

Court No. - 65

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 568 of 2023

Applicant :- Sheela Devi

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

Counsel for Applicant :- Prashant Vyas, Kanchan Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Hear Mr. Prashant Vyas, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This bail cancellation application has been filed by applicant/first informant Sheela Devi seeking cancellation of bail granted to accused opposite party-2 vide order dated 29.9.2022, passed by this Court in Criminal Misc. Bail Application No.29858 of 2022 (Kailash Vs. State of U.P). For ready reference, the same is reproduced herein under:

"Heard learned counsel for the applicant, Sri Prashant Vyas, learned counsel for the informant and learned A.G.A. for the State.

There is allegation against the applicant of committing gang rape along with another co-accused, Suresh.

Learned counsel for the applicant submits that the applicant is married woman and wife of Gajendra Singh with whom she has strained relation. A complaint under the various provisions of domestic violence Act has already been filed by the informant against her husband and other family members of matrimonial home on 01.02.2021. The present implication of the applicant by way of application under Section 156(3) Cr.P.C has been made with regard to the incident dated 13.09.2021 and first information report has been lodged on 09.12.2021. The victim has refused to get herself medically examined. Learned counsel for the applicant pointed out the applicant used to support the victim and later on account of social stigma, she has falsely implicated the applicant only to protect herself. The applicant is in jail since 26.04.2022 and has no criminal history.

Sri Prasant Vyas, learned counsel for the informant, has vehemently opposed the bail application and has placed before this an application made by the victim before the Superintendent of Police, Hathras stating that the brother of the applicant is threatening the victim of dire consequences. After the applicant is released on bail, he will cause harm to her.

Learned AGA has opposed the prayer for bail but could not dispute the above submissions.

After considering the rival contentions it appears that the victim and the applicant are known to each other. There is matrimonial dispute pending between the victim and her husband before different courts. The relationship made by victim with applicant may have disastrous consequences for future as her husband could make allegations of illicit relation-ship of the applicant with the victim and defeat the claims of the victim before the family court. Hence she appears to have lodged the first information report. However, these observations of this court will not affect the merits of trial.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of Dataram Singh Vs. State of U.P. and another reported in (2018) 3 SCC 22 and recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials 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.

Let the applicant, Kailash, involved in Case Crime No.144 of 2021, under Sections 376D, 506 I.P.C, Police Station Mursan, District- Hathras be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

- (i) The applicant shall not tamper with the evidence or threaten the witnesses.
- (ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.
- (iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.
- (iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.
- (v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.
- (vi) The applicant will not try to contact the victim in any manner during pendency of trial.

In case of breach of any of the above conditions, the complainant is free to move an application for cancellation of bail before this court.

Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of one year from the date of production of certified copy of this order. "

The bail cancellation application has been filed primarily on the ground that applicant has violated the conditions of bail contained in the order dated 29.9.2022.

Record shows that present application came up for orders on 15.9.2023 and this Court passed the following order:

"1. Heard Mr. Prashant Vyas, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for cancellation of bail has been filed by first informant-Sheela Devi seeking cancellation of bail granted to the accused-opposite party 2 vide order dated 29.09.2022 passed by this Court in Criminal Misc. Bail Application No. 29858 of 2022 (Kailash Vs. State of U.P.).

4. Notice on behalf of opposite party 1 has been accepted by the learned A.G.A.

5. Issue notice to accused-opposite party 2.

6. Notice shall be made returnable on 13.10.2023. Notice shall further indicate that matter shall re-appear as fresh on 13.10.2023.

7. All the opposite parties may file their respective counter affidavits on or before the date fixed in the notice.

8. Put up again as fresh for orders on 13.10.2023. "

Office has submitted a report dated 2.11.2023, stating therein that notice has been served upon opposite party-2 personally. However, inspite of service of notice, no one has put in appearance on behalf of opposite party-2 to oppose this application.

According to learned counsel for applicant after the accused-opposite party-2 was enlarged on bail vide order dated 29.9.2022 referred to above, he violated the conditions of bail. Prosecutrix was subsequently, assaulted by accused/opposite party-2 on 1.4.2023.

Accordingly, an F.I.R. dated 2.4.2023 was lodged by prosecutrix Sheela and was registered as Case Crime No. 61 of 2023, under sections 323, 504, 506 IPC, P.S- Mursan, District Hathras.

In the aforesaid F.I.R., accused opposite party-2 Kailash has been nominated as solitary named accused.

Subsequent to above F.I.R. dated 2.4.2023, the prosecutrix was medically examined. As per injury report she sustained following injuries :

"(1) Multiple abrasions in area of 13 cm x 2 cm in back of Rt. forearm, 7 cm, below from elbow joint.

(2) Multiple abrasion in area of 5 cm x 2 cm on back of chest from 3 below from elbow joint.

(3) C/o pain in left shoulder joint. Adv. X-ray left shoulder joint AP/lat."

Thereafter, X-ray of the prosecutrix was conducted. Accordingly, supplementary report was submitted which reads as under :

"Supplementary Report"

Supplementary Report of Smt. Sheela D/o Prem Singh age 23 yr. R/o Uday Bhan, P.S. Mursan, Hathra, whose medico legal exam was done by me on 2.4.2023

M.I. A black mole on front of neck, 6 cm, above from sterna notch.

-Advised X-ray Left Shoulder Joint-AP/Lat

(1) According to X-ray report ML No. 280/23 on 3.4.2023 by Dr. Santosh Kumar Gupta (Radiologist, Bagla Hospital, Hathras) Report Shown : Fracture in left clavicle bone

Opinion: Injury NO.3 which was KUO, is now grievous in nature."

In the light of above and other material collected by Investigating Officer he submitted charge sheet dated 28.6.2023, whereby accused Kailash has been charge sheeted under sections 323, 504, 506 IPC.

On the above premise, the learned counsel for applicant submits that since accused opposite party-2 has violated the conditions of bail, therefore, his bail is liable to be cancelled.

A counter affidavit has been filed by learned A.G.A. However, perusal of the same goes to show that grounds urged for consideration of bail of accused opposite party-2 has been admitted by State, inasmuch as the F.I.R, the medico legal report, supplementary report and charge sheet referred to above have not been disputed by State.

It is thus urged by the learned counsel for applicant contends that interest of justice shall be served in case the bail granted to opposite party-2 is cancelled by this Court.

As no counter affidavit has been filed by opposite party-2 and State has supported the bail cancellation application, therefore,

prima faice the accused/opposite party-2 is guilty of violating the condition no. 1 and 6 contained in bail order dated 29.9.2022.

In view of above, the bail granted to accused opposite party-2 vide order dated 29.9.2022 passed in Criminal Misc. Bail Application No.29858 of 2022 (Kailash Vs. State of U.P) shall stand cancelled.

Accused/opposite party-2 shall be taken into custody at once.

Order Date :- 20.11.2023

Arshad