

Court No. - 68

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 150 of 2023

Applicant :- Smt Sakrun Nisha

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ajay Kumar Upadhyay

Counsel for Opposite Party :- G.A., Ram Pravesh
Yadav, Swatantra Kumar Rai

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Sri Ajay Kumar Upadhyay, learned counsel for the informant-applicant, Sri Ram Pravesh Yadav, learned counsel for O.P. No. 2 and learned A.G.A. for the State,

2. The instant bail cancellation application has been moved on behalf of the applicant for cancelling the bail granted to the accused-opposite party nos.2 to 4 in Complaint Case No.122 of 2020 arising out of Case Crime No.244 of 2020 under Sections 376-D, 34 I.P.C. and section 5/6 POCSO Act, P.S. Bakhira, District Sant Kabir Nagar.

3. Learned counsel for the applicant-informant submits that after registration of the F.I.R. the matter was investigated in which, after investigation final report was submitted inspite of the fact that the victim has categorically supported the prosecution version in her statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. against which, protest petition was filed, which was treated as complaint case in the meantime, the opposite party nos. 2 to 4 applied for bail, which has been granted by the learned Court below without considering the factual and legal aspect of the matter as well as without affording an opportunity of hearing to the complainant's counsel, who was opposing the bail. Learned counsel further submits that the order granting bail to the accused-opposite party nos. 2 to 4 is wholly illegal, arbitrary as no notice was served upon the applicant in view of the Rule 4 sub-rule (IV) Protection of Children from Sexual Offence Act. and therefore the bail granted to the accused-opposite party nos. 2 to 4 is liable to be cancelled.

4. On the other hand, learned counsel for the accused-opposite parties as well as learned A.G.A. submits that the bail order is perfectly legal, just and proper, which calls for interference by this

Court in exercise of powers conferred under Section 439 (2) Cr.P.C.

5. After hearing the learned counsel for the applicant, learned A.G.A. learned counsel for O.P. No. 2 and also considering the facts of the case, this Court is of the opinion, that no good ground is made by learned counsel for the applicant for cancelling the bail granted to the accused-opposite party nos. 2 to 4.

6. Accordingly, the prayer for cancelling the bail is refused.

7. At this stage, learned counsel for the applicant submits that the O.P.No. 2 to 4 are giving threatening for the dire consequences and therefore prayed to grant some protection to the applicant.

8. In view of submissions advanced by learned counsel for the applicant, this Court is of the opinion that the applicant has remedy open to him under Witness Protection Scheme, 2018, which scheme which has also been approved by Hon'ble Apex Court in the matter of **Mahender Chawla and others Vs. Union of India reported in (2019) 14 SCC 615** and therefore in case, the informant-applicant moves appropriate application on the proforma prescribed in the Witness Protection Scheme 2018 alongwith a certified copy of this order for redressal of his grievances, as raised in the instant bail cancellation application, before the competent authority as has been defined under Section 2 (c) of the Witness Protection Scheme, 2018 within a week from today, same shall be considered and decided as expeditiously as possible, preferably within a period of one month from date of filing such application, strictly in accordance with the Witness Protection Scheme 2018.

9. With the aforesaid observations/direction, the instant bail cancellation application stands disposed of.

Order Date :- 17.10.2023/RPD