

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39489 of 2023

Applicant :- Avanish @ V.K.

Opposite Party :- State Of Up Throu Principal Secretary Home Gov. Of Up At Luc

Counsel for Applicant :- Dwijendra Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Chandra Sharma,J.

1. Heard Sri Dwijendra Prasad, learned counsel for the applicant, Sri Pankaj Kumar Tripathi, learned AGA for the State and perused the record.

2. This bail application has been moved to set aside the conditions imposed by the ACJM, Shikohabad, District Firozabad directing the applicant to deposit Rs.1,65,000/- and an undertaking to deposit monthly maintenance time to time and to enlarge the applicant on bail in Complaint Case No.1722 of 2022, under Section 31 of Protection of Women from Domestic Violence Act (hereinafter referred to as 'the Act'), Police Station Shikohabad, District Firozabad.

3. In brief, facts of the case are that Smt. Asha Devi wife of the applicant filed a complaint against the applicant and his family members under Sections 12, 18, 19, 20, 21, 22 of the Act. The applicant appeared and filed written statement against the complaint but later on he disappeared, therefore, an *ex parte* judgment and order was passed on 17.01.2022 by ACJM, Shikohabad, District Firozabad under Sections 18, 19, 20, 22 of the Act and the applicant was directed not to cause physical or

mental harm to the complainant and to provide Rs.1,00,000/- lump sum amount for medical expenditure within two months from the date of order. The applicant was also directed to pay Rs.5,000/- per month as maintenance allowance by the 10th day of every month. The applicant moved a recall application on 02.03.2022 which was rejected by the concerned ACJM. The order of the ACJM was challenged through Misc. Appeal No.607 of 2023 in the Court of District Judge, Firozabad and the same was also rejected on 28.06.2023. When the order dated 17.01.2022 was not complied with by the applicant, the complainant Smt. Asha Devi wife of the applicant moved an application under Section 31 of the Act for execution of the order on 27.05.2022 on which a warrant of attachment and sale was issued under Section 31 of the Act and the applicant was arrested in compliance of the warrant. Thereafter the applicant preferred a bail application on 25.04.2023 which was allowed same day with the condition that if the applicant executes a personal bond for an amount of Rs.20,000/- and provides Rs.1,65,000/- the amount of recovery warrant and also executes an undertaking that he will pay the maintenance allowance time to time, he would be released on bail.

4. Being aggrieved by the conditions imposed by the court below, the aforesaid Misc. Appeal No.607 of 2023 had been preferred which had been rejected on 28.06.2023.

5. The applicant also moved a Criminal Appeal No.70 of 2023 with the delay condonation application in the Court of District Judge. The delay condonation application was allowed and the delay was condoned but the appeal against the *ex parte* judgment and order dated 17.01.2022 had been rejected on 15.07.2023. Being aggrieved, the applicant had filed an Application No.28751

of 2023 under Section 482 CrPC challenging the aforesaid order dated 15.07.2023 but on 17.08.2023 it was dismissed as withdrawn with liberty to approach the appropriate forum. Thereafter the instant bail application has been moved under Section 439 CrPC with the prayer to remove the conditions imposed by the ACJM concerned. In this regard learned counsel for the applicant contended that no undue and harsh condition can be imposed by the court while granting bail and the court of sessions and the High Court is empowered under Section 439(1)(b) CrPC to set aside or modify such conditions.

6. Learned counsel for the applicant further contended that the conditions imposed by the learned Magistrate is contrary to the law and is liable to be quashed under Section 439(1)(b) CrPC.

7. Learned AGA has vehemently opposed the maintainability of the bail application and argued that since the ex parte order dated 17.01.2022 has become final upto the appellate court and the impugned order has been passed under Section 31 of the Act, therefore, Section 439(1)(b) CrPC cannot be applied.

8. From perusal of Section 31 of the Act, it transpires that this section is meant to prevent the breach of protection order passed by the Magistrate. The application for bail moved on behalf of the applicant cannot be literally treated a bail application under Sections 436 or 437 CrPC. The conditions are imposed only to execute the order which has been passed in accordance with law and which has attained finality as of now. From perusal of record it also transpires that the impugned order passed by the ACJM, Shikohabad, District Firozabad has attained finality as it has been merged in the order of the appellate court and the order of the appellate court has not been challenged. Even if for the sake of

argument the order of the ACJM is modified, the order of the appellate court would remain intact and a judicial discrepancy would arise.

9. According to this Court, since the impugned order has been passed and the conditions have been imposed to execute a legal and valid order, therefore, this Court is of the view that there is no occasion to allow this bail application and to remove the conditions imposed by the ACJM which has also been affirmed by the Sessions Judge in the aforesaid appeal. Thus, this Court is of the view that the application is not maintainable and is liable to be rejected.

10. This bail application is, accordingly, **rejected**.

Order Date :- 17.11.2023
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(Umesh Chandra Sharma,J.)