition was allowed and the said undertaking was not complied by the petitioner filed before this Court and the Court has directed the learned trial court to enquire into the matter and in enquiry the mother of the O.P.No.2 has also disclosed that the O.P.No.2 has not complied with the undertaking. It is well settled that the bail is not required to be cancelled once it is granted as has been held by this Court in the case of Amr Chouhan @ Amar Singh Chouhan v. The State of Jharkhand and Another, 2016 SCC OnLine Jhar 1018 (Cr.M.P.No.255 of 2016). Paragraph no.11 of the said judgment is quoted below.:

"11. It, thus, appears that ratio with respect to cancellation of bail has been clearly laid down, inasmuch as, non-fulfillment of the terms of the compromise cannot be a basis for cancelling bail. Moreover, some doubt definitely creeps out, since the opposite party no.2 was purported to be treated at Dhanbad on 10.12.2015 for an assault which had taken place on 04.12.2015 at Asansole in the State of West Bengal. It is an admitted position that the occurrence of purported assault had taken place on 04.12.2012; she was treated on 10.12.2015 at Dhanbad and the application for cancellation of bail was filed on 10.12.2015 by the opposite party no.2, but the injury report was never brought on record along with an application dated 10.12.2015 filed for cancellation of bail. Subsequently, by way of list of documents filed on 18.12.2015 the alleged injury report has been brought on record. In such circumstance, therefore, I find that the learned Additional Sessions Judge XI, Dhanbad, did not consider the aforesaid aspects of the matter while cancelling the bail granted earlier to the petitioner in his order dated 05.01.2016."

Considering that the evidence is already going on and five witnesses have already been examined and the matter is pending for disposal before the learned court and all the arguments advanced by the learned counsel for the petitioner as well as the O.P.No.2 can be raised before the learned trial court as the trial has proceeded and the O.P.No.2 has already been granted bail, this petition is being disposed of with liberty to the petitioner to demonstrate the case in the final argument before the learned trial court and as the learned counsel for the O.P.No.2 submits that the steps have been taken by the learned court and for procuring the appearance of the witnesses the warrant has already been issued by the learned trial court and he submits that O.P.No.2 will cooperate in the trial.

In view of the submission of the learned counsels for the O.P.No.2 as well as the

petitioner, this petition is disposed of with liberty to make out their case before the learned trial court and the learned trial court shall expedite the trial and will conclude the same as early as possible.

With above observation and direction Cr.M.P.No.2137 of 2017 stands disposed of.

I.A if any also stands disposed of.