

## Court On Its Own Motion Vs State of Jharkhand and Santosh Kumar Singh

**Court:** Jharkhand High Court

**Date of Decision:** Oct. 23, 2008

**Acts Referred:** Constitution of India, 1950 " Article 227  
Criminal Procedure Code, 1973 (CrPC) " Section 437, 438, 439  
Penal Code, 1860 (IPC) " Section 120B, 420

**Citation:** (2009) 1 JCR 74

**Hon'ble Judges:** D.K. Sinha, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

D.K. Sinha, J.

This Court on its own motion exercised its extraordinary jurisdiction of superintendence/interference under Article 227 of

the Constitution of India and issued notices to the respondent-State as well as the respondent No. 2 Santosh Kumar Singh. The respondent

Santosh Kumar Singh alleged to be the principal accused was granted bail by the Judicial Commissioner I/C, Ranchi (Shri H.P. Chakraborty as he

then was) in B.P. No. 913 of 2003 on 4.11.2003 u/s 439 of the Code of Criminal Procedure. The State and the accused Santosh Kumar Singh,

both the respondents entered appearance and filed their affidavits.

2. Facts of the case, giving rise to Ranchi Kotwali P.S. Case No. 442 of 2003 was recorded for the offence under Sections 420/120B of the

Indian Penal Code on the allegation that a sum of Rs. 3,00,000/-was recovered from the possession of respondent No. 2 Santosh Kumar Singh

by the police raiding party while he was staying in a hotel with the co-accused. Prosecution collected the facts that the accused were working

under a network by indulging themselves in getting the students admitted in various medical and engineering colleges by illegal means in lieu of

exorbitant amount by influencing the persons concerned, engaged in selection process of admissions. The prosecution further alleged that the

amount to the tune of Rs. 3,00,000/-as recovered from the possession of respondent No. 2 Santosh Kumar Singh was actually realized from one

Alok Kumar for his admission in the medical college and Rs. 50,000/-was yet to be paid to the accused persons as against the agreed amount of

Rs. 3,50,000/-. Respondent No. 2 Santosh Kumar Singh was arrested and remanded to the judicial custody on 7.9.2003. Nevertheless, he was

admitted to bail u/s 439 of the Code of Criminal Procedure by the Judicial Commissioner I/C, Ranchi on 4.11.2003 as aforesaid.

3. I find from the plain reading of the impugned order dated 4.11.2003 that the learned Judicial Commissioner I/C while considering his bail

petition applied his judicial mind on the facts of the case and observed in the following manner, "I have very carefully gone through the case diary of

this case and found that apart from confessional statement of the accused persons, there are no other material in the case diary to corroborate such

type of serious offence, which was taken place. Even the University authority or the teaching or non-teaching staff of the University or the

Engineering College or any Medical College or the Controller of the Examinations, who was conducting examinations or any document showing

the admission of the students, who are candidates for Medical and Engineering Examinations have been placed in the case diary. The case diary

quite silent on this point. So, there is a great legal lacunae in investigation of this case. The accused/petitioner is in custody since 7.9.03 and today

we are on 4.11.03. Under such circumstances, the petitioner Santosh Kumar @ Santosh Kumar Singh is directed to be enlarged on bail on

furnishing bail bond of Rs. 20,000/-(Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of the learned C.J.M.,

Ranchi.

Having noticed the impugned order this Court on its own motion in exercise of power of superintendence under Article 227 of the Constitution of

India, issued the notice to the respondent Santosh Kumar in the following manner:

Whereas on taking a serious note of order passed by the court below granting bail to the main accused and also to examine the propriety of the

aforesaid order, this Court on its own motion have been pleased to issue you notice as to why appropriate order be not passed against the said

bail order B.P. No. 913 of 2003 passed by the Judicial Commissioner I/C, Ranchi.

4. The specific reply of the respondent Santosh Kumar Singh in his affidavit is that no claimant of the money seized from his possession could come

forward alleging that it was given to the respondent Santosh Kumar and that investigation did not disclose or named any person, who has been

cheated on his instance, nor the name of any person has been cited who was illegally admitted into any medical college on payment of money to the

respondent. Admittedly, it was not the case of the prosecution that Santosh Kumar Singh was apprehended by the police while he was getting any

individual admitted into a medical college illegally or found indulged in such exercise. On the contrary, the allegation as levelled against him was

without any basis that he was operating a gang.

5. The learned Counsel for the respondent No. 2 further submitted that cognizance in this case was taken on 5.11.2003 for the offence under

Sections 420/120B of the Indian Penal Code and charge was framed after about 3 1/2 years on 16.5.2007. Yet, in course of trial no witness

could be produced on behalf of the prosecution.

6. The counsel finally submitted that other co-accused Rajnikant and Rajesh Nandan were admitted to bail by this Court in B.A. Nos. 6041 of

2003 and 6183 of 2003 respectively. Similarly, the accused Shashi Ranjan Kumar and Rajeev Kumar of this case were also admitted to bail by

this Court in B.A. Nos. 7086 of 2003 and 7096 of 2003 respectively and that respondent No. 2 Santosh Kumar Singh ever since he was released

on bail in the year 2003 has neither misused the privilege accorded to him by the impugned order nor caused any impediment in the ongoing trial so

as to attract cancellation of his bail u/s 439(2) of the Code of Criminal Procedure.

7. Having regard to the facts and circumstances, I find no material in the affidavit filed on behalf of the respondent-State except the averment that

Investigating Officer submitted chargesheet on 30.10.2003 after investigation against as many as six accused persons including the respondent No.

2 Santosh Kumar Singh for the alleged offence under Sections 420/120B of the Indian Penal Code, nevertheless the State respondent did not

assail the propriety of the Judicial Commissioner, I/C, Ranchi who passed the impugned order admitting the respondent No. 2 Santosh Kumar

Singh to regular bail u/s 439 of the Code of Criminal Procedure.

8. It is well settled that if the bail is granted under either the Sections of 437 or 438 or 439 of the Code of Criminal Procedure which governs the

provisions of bail, it cannot be rescind in ordinary course unless certain impediment is shown to the court concerned in respect of the conduct of

the accused or the order found to be otherwise procured by playing fraud on Court.

9. Law has been laid down u/s 437(5) as well as u/s 439(2) of the Code of Criminal Procedure for cancellation of bail. It was held by the Apex

Court in *Dolat Ram and Others Vs. State of Haryana*, and *Kashmira Singh Vs. Duman Singh*, that 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. In the instant case, respondent-State has nowhere prayed for

cancellation of bail of respondent Santosh Kumar Singh.

10. Upon careful consideration of the facts and circumstances of the case, I have no hesitation to observe that the Judicial Commissioner, I/C,

Ranchi (Shri H.P. Chakraborty as he then was) was well within his jurisdiction to allow the respondent Santosh Kumar Singh to regular bail u/s

439 of the Code Criminal Procedure by the impugned order. Similarly, no ground has been shown to question the propriety of Judicial

Commissioner I/C in passing impugned order. The respondent-State failed to show that he is tampering the evidence so as to call for interference.

Finally, I observe that the Judicial Commissioner, I/C, Ranchi was well within his jurisdiction under the given situation u/s 439(1) of the Code of

Criminal Procedure to pass the order, which is impugned.

11. I do not find any reason to interfere therein, thus this writ petition is dismissed.