

Court No. - 68

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 346 of 2023

Applicant :- Sarvesh Kumar

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

Counsel for Applicant :- Anil Kumar

Counsel for Opposite Party :- G.A., Rajjan Singh, Tarun Jha

Hon'ble Dr. Gautam Chowdhary, J.

1. The instant bail cancellation application has been moved on behalf of the informant for cancelling the bail granted to the accused-opposite party nos.2 in Case Crime No.68 of 2023 under Sections 363, 366, 376 (3) I.P.C., and Section 3/4 (2) of POCSO Act, Police Station Kotwali Kalpi, District Jalaun.

2. Heard learned counsel for the applicant, learned A.G.A. for State, Sri Rajjan Singh, learned counsel for the informant and perused the material on record.

3. Learned counsel for the applicant submits that the learned Additional District and Sessions Judge/Special Judge POCSO Act, Jalaun at Orai while granting bail to the accused-opposite party no.2 had failed to take into consideration that the victim was aged about 14 years and 7 months and 28 days at the time incident. Apart from the same, the victim had also supported the prosecution version in her statements recorded under Section 161 and 164 Cr.P.C. Learned counsel has drawn attention of this Court to paragraph no.14 to the affidavit accompanying the bail cancellation application wherein, it has been categorically stated that the opposite party no.2 after released from jail, started making pressure upon the applicant to compromise the matter failing

which, the victim would be kidnapped and therefore the accused-opposite party no.2 is constantly making pressure upon the applicant to settle the matter outside the Court and since heinous offence has been committed against society, therefore the bail granted to the accused-opposite party no.2 is liable to be cancelled.

4. On the other hand, learned A.G.A. as well as learned counsel for the accused-opposite party no.2 submits that the bail order passed by learned Court below is perfectly legal, just and proper which has been passed after considering the case diary as well as entire submissions adduced on behalf of the parties, therefore, the bail granted to the applicant is not liable to be cancelled. Learned A.G.A. further submits so far as submission of learned counsel for the applicant that threatening are being given to the informant is concerned with respect to such submissions, the informant has a remedy available under the Witness Protection Scheme Scheme, 2018 and thus the instant bail cancellation application may be disposed of in the light of protection granted to the witnesses under the Witness Protection Scheme, 2018.

5. After perusing the order impugned as well as pleadings of the instant case, this Court is of the opinion, that learned counsel for the applicant could not point out any good ground for cancelling the bail granted to the opposite party no.2 in exercise of powers conferred under 439 (2) Cr.P.C.

6. Accordingly, the relief as sought by the applicant is refused.

7. However, in view of the submissions made by learned A.G.A., this Court is of the opinion, that the applicant has remedy available to him under Witness Protection Scheme, 2018, which scheme has been approved by Hon'ble Apex Court in ***Mahender Chawla and***

others Vs. Union of India reported in ***(2019) 14 SCC 615***.

8. Accordingly, present bail cancellation application is disposed of with a direction, 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.

Order Date :- 2.11.2023

S.Ali