

Court No. - 75

Case :- CRIMINAL MISC. BAIL CANCELLATION APPLICATION
No. - 576 of 2023

Applicant :- Ram Ashish

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Bashisth Narain Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma,J.

1. The instant application under Section 439 (2) Cr.P.C. has been filed with the prayer to cancel the bail of opposite party no.2 granted by coordinate Bench of this Court in Criminal Misc. Bail Application No. 8809 of 2023 vide order dated 23.02.2023 relating to Case Crime No. 195 of 2022 under Section 363, 366 I.P.C. Police Station-Sonha, District-Basti.
2. Despite service of notice upon the accused/opposite party no.2, Beenu @ Ibrar, through his heir, none has appeared on his behalf.
3. Heard Sri Bashisth Narain Pandey, learned counsel for the applicant and gone through the material placed on record.
4. The accused was enlarged on bail by coordinate Bench of this Court on 23.2.2023 with the following conditions:
 - (i) *The applicant will not tamper with the evidence or influence any witness during the trial.*
 - (ii) *The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.*
5. The informant moved an application/complaint to S.H.O. Rudhauli, District Basti, that on 25.3.2023 the accused met him at Rudhauli Bazar and threatened to kill him if the case is not taken back by him.

6. There is nothing on record to show that any action was taken by the S.H.O. on the application of the applicant. When the present application, supported with annexures and affidavits has been moved before this Court, notice was issued to opposite party no.2/accused which was served to the accused through heir. In this regard, office report dated 17.10.2023 is on record. However, when the accused did not appear, in the interest of justice an opportunity was granted to him on 18.10.2023. Today also none has appeared on behalf of the accused to oppose the bail application.

7. The aforesaid grounds for cancellation of bail is supported with affidavit and no counter affidavit to rebut the same has been filed by the accused. A supplementary affidavit has also been filed by the learned counsel for the applicant reiterating the same facts and allegations against the accused/opposite party no.2.

8. The fact of this case is that the sister of the informant was kidnapped and abducted by the accused and two others, however, later on the accused was released on bail by coordinate Bench of this Court.

9. The principal regarding cancellation of bail has been propounded in several pronouncements by the Apex Court which are as follows:

(a) In *Y.S. Jagan Mohan Reddy Vs. CBI, (2013) 7 SCC 439*, principles are laid down to cancel the bail that if 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 trial. If there is chance that the accused will abscond, will interfere or will attempt to interfere with due course of administration of justice and abuse in any manner of bail etc., the bail order may be cancelled. When a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled.

(b) In ***Panchanan Mishra Vs. Digambar Mishra, AIR 2005 SC 1299; Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890*** and ***Gurcharan Singh Vs. State of Delhi Admn. AIR 1978 SC 179***, it has been held that bail granted to an accused u/s 437/439 CrPC can be cancelled if the accused threatens the witnesses to turn hostile or tampers in any other manner with the evidence of the prosecution.

(c) The above guidelines have been reiterated by a Division Bench of this Court in ***Crl. Misc. Petition No. 5695 of 2006, Karan Singh Vs. State of U.P.***, decided on 12. 4.2007, which was also circulated amongst the judicial officers of the State of U.P. vide C.L. No. 6561 of 2007 Dated: April 21, 2007, directing the judicial officers to initiate process for cancellation of bail of such accused who threaten the PWs to turn hostile.

(d) In ***State of U.P Through CBI Vs. Amarmani Tripathi, 2005 (8) SCC 21***, it has been held that for cancellation of bail granted to an accused u/s 437 or 439 CrPC, post bail conduct of the accused and supervening circumstances can also be taken into consideration.

(e) In ***Mehboob Dawood Shaikh (Supra)***, it has been further held that it is not necessary that the application for cancellation of bail be placed before the Judge who had granted the bail but it can be cancelled by any other Judge also.

(f) In ***Brij Nandan Jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021; Puran Vs. Ram Bilas, (2001) 6 SCC 338***; and in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra, 2011 (1) SCC 694***, it has been held that the complainant is competent enough to move application for cancellation of bail.

10. In this case the accused has been served through his family member. Two opportunities have been provided to him to appear and oppose the present application, however, no response has been received from him.

11. According to this Court, from the application for cancellation of bail moved by the complainant which is supported with affidavit and the same has not been controverted by the accused for tendering threats to the complainant, the accused has violated the conditions imposed by this Court while granting bail to him. In such a circumstance, there is no possibility of a fair trial, therefore, the application for cancellation of bail is liable to be allowed.

Order

12. The application is **allowed** and the order dated 23.3.2023 by which the opposite party no.2/accused was granted bail in Criminal Misc. Bail Application No. 8809 of 2023 vide order dated 23.02.2023 relating to Case Crime No. 195 of 2022 under Section 363, 366 I.P.C. Police Station- Sonha, District- Basti, is hereby quashed/cancelled.

13. C.J.M. Basti and S.H.O., Police Station- Rudhauli, are directed to take the accused, Beenu @ Ibrar, into custody and lodge him into jail immediately.

Order Date :- 3.11.2023

S.Verma

{Umesh Chandra Sharma, J.}