

Court No. - 65

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 436 of 2023

Applicant :- Indrapal

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

Counsel for Applicant :- Anil Kumar Mishra

Counsel for Opposite Party :- G.A.,A.C.Srivastava

Hon'ble Rajeev Misra,J.

1. Heard Mr. Anil Kumar Mishra, the learned counsel for applicant, the learned A.G.A. for State and Mr. A.C.Srivastava, the learned counsel representing accused/opposite party-2.

2. Perused the record.

3. This bail cancellation application has been filed by first informant-Indrapal seeking cancellation of bail granted to accused/opposite party-2 in Case Crime No. 509 of 2022 under Section 302 I.P.C. Police Station Parikshitgarh, District Meerut.

4. Record shows that accused/opposite party-2, Bijendra was enlarged on bail by this Court vide order dated 05.04.2023 passed in Criminal Misc. Bail Application No. 12558 of 2023 (Bijendra Vs. State of U.P.). For ready reference, the same is reproduced herein-under:-

"1. List has been revised.

2. Heard Shri A.C. Srivastava, learned counsel for the applicant and Shri Adesh Kumar, learned counsel for the informant as well as Shri R.P. Patel, learned A.G.A. for the State and perused the record.

3. Applicant seeks bail in Case Crime No.509 of 2022, under Section 302 I.P.C., Police Station Parikshitgarh, District Meerut, during the pendency of trial.

4. As per prosecution story, the applicant along with his brother Veer Singh

and two unknown persons are said to have throttled the father of the informant on 28.12.2022 at about 04:30 p.m. in the field near the canal. The applicant and other co-accused persons are stated to have assaulted the deceased person on 11.2.2022 also, whereby an FIR No.0050 of 2022 was lodged at the police station.

5. Learned counsel for the applicant has stated that the applicant is absolutely innocent and has been falsely implicated in the present case. The FIR is delayed by about more than twenty hours and there is no explanation of the said delay caused. Learned counsel has stated that the information at the police station was given by the nephew of the informant on the same evening on 28.12.2022 at 19:31 hours which was entered at GD No.40 on 28.12.2022. Learned counsel has stated that the informant Indrapal son of Khemchand had also accompanied his nephew to the police station as is evident from the perusal of GD No.40, which is annexed as Annexure No.5 to the affidavit filed with bail application. Learned counsel has stated that had the applicant committed the said offence, his name would have come up at the stage of informing the police the same evening. The FIR has been lodged just to usurp the property which the applicant and his brother inherited from the deceased person. Learned counsel has further stated that the eye-witnesses, who are stated to have seen the offence, are interested witnesses and have just taken the line of the informant to keep the applicant behind the bar. Learned counsel has stated that the applicant has no criminal history except the said FIR No.0050 of 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. The applicant is languishing in jail since 21.12.2022. In case, the applicant is released on bail, he will not misuse the liberty of bail.

6. Per contra, learned counsel for the informant has vehemently opposed the bail application on the ground that the applicant carried the strong motive as is evident from the statement of wife of the deceased person Seebo Saini, whereby she categorically stated that the deceased person would have got a compensation of Rs.1 lakh from the electricity department and the applicant and his brother Veer Singh wanted to get the said amount from the deceased which he was not inclined to give to them. Learned counsel has further stated that the said strong motive is the force which prompted the accused persons to commit murder of his father. Learned counsel has stated that there is no cause of falsely implicating the applicant.

7. Learned A.G.A. has also reiterated the arguments tendered by learned counsel for the informant.

8. The motive is a double-edged sword and if it can be a reason for committing the crime, it may also be a reason for false implication.

9. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into consideration the fact that the information at the police station was furnished by the nephew of the informant Sushil Saini and the informant had accompanied him to the police station as also the fact that FIR is

delayed by more than twenty hours, and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

10. Let the applicant- Bijendra involved in aforementioned case crime number be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) The applicant will not tamper with the evidence during the trial.

(ii). The applicant will not pressurize/ intimidate the prosecution witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected of the commission of which he is suspected.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 5.4.2023 "

5. Learned counsel for applicant submits that subsequent to enlargement of accused opposite party-2 on bail, he has been terrorizing the witnesses. To buttress his submission, attention of the Court was invited to the F.I.R. dated 28.04.2023 lodged by the mother of accused/opposite party-2 and was registered as Case Crime No. 135 of 2023 under Sections 147, 323, 506, 341, Police Station-Police Station Parikshitgarh, District Meerut. On the above premise, he submits that bail granted to accused-opposite party-2 is liable to be cancelled.

6. However the Court raised a query as to whether any report in

terms of Section 173 (2) Cr.P.C. has been submitted or not even though a period of more than six months has rolled by, the learned counsel for applicant could not give any satisfactory reply. the date of lodging of the F.I.R.

7. Except for the above, there is nothing on record to show that the accused/opposite party-2 has either jumped the bail or terrorized the witnesses.

8. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing accused/opposite party-2 and upon consideration of material brought on record, this Court finds that upto this stage no such incriminating material has emerged on the basis of which it can be definitely concluded that accused/opposite party-2 has either jumped the bail or he has been terrorizing the witnesses. In view of above, no good or sufficient ground has emerged to cancel the bail granted to accused/opposite party-2.

9. As a result, present bail cancellation application is misconceived and is liable to be rejected.

10. It is accordingly rejected.

Order Date :- 6.11.2023

YK