

Manoj Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-24-2005

Judge : M.L. Visa, J.

Acts : Arms Act - Sections 27; Indian Penal Code (IPC) - Sections 34, 302, 307, 323, 324, 337, 341, 379, 384 and 504

Appeal No. : Cri. Misc. No. 26273 of 2004

Appellant : Manoj Kumar

Respondent : State of Bihar and ors.

Disposition : Application dismissed

Judgement :

M.L. Visa, J.

1. This application by petitioner has been filed for cancellation of bail granted to opposite parties No. 2 to 7 by Additional Chief Judicial Magistrate, Barh on 17.9.2003 and 18.9.2003 in Bakhtiyarpur Police Station Case No. 173 of 2003 initially registered under Sections 341, 323, 504, 337 and 307/34 of Indian Penal Code (in short 'IPC') but subsequently added with Section 302 of IPC.

2. The case of petitioner, in short is that on the basis of his fardbeyan recorded on 11.9.2003 by Bakhtiyarpur Police at Bakhtiyarpur Primary Health Centre that on

the same date at about 8.30 a.m. when he went to a well for taking bath, his gotiyas opposite parties No. 2 and 3 did not allow him to take bath saying that the well belonged to them and when he said that he had also share in the well because well was in his land also, the aforesaid opposite parties abused him and called other opposite parties, who are their family members, and opposite party No. 4 was armed with garasa, opposite party No. 5 was armed with a brick and opposite parties No. 6 and 7 were armed with lathi came there. On hulla father and uncle of informant came there and they also asked the opposite parties why they were not allowing the informant to take bath on well which was in their share also, the opposite parties started assaulting his father and uncle with fist, lathi and brick. The father and uncle of informant received injuries by the lathi and brick on their head and face and they became unconscious and were taken to mukhiya who got medicines applied to them. On the basis of fardbeyan of informant, a case under Sections 341, 323, 504, 337, 307/34 of IPC was registered against opposite parties No. 2 to 7. Subsequently father of informant, who was referred to Patna Medical College and Hospital (in short PMCH) from Primary Health Centre, Bakhtiyarpur, died during treatment at PMCH on 28.10.2003 and uncle of the informant also had to remain in hospital for many days and was released from hospital on 20.9.2003. The case of petitioner is that the Court below on both days, when opposite parties No. 2 to 7 surrendered, without calling for case diary and perusing the injury reports, granted them bail and the action of Court below suggests that the Court below was in much hurry to grant bail to opposite parties No. 2 to 7 not on merit but for some other reason. The further case of petitioner is that opposite parties No 2 to 7 are regularly giving threat to him of dire consequences if the case is not compromised and he also filed applications to this effect on 1.10.2003 and 20.10.2003 (Annexures-4 and 5) before learned Additional Chief Judicial Magistrate. The petitioner also filed application on 20.2.2004 before Additional Sessions Judge III, Barh for cancellation of bail of opposite parties No. 2 to 7 but his application has been dismissed. Petitioner has prayed for cancelling the bail of opposite parties No. 2 to 7.

3. Opposite parties No. 2 to 7 have appeared and have filed show cause and have opposed the prayer of petitioner for cancellation of their bail submitting that in the fardbeyan, there is no specific allegation as to who had assaulted with what

weapon and no specific overt act has been attributed to any of the opposite parties and only a general, vague, omnibus and sweeping statement has been made. Their further case is that in the fardbeyan, it was alleged that opposite party No. 4 Sanjit Kumar was armed with garasa but there is no allegation that he used the garasa in inflicting injury to any body and this completely negated the case of informant under Section 307 of IPC. Their further case is that opposite parties No. 2, 5 and 6 surrendered before the Court below on 17.9.2003 and after hearing their counsel as well as counsel of other side, the learned Additional Chief Judicial Magistrate granted bail to them and similarly on 18.9.2003, opposite parties No. 3, 4 and 7 surrendered and filed application for bail and after hearing counsel of parties, the Court below passed a reasoned order granting bail to them. About the death of father of informant, the case of opposite parties No. 2 to 7 is that he was an old man and he died on 28.10.2003 that is one and half months after the date of alleged occurrence and Section 302 of IPC was added in this case by order dated 18.11.2003 that is after opposite parties No. 2 to 7 were already granted bail by the Court below and post-mortem examination report of deceased discloses that father of informant died due to septicaemia. About the allegation that opposite parties No. 2 to 7 gave threat to petitioner, opposite parties No. 2 to 7 have denied this allegation and have submitted that this allegation has been made by the petitioner with a view to put pressure on them. According to opposite parties No. 2 to 7, no case for cancellation of their bail is made out. The further case of opposite parties No. 2 to 7 is that mother of opposite parties No. 4 and 5 has filed a complaint case against petitioner, his brothers and his father and others under Sections 323, 324, 307, 379, 384/34 of IPC and Section 27 of Arms Act for an occurrence of the same day (Annexure-A) and in that occurrence, mother of opposite parties No. 4 and 5 had received injuries (Annexure-B) and in that case, cognizance has already been taken and the case is pending before the Court of Shri V.K. Mishra, Judicial Magistrate, 1st Class, Barh bearing trial No. 838 of 2003. According to opposite parties No. 2 to 7, this is the motive for which petitioner has implicated them in the false case under consideration.

4. The petitioner has filed rejoinder to the show cause filed by opposite parties No. 2 to 7 submitting therein that his father died due to grievous head injury inspite of best efforts made by the doctors who were attending him and, therefore, Section

302 of IPC is attracted to the facts of the present case. On the other hand, the learned counsel appearing on behalf of opposite parties No. 2 to 7 has submitted that when opposite parties No. 2 to 7 surrendered, only material against them was general and omnibus allegation that they had assaulted the informant, his father and uncle with kicks, lathi and brick and in the fardbeyan, it was admitted by the petitioner that the occurrence took place on the point of taking bath by informant on a well in which informant and his family members also claimed their share and it was further admitted that opposite parties No. 2 to 7 are gotiyas of petitioner.

5. The learned counsel of petitioner, by relying upon a decision of the Bench of Single Judge of this Court in the case of Pappu Rai and Ors. v. The State of Bihar and Anr., 2004 (1) PLJR 341, has submitted that in proper cases involving serious offence, the power to cancel the bail can be exercised to meet the ends of justice. The facts of the case relied upon by the learned counsel of petitioner were different from the facts of the present case because in that case, allegation against one of the accused was of firing from pistol which caused injuries to informant and twenty three pellets were recovered from the person of informant and Chief Judicial Magistrate granted bail to accused persons on the very day of surrender without looking into the injury report and case diary, Subsequently, bail granted to accused persons in that case was cancelled by Sessions Judge and against that order when the accused persons came before this Court, their application was dismissed upholding the cancellation of their bail by learned Sessions Judge. In the present case, facts are quite different. It is true that father of informant subsequently died but, admittedly, he died on 28.10.2003 whereas the occurrence had taken place on 11.9.2003 and in the fardbeyan, there was general and omnibus allegation against all the accused persons named in the first information report that they assaulted the father and uncle of informant with fists, slaps and brickbats as a result of which they became unconscious. Even when bail to petitioners were granted by that time, father of informant had not died and considering the allegations in the fardbeyan, the opposite parties were granted bail. As stated earlier in the first information report, it is alleged that petitioner No. 4 Sanjit Kumar was armed with garasa but in the entire fardbeyan, there is no allegation that he used the garasa in assaulting any one. Besides this, the occurrence took place on account of taking bath of informant on a well which was

being claimed by the petitioners who have been described as gotiyas of informant. I find that the Court below rightly observed that it was a case of family feud and there was no scope to infer a case emerging under Section 307 of IPC and this observation was based on the materials available at that time in fardbeyan.

6. In the result, I find no merit in this application which is, accordingly, dismissed.

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