

Bablu Singh and anr. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Mar-04-2004

Judge : Navin Sinha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 443(2)

Appeal No. : Cr. Misc. No. 1915 of 2003

Appellant : Bablu Singh and anr.

Respondent : State of Bihar and anr.

Advocate for Def. : K.P. Sinha, Adv. and D.P. Choudhary, Adv. for Opposite Party No. 2

Advocate for Pet/Ap. : Niranj Madan and Kalika Prasad Singh

Disposition : Application dismissed

Judgement :

Navin Sinha, J.

1. This application has been filed for quashing the order dated 2.1.2003 passed by the Additional Sessions Judge, I, Barh (Patna) in Cr. Misc. No. 1 of 2002 by which he has cancelled the bail granted to petitioners herein on 29.11.2002 in Pandarak PS Case No. 64 of 2001 under Sections 147, 148, 149, 302, 307 read with 120B

of the Indian Penal Code and Section 27 of the Arms Act.

2. It would appear from, the order dated 29.11.2002 passed in B.P. No. 640/2002 that both the petitioners were granted bail on the submission that the allegations against them as contained in the FIR were general in nature and that there was no specific allegation of committing murder against them. The further assumption was that in similar circumstances accused Kapil Singh and Navin Singh were granted bail by this Court in Cr. Misc. No. 3241 of 2002 and 32508 of 2001. It would appear from the said order dated 29.11.2002 that in the said circumstances the court below was persuaded to hold that the allegations against the present petitioners was general in nature and in similar situation two of the accused as named above were granted bail. In the circumstances, the court below proceeded to grant bail to the present two petitioners.

3. Subsequently on 13.12.2002 the informant submitted an application for cancellation of bail to the present petitioners. It was contended that the case of the present petitioners was not same or similar to that of the aforesaid accused i.e., Kapil Singh and Navin Singh and, therefore, the grant of bail to the present petitioners for reasons as stated in the, order dated 29.11.2002 was erroneous and contrary to record.

4. A bare perusal of the FIR would reveal that there is a specific allegation against the two petitioners along with one Kedar Singh and two others of being armed with rifles, pistols and automatic weapons which were used by them to fire liberally upon the five persons named in the FIR. It is relevant to state here that it is recorded in the impugned order dated 2.1.2003 that Kedar Singh (mentioned above) has been refused bail by this Court. The FIR thereafter clearly states that Kapil Singh was merely an order giver as per the allegations contained therein. Navin Singh was alleged to be a conspirator only.

5. In the aforesaid facts and circumstances, it is apparent that the case of the petitioners was similar in nature and allegations to that of Kedar Singh who has been refused bail by this Court. The FIR does not bare it out that the allegations against the present petitioners was akin to Navin Singh and Kapil Singh. This was clearly a case of grant of bail ignoring the materials and evidence on record

leading to a perverse order granting bail in a heinous crime of this nature and that too without giving any reason. This would be contrary to law. It would be in the interest of justice that such an order be set aside and the bail be cancelled. The erroneous exercise of power and discretion of the trial Court has to be corrected. The correction or setting aside of an unjustified, illegal or perverse order passed by the lower Court would be different from the concept of cancellation of bail on the ground that the accused had misconducted himself or some new facts requiring such cancellation.

6. Clearly the present would not be a case of cancellation of bail simpliciter for reason of alleged misuse or discovery of subsequent materials. The present would be a case where the bail originally should not have been granted. This power for cancellation as being contrary to record and perverse can be initiated either by the State or by any aggrieved party. In the present case it is the informant who moved the court below for the same which was fully in accordance with law.

In the facts and circumstances of the case and for the reasons as indicated above there is no infirmity in the order dated 2.1.2003 passed in Cr. Misc. No. 1/2002 whereby bail granted to the petitioner earlier has been cancelled.

7. This application is accordingly dismissed.

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