
(2022) 08 JH CK 0013

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2165, 2332 Of 2019

Umesh Kumar Yadav And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 03-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437

Citation : (2022) 08 JH CK 0013

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Awinash Kumar, Vandana Bharti, V.S. Sahay, Md. Hatim, Tarun Kumar

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. In both the cases, common order of cancellation of anticipatory bail dated 01.07.2019 is under challenge. In Cr.M.P. No.2332 of 2019, the husband of opposite party no.2 has challenged the said order and in Cr.M.P. No.2165 of 2019, the said order has been challenged by the father-in-law, mother-in-law and brother-in-law of opposite party no.2 respectively.

2. Heard Mr. Awinash Kumar, learned counsel for the petitioners, Mrs. Vandana Bharti and Mr. V.S. Sahay, learned counsel for the State and Mr. Tarun Kumar No.1, learned counsel for opposite party no.2.

3. Both the petitions have been filed for quashing the order dated 01.07.2019 passed in Criminal Miscellaneous Case No.146/2019 by the learned Additional Judicial Commissioner- XIII, Ranchi whereby the anticipatory bail granted vide order dated 28.03.2019 in A.B.P. Nos.335/2019, 336/2019 and 452/2019 has been cancelled. The prayer is also made to restore the order dated 28.03.2019 passed in the aforesaid A.B.Ps.

4. Learned counsel for the petitioners submits that the petitioner in Cr.M.P.

No2332 of 2019 has filed A.B.P. No.335/2019 which was heard along with A.B.P. Nos.336/2019 and 452/2019 and all the A.B.Ps. have been allowed by the common order dated 28.03.2019 and on the basis of the terms and conditions of compromise, the said order has been passed. He further submits that the matter was referred for mediation and the dispute was settled on certain terms and conditions. He further submits that as per the order dated 28.03.2019, contained in Annexure-2 and the mediation report, contained in Annexure-3, it was specifically agreed by the petitioners and opposite party no.2 and direction was also given by the concerned court that on the date of furnishing bail bond by the husband of opposite party no.2, he will take away his wife to Hazaribag where he resides and do his business and on that ground, the anticipatory bail was granted. He also submits that the petitioner has taken away opposite party no.2 to Hazaribag. He further submits that on 05.05.2019, the opposite party no.2 demanded a sum of Rs.20,000/- which was denied by the husband in view of the fact that his business was not in progress. The opposite party no.2 became aggressive, torn her clothes and caused self inflicted injury on her person and also caused injury to her husband. He also submits that in spite of best efforts made by the husband and in-laws, the opposite party no.2 is not living peacefully. He submits that a petition was filed by the opposite party no.2 and on considering that petition, the impugned order dated 01.07.2019 has been passed. He further submits that once the anticipatory bail is granted, in casual manner and particularly in the facts and circumstances of the present case, the learned court was not justified in cancelling the anticipatory bail.

5. On the other hand, Mr. Tarun Kumar No.1, learned counsel for opposite party no.2 submits that the terms and conditions of the compromise has not been fulfilled and therefore the learned court has passed the impugned order. He further submits that even the order passed in the Maintenance Case is not complied and the terms and conditions of the settlement has not been followed by the petitioners and in that view of the matter, the learned court has cancelled the anticipatory bail.

6. Mr. V.S. Sahay and Mrs. Vandana Bharti, learned counsel for the State submits that the learned court has considered that the compromise has not been fulfilled, which was the basis for grant of anticipatory bail and that is why the anticipatory bail has been cancelled.

7. In view of the above submissions of the learned counsel for the parties, this Court has gone through the materials on the record and finds that the husband of opposite party no.2 has taken his wife to Hazaribag and thereafter quarrel started between them and prima facie, it appears that there was instigation by opposite party no.2. This aspect of the matter was not appreciated by the learned court while cancelling the anticipatory bail. The submission of Mr. Tarun Kumar No.1, learned counsel for opposite party no.2 with regard to the order passed in Maintenance Case, that is the separate proceeding and opposite party no.2 is having remedy.

8. On query from the Court, Mr. Tarun Kumar No.1, learned counsel for opposite party no.2 on instruction submits that the opposite party no.2 is not ready to live with her husband namely Umesh Kumar Yadav @ Umesh Yadav.

9. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. A reference may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Biman Chatterjee v. Sanchita Chatterjee & another, reported in (2004) 3 SCC 388. Paragraph 7 of the said judgment is quoted herein below:

"7. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well-wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe, first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart, non-fulfillment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law."

10. It is settled that for non-fulfilment of the terms and conditions of the compromise, the bail is not required to be cancelled and that was the subject matter before this Court in the case of Amr Chouhan @ Amar Singh Chouhan v. The State of Jharkhand & another, reported in 2016 SCC OnLine Jhar 1018 (Cr.M.P. No.255 of 2016). Paragraph 11 of the said judgment is quoted herein 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.”

11. This Court has perused the settlement agreement, contained in Annexure-3 of the petition. The learned court has granted anticipatory bail on the facts as well as the settlement agreement and subsequently by the impugned order dated 01.07.2019, the petition filed by opposite party no.2 has been allowed. Once the settlement is reached between the parties and opposite party no.2 herself is not complying with the terms and conditions of the agreement and in that scenario, anticipatory bail granted to the petitioners can be cancelled or not, it is well answered in the cases of Biman Chatterjee and Amr Chouhan @ Amar Singh Chouhan (supra).

12. Having found merit in these petitions, the same stand allowed. Accordingly, the impugned order dated 01.07.2019 passed in Criminal Miscellaneous Case No.146/2019 by the learned Additional Judicial Commissioner- XIII, Ranchi is, hereby, quashed and set aside. The petitioners shall remain on previous anticipatory bail in terms of the order dated 28.03.2019 passed in connection with Sukhdeo Nagar P.S. Case No.439/2018, which was the subject matter in A.B.P. Nos.335/2019, 336/2019 and 452/2019.

13. Accordingly, these petitions stand allowed and disposed of.

14. Interim order dated 09.01.2020 passed in Cr.M.P. No.2332 of 2019 and interim order dated 08.01.2020 passed in Cr.M.P. No.2165 of 2019 stand vacated.

15. It is open to opposite party no.2 to take efforts for conclusion of the trial at the earliest.