

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60007 of 2025

Arising Out of PS. Case No.-105 Year-2022 Thana- BODHGAYA District- Gaya

Chandan Kumar, son of Shivnandan Mahto, resident of Mohalla - Bataspur
PS -Bodhgaya, District – Gaya.

... .. Petitioner

Versus

1. The State of Bihar
2. Amit Kumar, son of Ram Niwas Sharma @ Ram Bilas Sharma, resident of village – Urail, P.S. - Bodhgaya, Dist- Gaya

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Shivendra Prasad, Advocate
For the State	:	Mr. Tarun Prasad Mandal, APP
For the Opp. Party No. 2:	:	Mr. Rabindra Kumar Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.AV. JUDGMENT

Date : 12-10-2026

The present application has been filed by the petitioner under Section 483(3) of the *Bharatiya Nagarik Suraksha Sanhita, 2023*, praying for cancellation of the regular bail granted to the opposite party no.2, namely, Amit Kumar, by the learned Additional Sessions Judge-XIX, Gaya, *vide* order dated 15.01.2025 passed in Sessions Trial No.848 of 2024, arising out of Bodhgaya P.S. Case No.105 of 2022, registered for the offences punishable under Section 304B/34 of the Indian Penal Code. The principal ground urged is that the said order was obtained by categorically misrepresenting before the Court below the order dated 03.10.2024 passed by a Co-ordinate Bench of this Court in Criminal Miscellaneous No.58263 of 2024, whereby the prayer for bail of the opposite party no.2 had



been rejected by the aforesaid Co-ordinate bench of this Court. It has also been urged on behalf of the petitioner that the said order has been passed merely three months after the said rejection, upon the very same material and without any change in the fact-situation, in disregard of judicial discipline and ignoring the relevant materials on record.

2. The prosecution case, as set out in the written application of the informant, Rajendra Prasad, on the basis whereof Bodhgaya P.S. Case No.105 of 2022 came to be registered on 23.02.2022, is that his daughter, Rinki Kumari, was married to the petitioner, Chandan Kumar, in the year 2018. It is alleged that soon after the marriage, the husband and the in-laws of the deceased began torturing her for additional dowry and cash, on account whereof she came away to her parental home on several occasions. It has further been alleged that about 15 to 20 days prior to the occurrence, the informant gave a sum of Rs.25,000/- and sent his daughter back to her matrimonial home, but her husband and in-laws remained dissatisfied and continued the maltreatment. On 22.02.2022, at about 4:30 P.M., the informant received information over the telephone that his daughter had committed suicide by hanging. On reaching the matrimonial home, the informant found the dead body of his



daughter hanging from an iron pipe, and it is the belief expressed in the F.I.R. that the deceased was killed for demand of dowry by her husband and her in-laws, and the dead body of the deceased was thereafter hanged to lend the occurrence the colour of suicide.

3. It is noted that the petitioner is the husband of the deceased and himself a co-accused in Bodhgaya P.S. Case No.105 of 2022. The opposite party no.2 is not named in the F.I.R., his name has surfaced during the course of the investigation on the basis of his mobile number, which stands registered in the name of the opposite party no.2, and the call detail records of the said number and of the mobile number of the deceased revealed that the deceased was in constant touch with the opposite party no.2 and there were consistent conversations and chats between them.

4. The prayer for regular bail of the opposite party no.2 was first rejected on merits by the learned Additional District & Sessions Judge-II, Gaya, *vide* order dated 06.07.2024 passed in B.P. No.1282 of 2024, upon the finding that the material collected during the investigation, including the call detail records and paragraph no.80 of the case diary, disclosed sufficient incriminating material against him. The opposite party



no.2 thereafter moved this Court, and a Co-ordinate Bench of this Court, *vide* order dated 03.10.2024 passed in Criminal Miscellaneous No.58263 of 2024, rejected his prayer for bail in the following terms:-

- “5. *Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner and submitted that from the perusal of the para no.137 of the case diary, the mobile number xxxxxxxx245 is registered in the name of the petitioner, Amit Kumar. As per para 87, 88 and 89, there was extra marital love affair between the petitioner and the deceased (Rinki Devi) who used to talk with him. The said Rinki Devi (deceased) committed suicide by hanging due to dispute with the petitioner which is apparent from the C.D.R. of the mobiles numbers of the deceased and the petitioner. Further, from perusal of the para 80 of the case diary, it transpires that the petitioner threatened and abused the deceased. There were several chattings between the petitioner and the deceased.*
6. *Considering the aforesaid facts and circumstances of the case as well as the specific allegation against the petitioner, I am not inclined to enlarge the petitioner above-named on bail.*
7. *The application stands rejected.”*

5. It deserves to be noticed, at the very outset, that the order dated 03.10.2024 is a rejection *simpliciter*, on the merits of the accusation. It contains no observation, no liberty and no direction, express or implied, that the prayer for bail of



the opposite party no.2 may be renewed, or may be favourably considered by the Court of Session, after cognizance and commitment of the case. A fortnight thereafter, the petitioner, who is the husband of the deceased, was granted regular bail by the same Co-ordinate Bench, *vide* order dated 18.10.2024 passed in Criminal Miscellaneous No.67557 of 2024, and, as the said order itself discloses, the submissions on his behalf rested substantially upon the very case-diary material implicating the present opposite party no.2, namely, paragraph nos.80, 87, 88 and 89 of the case diary and the call detail records.

6. The opposite party no.2 thereafter renewed his prayer for bail before the learned Trial Court, and, by the impugned order dated 15.01.2025, the learned Additional Sessions Judge-XIX, Gaya allowed the same.

7. It may be emphasized that the impugned order itself categorically records, with specific reference to paragraph no.2 of the bail application of the opposite party no.2, the statement made therein to the effect that, as per the order dated 03.10.2024 passed in Criminal Miscellaneous No.58263 of 2024, the bail application of the applicant may be allowed by the Court of Session after cognizance and commitment of the case. Upon the said premise, the Court below entertained the



bail application of the opposite party no.2 and allowed the same *vide* the impugned order dated 15.01.2025. The relevant paragraphs of the impugned order read as under:-

“जमानत आवेदन के कंडिका-2 में कहा है कि आवेदक / अभियुक्त की ओर से माननीय उच्च न्यायालय, पटना में किमिनल मिसलेनियस नम्बर 58263/2024 दाखिल किया गया था जो 03.10.24 को ओदशानुसार सांज्ञान एवं दौरा सुपुदर्गी के बाद सत्र न्यायालय द्वारा आवेदक / अभियुक्त का जमानत आवेदन स्वीकृत किया जाये। जमानत आवेदन के पारा 3 में कहा है कि आवेदक / अभियुक्त कहा है कि काण्ड दैनिकी के पारा 180 में आवेदक का कोई अपराधिक इतिहास नहीं है।

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उभय पक्षों को सुना एवं अभिलेख का अवलोकन किया। अभिलेख के अवलोकन से विदित होता है कि सह-अभियुक्त चन्दन कुमार का जमानत माननीय उच्च न्यायालय से किमिनल मिसलेनियस नं० 67597/24 में हो चुका है। आवेदक अमित कुमार तथा सह अभियुक्त चन्दन कुमार का केस समान प्रकृति का है। काण्ड दैनिकी के पारा 87, 88, 89 को देखने से पता चलता है कि मृतिका बराबर किसी अन्य व्यक्ति से बात चीत करती रहती थी तथा किसी अन्य व्यक्ति से उसका प्रेम-प्रसंग चल रहा था। इस साक्षी ने यह भी कहा है कि प्रेम-प्रसंग के कारण मृतिका ने फांसी लगा लिया है। काण्ड दैनिकी के पारा 92 में आवेदक का कोई अपराधिक इतिहास नहीं है काण्ड दैनिकी के पारा 97 सी०डी०आर० तकनीकी सेल, वरीय पुलिस अधिक्षक गया के अवलोकन से ज्ञात होता है कि मृतिका रिंकी कुमारी किसी दुसरे व्यक्ति से 39 सेकेण्ड बात-चीत करने के बाद फांसी लगाने की घटना घटी है काण्ड दैनिकी के पारा 100 का अवलोकन किया तो पाया कि मृतिका अपने पति चन्दन कुमार से बात करने के बाद गुड बाय हमेशा के लिए कहा। पार्थी मृतिका के घर-परिवार से संबंधित नहीं है और न ही उसके घर आता-जाता था। प्रस्तुत काण्ड में नामित अन्य



अभियुक्त जमानत पर है। प्रस्तुत काण्ड दहेज मृत्यु के अपराध से संबंधित है जिसमें मृतिका के पति, सास, ससूर, एवं देवर जमानत पर है। यह काण्ड इस न्यायालय में दौरा-सुपूद होने के उपरान्त प्राप्त हुआ है। प्रार्थी कारा में काराधीन है।

8. The learned counsel for the petitioner has submitted that the impugned order is unsustainable in the eyes of law, having been obtained by the opposite party no.2 upon a patent deception. It is submitted that the statement in paragraph no.2 of the bail application, that this Court had, by its order dated 03.10.2024, contemplated the grant of bail after cognizance and commitment, is false and misleading statement by the opposite party no.2 in the Court below, which is evident from the order dated 03.10.2024 itself.

9. The learned counsel for the petitioner has further submitted that the learned Trial Court could not have granted bail to the opposite party no.2 merely three months after the rejection of his prayer by this Court, upon the very same material and without any substantial change in the fact-situation being either pleaded or recorded, and that the impugned order, which does not even notice the reasons in the order of this Court dated 03.10.2024 which impelled the aforesaid Co-ordinate bench of this Court to reject the bail application, amounts to the learned Trial Court sitting in review over the order of this Court, in the teeth of judicial discipline and propriety. *Lastly*, it is



submitted that the trial has commenced and the opposite party no.2 is attempting to influence the witnesses. Reliance has been placed upon the decisions of the Hon'ble Supreme Court in *Kusha Duruka v. State of Odisha*, reported as (2024) 4 SCC 432, *Neeru Yadav v. State of U.P. & Anr.*, reported as (2014) 16 SCC 508, *Puran v. Rambilas & Anr.*, reported as (2001) 6 SCC 338, *Vipan Kumar Dhir v. State of Punjab & Anr.*, reported as (2021) 15 SCC 518, *Deepak Yadav v. State of U.P. & Anr.*, reported as (2022) 8 SCC 559 and *State of Maharashtra v. Captain Buddhikota Subha Rao*, reported as 1989 Supp (2) SCC 605.

10. The learned APP for the State has not been able to dispute that the order dated 03.10.2024 passed by the Co-ordinate bench of this Court in Criminal Miscellaneous No.58263 of 2024 contains no such direction, observation or liberty as was projected in paragraph no.2 of the bail application of the opposite party no.2 before the Court below based on which the impugned order has been passed.

11. *Per contra*, the learned counsel for the opposite party no.2 has opposed the present application. He has submitted that the considerations governing the cancellation of bail stand on a footing entirely different from those governing



its grant, and that bail once granted is not to be cancelled in a routine or mechanical manner in the absence of cogent supervening circumstances. It is emphasised that ever since his enlargement on 15.01.2025, the opposite party no.2 has never misused the privilege of bail, has been regularly attending the Court below, and no complaint of tampering with the evidence or of influencing the witnesses has been lodged before any authority. It is submitted that the bail was granted upon genuine changed circumstances, namely, the commitment of the case to the Court of Session, the grant of bail to the co-accused, petitioner namely, Chandan Kumar by this Court on 18.10.2024, and the circumstance that every named accused of the case stands enlarged on bail. It has also been submitted that the opposite party no.2 is not named in the F.I.R. and now stands charged only under Section 306 of the Indian Penal Code. The learned counsel for the opposite party no.2 also draws the attention of this Court to the conversation of 39 seconds recorded in paragraph no.97 of the case diary which is said to be of 17:20:34 hours on 22.02.2022, i.e., after the death of the deceased had already been reported at about 4:30 P.M., and could not, therefore, have been a conversation with the deceased. It is *lastly* submitted that the present application, filed



by a co-accused whose own defence at the trial coincides with the accusation now levelled, is actuated by an oblique motive. Reliance has been placed upon the decisions in *Dolat Ram & Ors. v. State of Haryana*, reported as (1995) 1 SCC 349, *Himanshu Sharma v. State of Madhya Pradesh*, reported as (2024) 4 SCC 222 and *Abdul Basit @ Raju & Ors. v. Mohd. Abdul Kadir Chaudhary & Anr.*, reported as (2014) 10 SCC 754.

12. I have heard the learned counsel for the parties and considered their submissions. I have also perused the materials available on record, including the impugned order dated 15.01.2025 and the order of the Co-ordinate Bench dated 03.10.2024.

13. Upon a conspectus of the materials on record, the moot question that arises for consideration is whether the impugned order dated 15.01.2025, passed merely three months after the rejection of the prayer for bail of the opposite party no.2 by this Court, was obtained upon a misrepresentation of the order of this Court dated 03.10.2024, and whether the same has been passed upon the very same material and without any change in the fact-situation, in disregard of judicial discipline, so as to warrant its annulment



by this Court.

14. Before advertng to the rival contentions, it would be apposite to notice the settled law governing the subject. The Hon'ble Supreme Court, in the case of ***State of Karnataka v. Sri Darshan etc.***, reported as ***2025 SCC OnLine SC 1702***, has exhaustively surveyed the entire jurisprudence and has delineated two distinct categories, namely, the annulment of an order granting bail on account of a legal infirmity existing at its very inception, and the cancellation of bail on account of post-grant misconduct or supervening circumstances, holding, inter alia, as under:-

“38.4. An order that overlooks material evidence or proceeds on an erroneous premise is perverse, and such perversity forms a valid ground for cancellation or setting aside of bail.”

15. The Hon'ble Supreme Court in ***Neeru Yadav (supra)***, had held as follows:-

"12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and



perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."

(emphasis supplied)

16. The illustrative circumstances in which an order granting bail may itself be set aside were enumerated in ***Deepak Yadav (supra)***, and among them stand the circumstances where the Court granting bail takes into account irrelevant material of a substantial nature while ignoring the relevant material on record, where bail has been granted on untenable grounds, and where the order granting bail is whimsical, capricious and perverse in the facts of the given case. In the case of ***Puran (supra)*** and ***Vipan Kumar Dhir (supra)***, it has been held by the Hon'ble Supreme Court that bail can be cancelled where the order was obtained by suppression or misrepresentation of material facts, without insisting upon



any supervening misconduct.

17. The law governing the grant of bail by a subordinate Court after the rejection of the prayer for bail of the same accused by the superior Court is equally no longer *res integra*. As long ago as in *State of Maharashtra v. Captain Buddhikota Subha Rao (supra)*, the Hon'ble Supreme Court held that judicial discipline, propriety and comity demand that an order enlarging an accused on bail, after the rejection of his earlier prayers, must record a substantial change in the fact-situation, one which has a direct impact on the earlier decision and is not merely cosmetic, for, otherwise, the subsequent order amounts to virtually overruling the earlier decision without there being any change in the fact-situation. In the case of *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr.*, reported as (2005) 2 SCC 42, it was held that although a successive bail application is maintainable, the Court entertaining it is bound to consider the reasons and grounds on which the earlier prayer was rejected, and only fresh grounds or new circumstances can persuade it to take a view different from the one taken earlier. In the case of *Bimla Devi v. State of Bihar & Ors.*, reported as (1994) 2 SCC 8, where a Magistrate had granted provisional bail despite the rejection of two successive



bail applications by the High Court, the Hon'ble Supreme Court observed as under:-

“2. In view of the fact that the Judicial Magistrate at a later stage has himself cancelled the bail, it is not necessary for us to pass any order with regard to the petitioner’s prayer for cancellation of bail but the disturbing feature of the case is that though two successive applications of the accused for grant of bail were rejected by the High Court yet the learned Magistrate granted provisional bail. The course adopted by the learned Magistrate is not only contrary to settled principles of judicial discipline and propriety but also contrary to the statutory provisions. (See in this connection Shahzad Hasan Khan case (1987) 2 SCC 684)...”

18. This Court has recently applied the same principles, while setting aside orders of bail granted by the Trial Court after the rejection of the prayer by this Court, in the case of ***Asha Kumari vs. State of Bihar & Anr. (Criminal Miscellaneous No.34622 of 2026, decided on 10.07.2026)*** and ***Birendra Yadav v. State of Bihar & Anr.*** reported as ***2026 SCC OnLine Pat 6267***. Tested on the anvil of the aforesaid principles, the impugned order, in the considered opinion of this Court, cannot be sustained, for more reasons than one.

19. In the first place, the impugned order stands



vitiated by the clear misrepresentation upon which it was obtained, and the misrepresentation stands established from the impugned order itself, without the aid of any extrinsic material. The impugned order categorically records, with specific reference to paragraph no.2 of the bail application, the submission of the opposite party no.2 that, as per the order of this Court dated 03.10.2024, his bail application may be allowed after cognizance and commitment of the case. The order dated 03.10.2024, extracted hereinabove, is, however, a rejection *simpliciter* of the prayer for bail. From the perusal of the aforesaid order dated 03.10.2024 passed by the Co-ordinate Bench of this Court, it is patently clear that it contains no such direction, no such observation and no such liberty, express or implied. The representation was, therefore, clearly false on the very face of the record, and its falsity was within the special knowledge of the opposite party no.2, at whose instance the order dated 03.10.2024 had been passed. It was this false projection of a non-existent direction of this Court which furnished the very gateway for the entertainment of the successive application merely three months after the rejection of bail. The Court below, for its part, took no pains to verify the statement from the order of this Court available on the record.



20. The law visits such conduct with the severest consequence. In the case of ***S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.***, reported as ***(1994) 1 SCC 1***, the Hon'ble Supreme Court held that a judgment or order obtained by withholding or misrepresenting a material fact is one obtained by fraud, that fraud avoids all judicial acts, ecclesiastical or temporal. Again in the case of ***A.V. Papayya Sastry & Ors. v. Government of A.P. & Ors.***, reported as ***(2007) 4 SCC 221***, it was held that a judgment or order obtained by fraud is a nullity and *non est* in the eye of law, and may be challenged at any time, in any Court, even in collateral proceedings. In the case of ***Kusha Duruka (supra)***, the same principles were applied to bail proceedings, and it was held that the suppression of material facts from the Court of law is actually playing fraud with the Court.

21. A false representation as to the purport of an order of the superior Court, made to the subordinate Court in order to procure bail, is, in the considered opinion of this Court, among the gravest species of such fraud, for it does not merely withhold a material fact from the Court below rather it puts into the mouth of this Court words which this Court never uttered, and thereby procures from the subordinate Court, in the



supposed name of this Court, that which this Court had itself declined. An order so procured is vitiated at its very inception. Its recall or cancellation is not a review, but a declaration that the order was obtained by fraud and never had a legal existence, as held by a Co-ordinate Bench of this Court in ***Mohd. Rustam @ Minu v. State of Bihar***, reported as ***2017 SCC OnLine Pat 3929***, following ***A.V. Papayya Sastry (supra)*** and ***Abdul Basit (supra)***.

22. In the second place, the impugned order has been passed in plain disregard of judicial discipline. The prayer for bail of the opposite party no.2 had been rejected on merits by a Co-ordinate Bench of this Court merely three months earlier, and the order of this Court was on the record of the case, yet the impugned order nowhere adverts to, deals with or distinguishes the said rejection, which is noticed only through the recital of the bail application's own paragraphs, and that too in a falsified form. Neither did the opposite party no.2 plead, nor has the learned Trial Court recorded, any change in the fact-situation intervening between 03.10.2024 and 15.01.2025 having a direct impact upon the decision of this Court, as mandated by the law laid down in the case of ***Captain Buddhikota Subha Rao (supra)***. The commitment of the case to



the Court of Session is a routine procedural progression which adds nothing to the material bearing upon the accusation against the opposite party no.2 and the grant of bail to the co-accused persons could furnish no ground of parity, for the reasons recorded hereinafter. No new material, in fact, is even referred to in the impugned order. Pertinently, every paragraph of the case diary upon which it rests, namely, paragraph nos.87, 88, 89, 92, 97 and 100, was already on the record when this Court declined bail on 03.10.2024.

23. What the impugned order amounts to, therefore, is the grant by a subordinate Court, upon the very same material, of the very relief which the superior Court had categorically declined upon that material. Such a course is impermissible in the scheme of the administration of criminal justice. A subordinate Court cannot sit in appeal over, or re-appreciate afresh, the material which the superior Court has already weighed and found insufficient or meritless. If the subordinate Courts were free, upon an unchanged record, to re-evaluate the same material and reach the opposite conclusion, the rejection of bail by the superior Court would be reduced to a dead letter, and every unsuccessful applicant would be encouraged to shop for a more favourable forum below. Such a



course was described in the case of *Captain Buddhikota Subha Rao (supra)* as virtually overruling the earlier decision, and was characterised in the case of *Bimla Devi (supra)* as being contrary not only to the settled principles of judicial discipline and propriety but also to the statutory provisions. The import of the impugned order is that the learned Additional Sessions Judge has, in effect, sat in review over the order of this Court, a course which is wholly impermissible in law.

24. The plea of parity, which is a pivot of the impugned order, is misplaced on a twofold count. The doctrine of parity is not a mechanical rule of thumb, and in deciding the aspect of parity, the specific role attributed to the accused, and his position in relation to the incident and to the victim, is of utmost importance, as held by the Hon'ble Supreme Court in *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) & Ors.*, reported as (2021) 6 SCC 230. The co-accused Chandan Kumar and the other family members face the accusation of dowry death, the accusation against the opposite party no.2 is of having abetted the suicide of the deceased by threatening, blackmailing and humiliating her, which is distinct in character, and it is that very accusation which this Court, by its order dated 03.10.2024, held to constitute a specific



allegation disentitling him to bail. What is more, the order dated 18.10.2024, whereby the co-accused Chandan Kumar was granted bail by this Court, itself rested substantially upon the case-diary material implicating the opposite party no.2. An order which grants bail to the opposite party no.2 on the strength of an order which was itself founded upon the accusation against him, inverts parity on its head. The grant of bail upon an unanalysed plea of parity, in disregard of the material distinguishing the case of the accused, itself renders the order perverse, as held in *Neeru Yadav (supra)*.

25. The perversity of the impugned order is deepened by its treatment of the case-diary material. Paragraph nos.87, 88, 89, 97 and 100 of the case diary, are the very paragraphs which this Court had treated as constituting the specific allegation against the opposite party no.2 and have been read by the learned Trial Court as circumstances favouring his enlargement, without a word of explanation as to how the very same material, which had weighed against the opposite party no.2 before this Court on 03.10.2024, came to weigh in his favour merely three months later. Using the same material to reach the opposite conclusion, without even noticing the order of the superior Court, is the plainest form of perversity, and



squarely attracts the circumstances enumerated in ***Deepak Yadav (supra)*** and the principles laid down by the Hon'ble Supreme Court in ***Ajwar v. Waseem & Anr.***, reported as ***(2024) 10 SCC 768***.

26. The submissions advanced on behalf of the opposite party no.2, founded upon the decisions in ***Dolat Ram (supra)***, ***Himanshu Sharma (supra)*** and ***Abdul Basit (supra)***, and upon his conduct subsequent to his enlargement, proceed upon a misconception of the nature of the present application. Each of the said decisions concerns the first limb of the jurisprudence, namely, the cancellation of a validly granted bail for supervening misconduct, in which event alone the absence of misuse of the liberty would have assumed significance. The present application invokes the second limb, namely, the power of this Court to annul an order which was obtained by misrepresentation, which disregards the order of the superior Court, and which is perverse or unsustainable. In such a case, the Court does not dwell upon the conduct of the accused after the grant, but delves into the justifiability and the soundness of the order itself, as held in ***Neeru Yadav (supra)***. For the same reason, neither the subsequent framing of the charge against the opposite party no.2 under Section 306 of the Indian Penal Code



nor the time which has elapsed since his enlargement can breathe validity into an order which was null at its inception, for an order obtained by fraud confers no right and attracts no equity, and may be questioned at any time, as held in the case of ***A.V. Papayya Sastry (supra)***. The contention founded upon the timing of the conversation recorded in paragraph no.97 of the case diary is, in substance, a defence on the merits of the accusation, which is a matter exclusively reserved for the trial.

27. As regards the objection founded upon the *locus* of the petitioner, the law is settled since ***R. Rathinam v. State by DSP, District Crime Branch, Madurai & Anr.***, reported as ***(2000) 2 SCC 391***, that the power of cancellation under Section 439(2) of the Cr.P.C, now Section 483(3) of the BNSS, is a power conferred upon the Court, and there is nothing in the statute to indicate that it can be invoked only at the instance of the State or the prosecution. It was held therein as under:-

“8. It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court. If so, any member of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of



the need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open to the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law.”

28. In the case of **Puran (supra)**, the Hon’ble Supreme Court, repelling an identical objection, drew the distinction between a total stranger to the proceedings and a person connected with the cause, and upheld the maintainability of an application for cancellation moved by the father of the deceased therein. Recently, in the case of **Yogendra Pal Singh v. Raghvendra Singh @ Prince & Anr.**, reported as **2025 INSC 1367 = 2025 SCC OnLine SC 2580**, the father of the deceased in a case of dowry death was held to be an aggrieved person possessing the requisite *locus* to seek cancellation of the bail granted to the husband of the deceased therein, and it was reiterated, following **Brij Nandan Jaiswal v. Munna @ Munna**



Jaiswal & Anr. (Criminal Appeal No.2087 of 2008, decided on 19.12.2008), that a complainant can always question an order granting bail on its merits.

29. Tested on these principles, the petitioner is far from a stranger to the cause, he is a party to the very Sessions Trial, and, being the husband of the deceased and therefore, a legal heir of the deceased, he answers, *qua* the act for which the opposite party no.2 alone stands charged under Section 306 of the Indian Penal Code, the description of a “victim” within the meaning of Section 2(y) of the BNSS, corresponding to Section 2(wa) of the Cr.P.C, an expression which must receive a wide interpretation. The circumstance that the petitioner is himself facing trial on a distinct charge, i.e. 304-B, does not, at this stage and in itself, when the presumption of innocence operates in his favour, denude him of that statutory character, and a victim is entitled to be heard even in the matter of bail, as held in the case of ***Jagjeet Singh & Ors. v. Ashish Mishra @ Monu & Anr.***, reported as ***(2022) 9 SCC 321***.

30. In the considered opinion of this Court, once it is brought to the notice of this Court that an order has been obtained from a subordinate Court by clearly misrepresenting an



order of this Court, the source from which the information reaches this Court pales into insignificance, for the fraud is upon the Court and the stream of justice itself, and the power under Section 483(3) of the BNSS is exercisable by this Court even *suo motu*, as was, in fact, done by the High Court of Madhya Pradesh in ***Guddalal v. State of Madhya Pradesh*** reported as ***2020 SCC OnLine MP 1921***, where, upon a fraud upon the Court surfacing during the hearing of the bail plea of a co-accused, *suo motu* proceedings under Section 439(2) of the Cr.P.C. were directed to be registered for cancellation of the bail so procured. The law is well settled that the power of this Court extends to the annulment of an order granting bail which is vitiated by a legal infirmity existing at its very inception, as held by the Hon'ble Supreme Court in the case of ***Puran (supra)*** and reiterated in ***Sri Darshan (supra)*** and ***Yogendra Pal Singh (supra)***.

31. However, in the present case, the *locus* of the petitioner to challenge the bail granted to the opposite party no.2 is not required to be adjudicated since the bail itself was obtained on a clear misrepresentation of the order of this Court without any change in fact-situation.

32. For the foregoing reasons, this Court is of the



considered opinion that the impugned order dated 15.01.2025 stands vitiated, having been obtained by the opposite party no.2 upon a false representation as to the purport of the order of this Court dated 03.10.2024, and having been passed merely three months after the rejection of his prayer by this Court, upon the very same material and without any change in the fact-situation, in disregard of judicial discipline and upon a perverse and unanalysed appreciation of the materials on record. An order so obtained and so passed is a nullity in the eye of law and therefore, cannot be sustained.

33. In the result, the present application is allowed. The impugned order dated 15.01.2025 passed by the learned Additional Sessions Judge-XIX, Gaya in Sessions Trial No.848 of 2024, arising out of Bodhgaya P.S. Case No.105 of 2022, enlarging the opposite party no.2, Amit Kumar, on bail, is set aside. Consequently, the bail granted to the opposite party no.2 is hereby cancelled, and the bail bonds furnished by him also stand cancelled. The opposite party no.2 shall surrender before the Court below within a period of three weeks from today, failing which the Senior Superintendent of Police, Gaya shall take all necessary steps, in accordance with law, to secure his arrest.



34. The learned Trial Court is directed to proceed with the trial and conclude the same as expeditiously as possible.

35. It is made abundantly clear that the observations made hereinabove have been rendered only for the purposes of the adjudication of the present application, and shall not be construed as any expression of opinion on the merits of the accusation against the opposite party no.2 or any other accused, which shall be decided by the learned Trial Court strictly in accordance with law, uninfluenced by any observation made herein.

(Sandeep Kumar, J)

pawan/-

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