

CASE NO.:
Appeal (crl.) 529 of 2005

PETITIONER:
Nityanand Rai

RESPONDENT:
State of Bihar & Anr.

DATE OF JUDGMENT: 11/04/2005

BENCH:
N. SANTOSH HEGDE & S.B. SINHA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl) No. 3280 of 2004)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

By this appeal the appellant challenges an order of the High Court of Judicature at Patna made in Criminal Miscellaneous No. 29702 of 2003 dated 19-5-2004 by which order the High Court cancelled the bail granted to the appellant earlier by itself on 19-9-2003. Basic facts necessary for the disposal of this appeal are as follows :-

It is stated by the prosecution that the petitioner is an accused in Hajipur (T) P.S. Case No. 71 of 1993 which was registered U/s 302, 307, 120 B of the I.P.C. and Section 27 of the Arms Act on the basis of a complaint given by one Raj Kishore Rai on 6-3-1993 wherein it is stated that the appellant along with some others had murdered his brother Ram Davan Rai. Pursuant to the said complaint so far as the present appellant is concerned a charge-sheet was filed only on 11th July, 2003 nearly 10 years after the date of alleged incidence. On coming to know of the filing of such a charge-sheet the appellant moved the Sessions Court at Vaishali for grant of anticipatory bail which was rejected by the Sessions Court as per its order dated 30th of May, 2003. And being aggrieved by the said order of the Sessions Court, the petitioner preferred an anticipatory bail application before the High Court of Patna which also came to be rejected on 17-7-2003 directing the appellant to surrender and seek regular bail. As per the said direction, it is stated that the appellant surrendered before the C.J.M., Vaishali at Hajipur on 21-7-2003 and moved a regular bail application which was rejected by the learned Sessions Judge on 7-8-2003. Against the said order of rejection of regular bail, the appellant preferred a Criminal Miscellaneous Petition before the High Court of Patna which by its order dated 19th of September, 2003 granted the bail to the petitioner subject to his furnishing a bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the CJM, Hajipur.

However, even before the appellant could be released from custody pursuant to the bail granted by the High Court the complainant in the case moved an application before the High Court of Patna in Crl. Misc. No. 29702 of 2003 seeking cancellation of the bail granted to the appellant alleging that the appellant was an influential man and had

been manipulating the investigation for the past ten years and was ultimately brought to trial only because of the change in the hierarchy of police i.e. when an impartial investigating agency came into picture. It was also urged that the appellant had suppressed material facts while obtaining the bail from the High Court in as much as the appellant did not disclose that in the connected criminal trial the co-accused have been found guilty of an offence under Section 302 etc. and that since the date of the appellant's surrender pursuant to the direction issued by the High Court on 17th of July, 2003, the appellant and his musclemen have been threatening the witnesses and preventing the complainant from pursuing the case against the appellant. It was also stated in the said application for cancellation of bail that two complaints have already been filed in the Sadar Police Station, Hajipur on 10-10-2003 and 13-10-2003 alleging a threat by the appellant and his henchmen.

The High Court by the impugned order allowed the said application for cancellation of bail filed by the complainant on the ground that there was a threat to the prosecution witnesses by the appellant and his musclemen and that the appellant had not brought to the notice of the court that in the connected trial the two accused have already been convicted by the trial court and were sentenced to life imprisonment. The court in the impugned order also noticed that in the order granting bail it unfortunately failed to notice that the appellant was one of the two accused who were described as the active assailants.

Challenging the above order of cancellation of bail in this appeal the appellant contends that the High Court while canceling the bail has not borne in mind the well settled principles of law in regard to cancellation of bail and has approached the case as if it was hearing a bail application for the first time. It is also contended that the basis of the alleged threat which was taken note of by the High Court, i.e. the two complaints filed by the complainant dated 10-10-2003 and 13-10-2003 in Hajipur Police Station could not have been genuine in as much as on the date when these two complaints were filed, the appellant was, as a matter of fact, in custody and was only released pursuant to the bail granted by the High Court on 15-11-2003 nearly a month after the two alleged complaints of threat were lodged, hence, no reliance could have been placed on such a pre planned complaint. It is also submitted on behalf of the appellant that though the appellant was included in the First Information Report filed in the year 1993, the investigating agency could not find any material against the appellant, hence no charge-sheet was filed against the appellant for nearly 10 years until the same was done on 11-7-2003, this too because of the fact that the investigating Police officer was annoyed with the appellant because of a privilege motion brought against the said police officer in the assembly at the instance of the appellant as a Member of the Legislative Assembly, in which the said police officer had to tender an apology.

Learned counsel for the State as well as for the complainant in rebuttal submitted that the appellant being a very influential person has managed with the investigating agency to keep himself out of the trial all these years and because of the efforts of a good police officer he has at last been charged for a heinous crime and if he is let out on bail there is every possibility of his interfering with the fair trial, therefore, the High Court was justified in canceling the bail. It is also pointed out that since the Sessions court in the connected trial has convicted two persons for life imprisonment and in the evidence adduced in that trial found material against the appellant of his involvement in the crime. This is not a fit case in which the appellant should be granted bail.

Having considered the argument advanced on behalf of the appellant and respondent, we think the High Court was not justified in considering the application for cancellation of bail as if it was an

application for grant of bail. Consideration of an application for grant of bail stands on a different footing than one for cancellation of bail. Grounds for cancellation of bail should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail, such is not the case made out in application for cancellation of bail. Of course, the complainant had alleged in the petition for cancellation of bail that the witnesses in the case had received threats from the appellant and his henchmen, this is supported by two complaints filed by him before the police dated 10-10-2003 and 13-10-2003. But as contended by the learned counsel for the appellant these two complaints cannot be accepted ex-facie because on the dates mentioned in those complaints the appellant was still in jail and was not yet released on bail though the High Court had granted him bail, therefore, the question of the appellant administering threats to the witnesses as alleged by the complainant cannot be accepted. The next ground on which the High Court considered it appropriate to cancel the bail is the fact that the appellant had not brought to its notice that in the connected trial, two of the co-accused had been convicted for an offence punishable under Section 302. This fact has been denied by the appellant before us by pointing out from his bail application wherein para 10 he had specifically mentioned about the conviction of the two accused persons. Be that as it may, it was the duty of the prosecution to have brought this fact to the notice of the High Court and the appellant cannot be held guilty of suppression of that fact. The 3rd ground on which the bail was cancelled is an error committed by the court itself in not noticing the fact that in the judgment of the trial court in the connected matter the trial court found material as to the participation of the accused in the offence. We are of the opinion that this also cannot be a ground for canceling the bail already granted which was not challenged by any person be it the prosecution or the complainant. The factum that the learned Sessions Judge in the judgment convicting the two co-accused expressed certain views as to the involvement of the appellant in this crime cannot be a ground to cancel the bail. As contended by the learned counsel for the appellant if really there was such material against the appellant before the Sessions court in that trial the procedure contemplated under Section 319 of Cr.PC could have been invoked either by the complainant or the court itself which having not been done, at this stage that observation of the learned Sessions Judge or the evidence given by the witnesses in that trial in which appellant was not an accused can be construed as material sufficient to cancel the bail.

Learned counsel for the respondent then pointed out that the appellant was absconding since the date of incident, hence, investigation as against him could not be concluded for the last many years, and if he is released there is a possibility of he again absconding. This argument, in our opinion, runs counter to the material on record. Since the filing of the complaint in the year 1993, 7 earlier charge-sheets were filed against various accused mentioned in the complaint and in all these charge-sheets, last of which was on 31.3.2003, the appellant's name was shown in Col.No.2 as an accused against whom investigation was still being conducted. In the said charge-sheets, he was not shown as an absconder. That apart there is material on record to show that the appellant has been elected to the Legislative Assembly in the year 2000 and again in the year 2005, and has been attending the Assembly proceedings till he surrendered in the year 2003. If that be so, the allegation of abscondence in past or the likelihood of abscondence in future cannot be accepted. As a matter of fact that for nearly 10 years and after filing 7 charge-sheets, the investigation did not find sufficient material to include the appellant as an accused in those 7 charge-sheets is an indicator of the fact that for all these years the investigation agency could not find material against the appellant.

Therefore, we are satisfied that the cancellation of bail by the

impugned order, by the High Court is unsustainable. However, taking into consideration the apprehension of the complainant that the appellant by using his power as member of the Legislative Assembly might interfere in the trial or try to influence the witnesses in the case, we feel it appropriate to direct the appellant not to enter the territorial jurisdiction of Hajipur Sub Division of District Vaishali except for the purpose of attending the trial. If for any reason it becomes imperative for the appellant to visit Hajipur then he shall do so after informing the investigating agency in the case. This condition shall be in addition to the conditions imposed by the High Court for granting bail as per its order dated 19-9-2003.

For the reasons stated above, we allow this appeal, set aside the impugned order of the High Court and restore that of the High Court dated 19-9-2003 granting bail to the appellant.

We make it clear that whatever conclusion we have expressed in this order of ours is purely prima facie and for the limited purpose of finding out whether the impugned order of the High Court is sustainable or not. The trial court shall not be in any manner be influenced by these observations of ours or that of the High Court made in the course of the order granting bail or order canceling bail. Appeal allowed.