

(A.F.R.)

Neutral Citation No. - 2023:AHC:209410

Court No. - 72

Case :- CRIMINAL MISC. BAIL CANCELLATION APPLICATION
No. - 462 of 2023

Applicant :- Vinod Singh

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Arun Kumar Singh, Chandrika Patel

Counsel for Opposite Party :- G.A. Girish Tiwari

Hon'ble Krishan Pahal,J.

1. List has been revised. Rejoinder affidavit filed today by the learned counsel for the applicant is taken on record.
2. Heard Sri Arun Kumar Singh, learned counsel for the applicant and Sri Girish Tiwari, learned counsel for the opposite party nos.2 & 3 as well as Sri Varun Pratap Singh, learned A.G.A. for the State and also perused the record.
3. The instant bail cancellation application has been filed by the applicant assailing the order dated 08.06.2023 passed by learned Sessions Judge, Rampur whereby learned Court concerned after withdrawal of first anticipatory bail application on 07.06.2023, has allowed the Second Anticipatory Bail Application No. 905 of 2023, u/s 420, 467, 468, 471, 386, 397, 115, 323, 504, 506 of IPC, Police Station- Kotwali, District- Rampur in Complaint Case No.5206 of 2022.
4. The submission of the learned counsel for the applicant is that the impugned order dated 08.06.2023 has been obtained by the opposite party nos. 2 & 3 by playing fraud with the court as they had concealed their criminal history which is evident from para-3 of the said order dated 08.06.2023. Learned counsel has placed reliance on Section 44 of the Indian Evidence Act and for ready reference, Section 44 reads as under:-

“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.”

5. Per contra, learned counsel for the opposite party nos.2 and 3 has stated that the opposite party no.2 Sadhna Singh has criminal history of three cases;

(i) Case Crime No.30 of 2023, u/s 395, 397, 354B, 448, 504, 323, 120-B of IPC, P.S. - Ganj, District - Rampur, was instituted by the complainant herein himself against the applicant and other co-accused persons in which closure report has been filed.

(ii) Case Crime No. 50 of 2014, u/s 420, 467, 468, 471 of IPC, P.S. - Ganj, District – Rampur, was also instituted against the applicant and she was enlarged on bail on 08.04.2015.

(iii) Case Crime No.180 of 2022, u/s 420, 467, 468, 471 of IPC, P.S. - Baradari, District – Bareilly. In the said case, investigation is going on and no summons/warrants were issued against her.

6. So far as the opposite party no.3 is concerned, there is a criminal history of one case i.e. Case Crime No.30 of 2023, u/s 395, 397, 354-B, 448, 504, 323, 120-B of IPC, P.S. - Ganj, District – Rampur wherein she has been exonerated by the police and a closure report has been filed. The applicant has no knowledge of further proceedings in the said case.

7. Learned counsel for the applicant has further stated that the said anticipatory bail application was filed on 08.06.2023 and was allowed the same day, prior to it, first anticipatory bail application was filed before the same court and was withdrawn on 07.06.2023. The said order has been garnered by the applicant in a hurry by concealing the said fact of criminal history.

8. Considering the rival submissions advanced by the learned counsel for the parties and taking into consideration the fact that the opposite party nos. 2 & 3 while obtaining the bail order before the court concerned, had

concealed the fact of their criminal antecedents which is also evident from para-3 of the impugned order dated 08.06.2023 coupled with the provisions of Section 44 of Indian Evidence Act, the said order dated 08.06.2023 passed by learned Sessions Judge, Rampur is not sustainable and is set aside.

9. In view of the above, the instant bail cancellation application is **allowed**. The impugned bail order dated 08.06.2023 passed by learned Sessions Judge, Rampur is hereby set aside.

10. However, two weeks' time from the date of pronouncement of this Judgment is granted to opposite party nos. 2 & 3 to surrender before the concerned Trial Court and thereafter it will be open for them 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*, reported in 2022 SCC Online SC 825.

Order Date :- 1.11.2023
Siddhant

(Justice Krishan Pahal)