

Abdul Sattar and 5 ors. Vs. State of Bihar and anr.

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SooperKanoon Citation : sooperkanoon.com/514972

Court : Jharkhand

Decided On : Dec-01-2000

Reported in : 2001(49)BLJR615; 2001CriLJ557

Judge : Deoki Nandan Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 107, 116(3), 437(5), 439 and 439(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 147, 295-A, 380, 450, 504 and 506

Appeal No. : Crl. Revision No. 344 of 2000 (R)

Appellant : Abdul Sattar and 5 ors.

Respondent : State of Bihar and anr.

Advocate for Def. : APP and; Prem Chand Tripathy, Adv.

Advocate for Pet/Ap. : S.K. Ughal and; S.K. Sumanto, Advs.

Disposition : Revision allowed

Judgement :

ORDER

Deoki Nandan Prasad, J.

1. This criminal revision application is directed against the order dated 30.9.2000 passed by the Sessions Judge, Giridih in Misc. Petition No. 6/2000, arising out of complaint case No. 1116 of 1999, whereby and whereunder the learned Sessions Judge cancelled the bail of the petitioners which was earlier granted by the Judicial Magistrate, 1st Class, Giridih vide his order dated 25.7.2000 and 26.7.2000.

2. The short facts giving rise to this revision are that the opposite party No. 2 filed a complaint case No. 1116/99, in the Court of learned Chief Judicial Magistrate, Giridih against the petitioners and others for the offence under Sections 147, 450, 120B, 504, 506, 295A and 380 of the Indian Penal Code. It is alleged that the opposite party No. 2 is a Secretary of Tanzim-a-Sufia Ashram situated in Mohalla Baxidih, Giridih and the said Ashram is conducted by local Guru, namely, Sufi Baba Shah Kalader. It is further alleged that the accused persons/petitioners and other entered into the Ashram and shouted slogans against Sufi Baba and also assaulted as well as snatched one H.M.T. Janta old watch and a sum of Rs. 2,000/-from the pocket. On halla, the persons of the locality rushed to the spot and thereafter accused persons fled away.

3. On the basis of the complaint case, the case was initiated against the petitioners and others. The petitioners surrendered before the trial Court and they were granted regular bail after hearing both sides. The opposite party No. 2 filed an application on 17.8.2000 in the Court of the District and Sessions Judge, Giridih under Section 439(2), Cr PC for cancellation of bail of the petitioners which was registered as Misc. Petition No. 6 of 2000. After hearing both sides, the learned Sessions Judge cancelled the bail of the petitioners by the impugned order. Hence, this revision application.

4. A supplementary counter affidavit has been filed on behalf of the opposite party No. 2 claiming therein that on the basis of three Sanhas (Annexure 1 series). The police enquired into the matter and it was submitted before the Sessions Judge as the petitioners were threatening the witnesses. It is also alleged that the accused persons are orthodox Muslim and they have no regard and respect for the religion of others and the accused persons/petitioners are still holding out threats to do

away with the lives and properties of the complainant and the witnesses and as such the learned Sessions Judge has rightly cancelled the bail granted to the accused/petitioners.

5. The learned counsel appearing on behalf of the petitioners submitted that the said complaint case has been filed out of previous enmity as several cases are pending in the Court below. It is further submitted that the complainant had filed an application for cancellation of bail before the Sessions Judge on 17.8.2000 whereas all the Sanhas annexed with the counter affidavit were registered on 30.8.2000, 6.9.2000 and 27.8.2000, which are apparently after thought allegation. No Sanhas was ever filed or registered prior to filing of the application for cancellation of bail and as such the question of threat as alleged either to the complainant or to the witnesses does not arise. It is also submitted that the police enquired into the matter and submitted his report on 25.9.2000, i.e. also after filing of the said application for cancellation of bail. It is further argued that a proceeding under Section 107, Cr PC said to have been initiated against both parties and actually the said enquiry report was made by the police in order to recommend for an interim bond as laid down under Section 116(3) of the Code of Criminal Procedure. It is further argued that the petitioners never threatened either to the complainant or to the witnesses in the instant case, nor they had ever made any pressure on them to withdraw the case, rather all the allegations have been concocted in order to harass the petitioners. It is further argued that the learned Sessions Judge failed to consider about those three Sanhas which were lodged after filing of the application for cancellation of bail and as such the story of threatening by the petitioners becomes falsified as well as the learned Sessions Judge passed the order impugned on assumption and conjecture. The petitioners had already filed a case much prior to the instant case against Sufi Baba and his companion which was registered as Giridih Town P.S. Case No. 151/99.

6. On the other hand, the learned counsel for the opposite party No. 2 contended before me that the learned Sessions Judge has rightly cancelled the bail of the petitioners as they had threatened to the complainant and his witnesses which is evident from the three Sanhas and the enquiry report of the police dated 25.9.2000.

7. Apparently, the instant case was initiated on the basis of the complaint case and the petitioners were granted regular bail by the trial Court as per order dated 25.7.2000 and 26.7.2000. It is also clear that the complainant had filed an application on 17.8.2000 for cancellation of bail under Section 439(2), Cr PC, and all three Sanhas said to have been lodged as regards to threatening were filed after filing of the said petition dated 17.8.2000. No any cogent document coming forward to show about the alleged threat prior to the application of cancellation dated 17.8.2000. Admittedly, there is enmity between the parties from before for which cases are pending. The learned Sessions Judge passed the order impugned dated 30.9.2000 cancelling the bail application of the petitioners mainly based on three Sanhas and the enquiry report of the police. When admittedly those Sanhas were registered after filing of the said application of cancellation of bail, which can be said that it was afterthought to create evidence.

8. It is true that bail can be cancelled either under Section 437(5) or 439(2) of the Code of Criminal Procedure, when the grounds for cancellation are identical, which are:

- (i) The accused misuses his liberty by indulging in similar criminal activities;
- (ii) Interferes with the course of investigation;
- (iii) Attempts to tamper with the evidence or witnesses;
- (iv) Threats witnesses or indulges in similar activities which would hampering 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 or his surety etc.

9. It must be remembered that rejection of bail stand on one footing but cancellation of bail is harsh order because it interferes with the liberty of the individual and it is well settled that the liberty once granted to a person may not be

curtailed unless otherwise circumstances arises. Therefore, the power to take back in custody an accused, who has been enlarged on bail has to be exercised with care and circumspection, but that does not mean that the power though extraordinary in character must not be exercised even if the ends of justice so demand.

10. In the instant case, it is evident that there is no cogent material to show about any threat or pressure for withdrawal of the case before filing of the application for cancellation of bail and whatever evidence or material collected those are after 17.8.2000, the day, the complainant had filed an application before the Sessions Judge for cancellation of bail which makes the story of threat or tampering with the evidence falsified and is afterthought.

10. Having regard to the facts and circumstances of the case coupled with the material available on the record, I find that the impugned order suffers from infirmity, which is fit to be set aside. Thus, I find merit in the application, which is allowed. The order dated 30.9.2000 is hereby, set aside.

11. It is made clear that the Court below is at liberty to exercise the power of cancellation of bail of the accused/petitioners at any point of time, if the ends of justice so demand.

12. Revision allowed.