

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1939 of 2022

Diksha Kumari @ Disksha Kumari, aged 28 years, wife of Amit Kumar Rajak and daughter of Ravinder Rajak, resident of Girls School Road, Jugsalai, P.O. & P.S. Jugsalai, Town Jamshedpur, District Singhbhum East- 831006

... Petitioner

Versus

1. The State of Jharkhand

2. Amit Kumar Rajak @ Amit Kumar, son of Jogendra Rajak @ Jogender Rajak @ Yogendra Rajak, resident of 5, Manifit, Dhobi Line, Near Bansal Company, P.O. Burmamines, P.S. Telco, Town Jamshedpur, District East Singhbhum- 831004

... Opposite Parties

For the Petitioner : Ms. Prachi Pradipti, Advocate
For the State : Ms. Nehala Sharmin, Spl. P.P.
For the O.P. No.2 : Mr. Sourav Kumar, Advocate
Mr. P. S. Bajaj, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 439 (2) of the Code of Criminal Procedure with a prayer to set aside the order dated 02.05.2022 passed by the learned Sessions Judge, Jamshedpur at East Singhbhum in Criminal Revision No.11 of 2022 by which the learned Sessions Judge dismissed the Criminal Revision which was directed against the order dated 30.11.2021 passed by the learned Judicial Magistrate-1st Class, Jamshedpur whereby the learned Judicial Magistrate-1st Class, Jamshedpur rejected Misc. Criminal Application No.6961

of 2021 arising out of Telco P.S. Case No.110 of 2021 corresponding to G.R. No.2146 of 2021 and the said case is now pending in the court of learned Judicial Magistrate-1st Class, Jamshedpur.

3. The brief fact of the case is that the opposite party No.2 was admitted to bail on 05.08.2021 on the basis of compromise between the parties. There was no condition in the bail order that if the accused does not comply with the terms and conditions of the agreement, his bail will be cancelled. A petition was filed on behalf of the informant with the prayer for cancellation of bail. The learned Assistant Public Prosecutor who was appearing in the court of the learned Judicial Magistrate-1st Class, Jamshedpur submitted that no private lawyer has any right to file a petition for cancellation of bail. Hence, the learned Magistrate rejected the prayer for cancellation of bail of the opposite party No.2. The said order was challenged in the Criminal Revision. As already indicated above.; the learned Sessions Judge considered that as nothing has been brought by the petitioner on record to show that opposite parties have misused their liberty by indulging in similar criminal activity or interfering with the course of investigation or attempting to tamper with the evidence of witnesses or threatening the witnesses or indulging in similar activities which would hamper smooth investigation or there is likelihood of his fleeing to another country or attempting to make themselves scarce by going underground or becoming unavailable, hence, the learned Judicial Magistrate has rightly rejected the prayer for cancellation of the bail and dismissed the Criminal Revision.

4. Learned counsel for the petitioner submits that as the opposite party No.2 has refused to take the petitioner back to his matrimonial house, hence,

the bail granted to the opposite party No.2 ought to have been cancelled and the same having not been cancelled, the learned Sessions Judge ought to have allowed the Criminal Revision. In support of her contention, learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Bhuri Bai vs. State of Madhya Pradesh** reported in 2022 SCC OnLine SC 1779 paragraph-20 of which reads as under:-

"20. It had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation of the conditions imposed on her. We are impelled to observe that power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the Trial Court in its order granting bail."

hence, it is submitted that the prayer as made in this Criminal Miscellaneous Petition be allowed.

5. Learned Spl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioner for cancellation of the bail of the opposite party no.2. Learned counsel for the opposite party No.2 relies upon the judgment of this Court in the case of **Ajay Kumar @ Ajay Gope vs. The State of Jharkhand** passed in Cr.M.P. No.2116 of 2018 dated 16th of June, 2023 wherein this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Pritpal Singh Vs. State of Bihar** reported in 2001 SCC OnLine SC 123 paragraphs-4 & 5 of which read as under:-

4. *"The dispute raised in the case relates to eviction of the appellant who is the tenant from the premises of which the respondent is the owner. Previously, there was a compromise between the parties in which it was agreed inter alia that the appellant will pay certain amount to the respondent and vacate the premises by the time stipulated. On the allegation that the appellant has failed to comply with the terms of the compromise by not vacating the premises in question within the time stipulated, the petition for cancellation of bail was filed. It is stated by learned counsel for the appellant that neither was any averment made in the petition about misuse of liberty granted to the appellant nor was any difficulty alleged to have been faced by the prosecution in the case on the ground of the appellant being at large.*

5. *The Magistrate cancelled the bail granted to the appellant solely on the ground that the terms of the compromise had not been complied with. To say the least, the ground on which the petition for cancellation of bail was made and was granted is wholly untenable. It is our view that the order if allowed to stand will result in abuse of the process of court. The High Court clearly erred in maintaining the order. Therefore, the order passed by the Magistrate cancelling the bail and the order of the High Court confirming the said order are set aside. The bail order is restored. The appeal is allowed."* (Emphasis supplied)

and submits that this Court in the case of **Jyotshna Sharma @ Jyotsana**

Anand vs. The State of Jharkhand & Others passed in Cr.M.P. No.2499 of 2021

dated 01.04.2022 enumerated the following grounds illustratively though not exhaustively; where bail granted to an accused can be cancelled:-

- (i) *by indulging in similar criminal activity,*
- (ii) *interfering with the course of investigation,*
- (iii) *attempted to tamper with evidence or witnesses,*
- (iv) *threaten witnesses or indulges in similar activities which would hamper smooth investigation,*
- (v) *there is likelihood of their fleeing to another country,*
- (vi) *attempted to make themselves scarce by going underground or becoming unavailable to the investigating agency,*
- (vii) *attempted to place themselves beyond the reach of his surety, etc.*

and submits that it is a settled principle of law that solely the non-compliance of the terms and conditions of compromise, cannot be a ground for cancellation of bail. Hence, it is submitted that both the courts below have not

committed any illegality in not acceding to the prayer of the petitioner to cancel the bail of the opposite party No.2.

6. Learned counsel for the opposite party No.2 next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Dolat Ram & Others vs. State of Haryana** reported in (1995) 1 SCC 349 paragraph-4 of which reads as under:-

"4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted." (Emphasis supplied)

7. Learned counsel for the opposite party No.2 also relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Biman Chatterjee vs. Sanchita Chatterjee & Another** reported in (2004) 3 SCC 388 paragraphs-6 and 7 of which read as under:-

"6. The learned counsel appearing for the respondent, however, contended that the very basis of the grant of bail originally was on an assurance given by the appellant that he would compromise and would keep his wife with him and he having failed to fulfil the said promise made to the court, the High Court was justified in cancelling the bail because the foundation for the grant of bail was the promise made by the appellant.

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-fulfilment 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."

8. Learned counsel for the opposite party No.2 also relies upon the judgment of the co-ordinate Bench of this Court in the case of **Birendra Lohra vs. The State of Jharkhand & Another** passed in the Cr.M.P.3025 of 2021 dated 04.08.2022 and submits that this Cr.M.P., being without any merit, be dismissed.

9. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that as has been held by the Hon'ble Supreme Court of India in the case of **Pritpal Singh vs. State of Bihar (Supra)**, by now it is a settled principle of law that the bail granted to an accused cannot be cancelled solely on the ground that the terms of the compromise had not been complied with. As already indicated above there is no allegation against the petitioner having committed any of the acts, deeds or things which could be a ground for cancellation of bail already granted to him as enumerated by this Court in the case of **Jyotshna**

Sharma @ Jyotsana Anand vs. The State of Jharkhand & Others (supra). Bail once granted to an accused person cannot be cancelled unless he violates the condition of the bail or does any act, deed or thing to impede a fair trial of the case concerned. It is needless to mention that the petitioner seeks cancellation of the bail of the opposite party No.2 on the sole ground that he has failed to comply with the terms and conditions of the agreement entered into between the parties.

10. Under such circumstances, this Court has no hesitation on holding that the learned Sessions Judge, Jamshedpur has not committed any illegality in dismissing the Criminal Revision No.11 of 2022. Therefore, there is no justifiable reason for this Court to interfere with the said order.

11. Accordingly, this Criminal Miscellaneous Petition, being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 24th of April, 2024
AFR/ Animesh-Saroj