

Court No. - 70

Case :- CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. - 41 of 2022

Applicant :- Dinesh Kumar Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Pankaj Kumar Asthana

Counsel for Opposite Party :- G.A., Anil Kumar Verma

Hon'ble Sameer Jain, J.

1. Heard Sri Pankaj Kumar Asthana, learned counsel for the applicant; Sri Anil Kumar Verma, learned counsel for the opposite informant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed to cancel the bail order of the opposite party no. 2 passed by the co-ordinate Bench of this Court vide order dated 3.12.2021 in Case Crime No. 359 of 2021, under Sections 498-A, 304-B, 302 IPC and 3/4 D.P. Act, Police Station Bhelupur, District Varanasi during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that applicant is the informant of the case and he moved the instant application for cancellation of the bail granted to the opposite party no. 2 on the ground that although opposite party no. 2 is father in law of the deceased but on the basis of wrong facts he obtained bail.

4. He further submitted that from the bail granting order dated 3.12.2021 passed by this Court it appears that before the co-ordinate Bench of this Court, counsel for the opposite party no. 2 argued number of facts including the fact that deceased was living separately from the opposite party no. 2 and from the post mortem report it appears that except ligature mark, there is no other injury and there is no demand of dowry but from the record it reflects that opposite party no. 2 is residing in the same house although in the separate portion.

5. He further submitted that post mortem report of the deceased suggests that deceased sustained total four injuries including ligature mark.

6. He further submitted that there was also allegation of demand of dowry against the opposite party no. 2 and therefore, bail granted to the opposite party no. 2 i.e. father in law of the deceased should be cancelled.

7. Learned AGA also submitted that from the perusal of the bail granting order dated 3.11.2021 it appears that some wrong arguments have been advanced by learned counsel for the opposite party no. 2 and thereafter he was released on bail.

8. Per contra, learned counsel for the opposite party no. 2 opposed the prayer for cancellation of bail and submitted that there was absolutely no intention of the opposite party no. 2 to place the incorrect facts and as from perusal of the post mortem report of the deceased, it appears that it was in two pages and in the right corner of the first page, the other injuries were noted and in the front of the first page of the post mortem only ligature mark was noted and therefore, this fact was argued before the court concerned and alongwith the bail application of opposite party no. 2, the entire post mortem and other materials have been annexed.

9. He further submitted that at the time of granting bail to the mother in law the same points were raised by the counsel for the applicant and after considering the entire facts of the case, co-ordinate Bench of this Court granted bail to the mother in law of the deceased vide order dated 19.1.2022 which has been annexed alongwith the counter affidavit.

10. He further submitted that as co-ordinate Bench of this Court has already opined that there was no concealment of fact and inspite of the fact if some injuries sustained by the deceased then also it was a case of bail for mother in law of the deceased, therefore, opposite party no. 2 who is father in law of the deceased and is on bail, should be remained on bail and his bail granted by this Court should not be cancelled.

11. I have heard learned counsel for the parties and perused the record of the case.

12. This is the bail cancellation applicant filed on behalf of the applicant who is informant of the case on the ground that by concealment of material facts opposite party no. 2 obtained bail. Although, from the bail granting order dated 3.12.2021 passed by this Court it appears that some wrong facts have been argued by the learned counsel for the opposite party no. 2 but I find force in the argument advanced by learned counsel for the opposite party

no. 2 that from perusal of the post mortem report of the deceased at first glance it reflects that deceased sustained only one injury i.e. ligature mark and I also find support in the argument advanced by learned counsel for the opposite party no. 2 that after considering all these facts, the bail application of mother in law has been allowed by the co-ordinate Bench of this Court and merely on the basis of such facts bail granted to the accused should not be cancelled.

13. Law is settled that it is easy to reject bail application but it is very difficult to cancel the bail already granted to the accused and for cancellation of bail very overwhelming and cogent material should be available on record which is completely missing in the present matter.

14. In view of this Court even if some factors which either could be wrongly placed or could not be placed but they hardly affects the merit of the case then merely on this ground, bail granted to the accused should not be cancelled.

15. In view of the above, I find no merit in the bail cancellation application and it is, accordingly, **dismissed**.

16. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 1.11.2023

Ankita