

Court No. - 65

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 475 of 2023

Applicant :- Rajiv Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Kumar Srivastava

Counsel for Opposite Party :- G.A.,R.K Singh Gaharwar

Hon'ble Rajeev Misra,J.

Heard Mr. Manoj Kumar Srivastava, the learned counsel for applicant, the learned A.G.A. for State and Mr. R.K. Singh Gaharwar, the learned counsel for first informant.

This bail cancellation application has been filed by applicant-Rajiv Kumar seeking cancellation of bail granted to accused/opposite party-2 vide order dated 19.4.2023, passed by Special Judge/POCSO Act/Additional District and Sessions Judge, Aligarh.

Learned counsel for applicant submits that since the prosecutrix is aged about 12 years and recovered from the house of accused, therefore, the bail granted to accused/opposite party-2 is manifestly illegal and therefore, liable to be cancelled.

Learned A.G.A. and learned counsel for opposite party-2 have however, opposed this bail cancellation application. Attention of the Court was then invited to the bail order dated 19.4.2023. On the basis of above, they jointly submit that Court below while granting bail to accused has recorded a categorical finding that medical evidence does not support the ocular version. Similarly, the prosecutrix in her statements under section 161/164 Cr.P.C. has not remained consistent. They further submit that there is no allegation that accused has jumped the bail or is terrorizing the witnesses. As such, no sufficient ground is made to cancel the bail granted to accused/opposite party-2.

Even otherwise, opposite party-2 is a heart patient, which fact has also been noted by Court below while granting bail to opposite party-2.

When confronted with above, the learned counsel for applicant

could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State and the learned counsel for first informant, this Court finds that Court below has passed the bail order after due consideration of material on record and upon evaluation of the statement of the prosecutrix recorded under sections 161/164 Cr.P.C. as well as the medical evidence on record. This Court does not find any illegality or perversity in the conclusion drawn by Court below. Moreover, the observation made by Court below in second paragraph of page 25 of the paper book, has not been specifically contradicted by applicant in the affidavit filed in support of application for cancellation of bail.

In view of above and also the fact that the opposite party-2 has neither jumped the trial nor is terrorizing the applicant after being enlarged on bail, this Court does not find any good ground to cancel the bail granted to opposite party-2.

As a result, bail cancellation application fails and is liable to be rejected.

It is accordingly rejected.

Order Date :- 18.10.2023

Arshad