

A.F.R.

Neutral Citation No. - 2023:AHC:200535

Court No. - 72

Case :- CRIMINAL MISC. BAIL CANCELLATION APPLICATION
No. - 177 of 2023

Applicant :- Mohd. Ishtiyak Khan

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

Counsel for Applicant :- Sanjay Yadav,Deepak Singh Yadav

Counsel for Opposite Party :- G.A.,Arun Kumar Sharma

Hon'ble Krishan Pahal,J.

1. Heard Sri Sanjay Yadav, learned counsel for the applicant, Sri Arun Kumar Sharma, learned counsel for the opposite party no. 2 and Sri Sunil Kumar, learned A.G.A. for the State.

2. The instant bail cancellation application has been filed on behalf of the applicant (complainant) with the prayer to cancel the bail granted to opposite party no. 2 by this Court on 9.12.2022 passed in Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. 10933 of 2022, in Criminal Case No. 2177 of 2018, relating to Case Crime No. 303 of 2018, under Sections 420, 467, 468, 471 IPC, Police Station Kurra, District Mainpuri.

RIVAL CONTENTIONS:

CONTENTIONS ON BEHALF OF THE APPLICANT:

3. Learned counsel for the applicant has stated that the said order is liable to be cancelled, as it was garnered by the opposite party no.2 by misleading the Court and concealing the fact of seven criminal antecedents of the applicant. Learned counsel has next stated that the said order itself indicates as follows:-

"Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. The said sale deed has been executed in favour of his wife Sudha @ Neelam. A civil suit has been filed by the informant in the court of Civil Judge Junior Division, Mainpuri, wherein the wife of the applicant has categorically stated that she does not want to carry on the sale deed executed in her favour and the said property may be handed over to the informant. There is no other criminal history of the applicant except one case in which he has been acquitted vide order dated 15.12.2010. The said order is annexed as SA-1 dated 28.11.2022.

Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail."

4. Learned counsel has placed reliance on the judgement of the Apex Court passed in ***A.V. Papayya Sastry & others vs. Governmnet of A.P. & Others***¹, wherein it has been held as follows:-

"It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Even the Chief Justice Edward Coke proclaimed "Fraud avoids all judicial acts, ecclesiastical or temporal".

5. It was also opined in the said judgement that a judgement, decree or order obtained by fraud by the first Court or by the final court has to be treated as a nullity by every Court, superior or inferior. It can be challenged in any Court at any time, in appeal, revision, writ or even in collateral proceedings. Lord Denning had observed that in the leading case of *Lazarus Estates Ltd. v. Beasley*, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, that *"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."*

6. Learned counsel has placed reliance on the judgement of the judgement of the Apex Court passed in ***Puran vs. Rambilas and another***², wherein it was held as under:-

"11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.) reported in AIR 1978 SC 179. In that case the Court observed as under:-

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S. 439 (2) to commit the accused to custody. When, however, the State is aggrieved by the order of

1. Appeal (Civil) No. 5097 of 2004
2. 2001 SCC (Cri) 1124

the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

7. It was laid down in this judgement that even the complainant being an aggrieved person, can move the bail cancellation application. Learned counsel has stated that any party seeking relief from a court has to come with clean hands and as such, in light of the aforesaid judgements, any order garnered by playing fraud with it, has no sanctity in law and is thus, liable to be set aside.

CONTENTIONS ON BEHALF OF OPPOSITE PARTY NO. 2:

8. Per contra, learned counsel for the opposite party no. 2 has vehemently opposed the application on the ground that the applicant has no knowledge of the said criminal history and he has stated that he has explained three cases, in which he has been acquitted, although he could not dispute the fact that the said factum of criminal history has not been mentioned in the said anticipatory bail application No. 10933 of 2022. It is also stated that in one case, the applicant is on bail, in one other case, he is not wanted and the remaining case is under U.P. Gangsters Act, in which he is on bail, although the said order could not be annexed to the rejoinder affidavit.

CONCLUSION:

9. A bare perusal of Section 44 of the Indian Evidence Act is being reproduced as follows:-

"44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.—Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion."

10. The opposite party no. 2 has not come with clean hands to this Court and has obtained the previous order dated 9.12.2022 by concealing the fact of seven criminal antecedents of him. Thus, he has played fraud in obtaining the judgement, as enunciated in Section 44 of the Indian Evidence Act.

11. As such, the said order dated 9.12.2022 granting anticipatory bail to the opposite party no. 2 cannot be sustained in the eyes of law and is set

aside, as it has been garnered by misleading the Court and committing fraud with it.

12. The present bail cancellation application is *allowed*.

13. However, two weeks' time from the date of pronouncement of this Judgment is granted to opposite party no. 2 to surrender before the concerned Trial Court and thereafter it will be open for opposite party no. 2 to pray for regular bail, which may be considered in accordance with law laid down by the Apex Court in the case of *Satender Kumar Antil vs. Central Bureau of Investigation and another*³.

(Justice Krishan Pahal)

Order Date :- 17.10.2023

Shalini

3. 2022 SCC Online SC 825