

AFR

RESERVED

Case:- Criminal Misc. Bail Cancellation Application No. 590 of 2023

Applicant- Santosh Singh

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

Counsel for Applicant: Manu Sharma, Shiv Shanakar Singh

Counsel for Opposite Party: G.A., Rajkumar Verma

Hon'ble Sameer Jain,J.

1. Counter affidavit filed on behalf of opposite party no.2 is taken on record.
2. Learned counsel for the applicant does not propose to file any rejoinder affidavit.
3. Heard Sri Manu Sharma, learned counsel for the applicant, Shri Suresh Bahadur Singh, learned AGA for the State and Sri Kamaldev Rai, Advocate holding brief of Sri Rajkumar Verma, learned counsel for opposite party no.2.
4. The instant bail cancellation application has been filed on behalf of the applicant with the prayer to cancel the bail of opposite party no.2 already granted by court concerned vide order dated 30.8.2023 in Case Crime No.225 of 2023, under Sections 376(3), 323, 504 and 506 IPC and Section 3/4 POCSO Act, Police Station Khaga, District Fatehpur.

BRIEF FACTS:

5. FIR of the present case was lodged by the applicant against opposite party no.2 on 17.6.2023 and according to the FIR, on 10.6.2023 at about 5.00 PM in the evening opposite party no.2 enticed away the daughter of applicant aged about 14 years and next day in the morning at about 5.30 AM informant i.e. applicant received a phone call from neighbouring village Gopalpur that his daughter is in the village Gopalpur and thereafter daughter of the informant, i.e., applicant has taken to the Police Station and on the way his daughter informed that opposite party no.2 abducted her and in the jungle he committed rape with her throughout the night.

6. After registration of the FIR, investigation was commenced and during investigation opposite party no.2 was arrested and thereafter he applied for bail before the court concerned. On 30.8.2023 the court concerned granted bail to him.

7. Hence, the instant bail cancellation application.

CONTENTION RAISED ON BEHALF OF THE APPLICANT.

8. Learned counsel for the applicant submits that applicant is the informant of the case and court concerned granted bail to opposite party no.2 in heinous crime like rape.

9. He further submits that daughter of the applicant was a child below 18 years of age and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated that opposite party no.2 committed rape with her but in spite of that court concerned enlarged the opposite party no.2 on bail.

10. He further submits that from the perusal of bail granting order dated 30.8.2023 it appears that while granting bail to opposite party no.2 the court concerned did not even consider the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

11. He further submits that from the perusal of the medical report of the victim, it appears that she sustained abrasion on left cheek and on both hands and Doctor also opined that there are signs of use of force but the court concerned also did not consider the medical report of the victim and released the opposite party no.2 on bail.

12. He further submits that bail granting order dated 30.8.2023 passed by the court concerned is based on irrelevant facts and court concerned did not consider relevant materials available on record.

13. He further submits that the court concerned wrongly interpreted the judgments of the Supreme Court in the cases of **Union of India Vs. K.A.Najib, AIR 2021 SC 12** and **Satender Kumar Antil Vs. Central Bureau of Investigation and others (Manu/SC/0851/2022)**.

14. He further submits that in both these cases the Apex Court never opined that in serious offences like rape even without considering the statements of the victim recorded during investigation and without considering her medical report, bail should be granted.

15. He further submits that considering the seriousness of allegation made against opposite party no.2 and non-consideration of relevant material available on record, bail granted to opposite party no. 2 should be cancelled.

SUBMISSIONS MADE ON BEHALF OF THE STATE:

16. Learned AGA appearing on behalf of the State also submitted that it is a case of rape upon the minor girl, who was child under the provisions of POCSO Act and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that opposite party no.2 committed rape with her and the Doctor also noted the sign of use of force, therefore, bail granted to opposite party no.2 should be cancelled.

CONTENTIONS RAISED ON BEHALF OF OPPOSITE PARTY NO.2/ACCUSED:

17. Learned counsel for the opposite party no.2 opposed the prayer for cancellation of bail and submitted that bail granting order dated 30.8.2023 passed by the court concerned is a well reasoned order and after considering all aspects of the case, bail was granted to opposite party no.2.

18. He further submits that however, the court concerned did not discuss the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but from the perusal of the bail granting order it appears that the court concerned after discussion found that the prosecution story does not appear to be convincing therefore, court concerned did not discuss the statements of the victim recorded during investigation as even its discussion would hardly affect the bail granting order dated 30.8.2023.

19. He further submits that FIR of the present case was lodged after seven days on 17.6.2023 on the application of applicant dated 13.6.2023 and on 10.6.2023 applicant and others assaulted the opposite party no.2 at about 5.00 PM in the evening and in this regard on 12.6.2023 opposite party no.2 himself lodged FIR against the applicant and others at Police Station Khaga, District Fatehpur vide Case Crime No.215 of 2023 and as soon as applicant came to know about the FIR dated 12.6.2023 lodged by opposite party no.2 then next day, i.e., 13.6.2023 he moved an application against opposite party no.2 with the allegation of rape committed by him upon his daughter and this fact clearly suggests that on the basis of false allegation of rape opposite party no.2 was made accused in the present case therefore, court concerned rightly granted bail to opposite party no.2.

20. He further submits that from the perusal of the bail granting order dated 30.8.2023 it appears that after considering the evidence collected by Investigating Officer

during investigation court concerned granted bail therefore, it cannot be said that while granting bail to opposite party no.2 court concerned failed to consider the material available on record.

21. He further submits that bail granted to the accused should be very rarely cancelled and for cancellation of bail very strong reasons must be available on record.

22. He further submits that there is no allegation against opposite party no.2 that after released on bail he either in any manner is pressurizing the applicant or victim i.e. his daughter or is trying to tampering with the prosecution evidence.

23. He further submits that in the present matter after investigation charge sheet has already been submitted.

24. He further submits that instant bail cancellation application is devoid of merit and is, therefore, should be dismissed.

ANALYSIS:

25. This is the bail cancellation application filed by the informant of the case (applicant) for cancellation of bail granted by court concerned to the accused i.e. opposite party no.2 vide order dated 30.8.2023.

26. The main contention raised on behalf of the applicant and the learned AGA is that while granting bail to opposite party no.2 court concerned failed to even consider the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. They further submitted that even during

medical examination Doctor noticed abrasion on the cheek and hands of the victim and Doctor also opined that there are signs of use of force and this aspect was also not considered by the court concerned.

27. The Apex Court in the case of **Vipan Kumar Dhir Vs. State of Punjab and another, (2021) 15 SCC 518** observed that the bail can be revoked where court concerned while granting bail considered irrelevant factors or has ignored relevant materials available on record.

28. In case at hand, after perusing the bail granting order dated 30.8.2023 passed by the court concerned it cannot be said that on irrelevant factors the court concerned granted bail to opposite party no.2. However, it reflects that while granting bail the statements of victim recorded during investigation and her medical report could not be discussed but in my view even if some relevant materials available on record could not be discussed/considered while granting bail to the accused then also on this ground bail granted to the accused should not be automatically cancelled and for cancellation of bail it is necessary to consider the effect of non consideration of material available on record.

29. In the present matter, no doubt victim in her both the statements recorded during investigation stated against opposite party no.2 but from the perusal of the bail granting order dated 30.8.2023 it appears that even the Investigating Officer raised doubts on the story narrated by the victim and the informant and court concerned also considered the fact

that FIR of the present case was lodged after seven days and, therefore, even if the court concerned failed to consider the statements of the victim recorded during investigation then also it cannot be said that opposite party no. 2 was not entitled to be enlarged on bail.

30. Further, however, the court concerned also did not discuss the fact that at the time of medical examination abrasions were found on the cheek and hands of the victim and Doctor also opined, there are signs of use of force but from the perusal of the medical report of the victim it appears that victim was medically examined on 19.6.2023, i.e., after nine days of the alleged rape and, therefore, merely on the basis of abrasions noted by the Doctor at the time of her medical examination it cannot be said that these abrasions were sustained during alleged rape as she might have sustained these minor/small abrasions even subsequently in some other manner.

31. Further, no doubt in bail granting order the court concerned did not discuss the material available on record including statements of victim and her medical report but from the bail granting order it reflects that the entire material was perused before granting bail.

32. The Apex Court in case of **Myakala Dharmarajam & others Vs. The State of Telangana & Another** dated 07.01.2020 passed in Criminal Appeal No. 1974-1975 of 2019 arising out from SLP (Crl.) Nos. 8882-8883 of 2019 also observed as:-

""9. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant-Respondent No.2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence."

33. Further, in the case at hand, apart from the fact that in view of the court concerned prosecution story appears to be unconvincing the another aspect is that FIR of the present case was lodged after seven days on the application moved by applicant dated 13.6.2023 and a day before, i.e, 12.6.2023 opposite party no.2 had lodged an FIR against him and others and, therefore, possibility at this stage cannot be ruled out that due to this enmity next day applicant moved an application for lodging of the FIR against opposite party no.2.

34. Further, from the perusal of the FIR of the present case dated 17.6.2023 it reflects that opposite party no.2 had taken the victim on 10.6.2023 at about 5.00 PM and according to the FIR, lodged by opposite party no.2 against the applicant

dated 12.6.2023, on 10.6.2023 at about 5.00 PM in the evening applicant and others assaulted him, therefore, time and date of incident alleged by opposite party no.2 in his FIR and time and date of enticement alleged to have been made by opposite party no.2 in the FIR of the present case are same and, therefore, at this stage it is not possible to ascertain whose FIR and allegation is correct and this fact can only be properly ascertained by the trial court during trial therefore, from this angle too opposite party no. 2 appears to be entitled for bail.

35. Personal liberty of a person is the most cherished fundamental right provided under the Constitution of India and personal liberty of a person should not be easily curtailed and for curtailment of personal liberty very cogent and overwhelming circumstances are necessary. The law with regard to cancellation of bail is also settled that it is easy to reject a bail application but it is very difficult to cancel the bail already granted and for cancellation of bail very overwhelming and cogent circumstances are necessary. In case of cancellation of bail the court has to extinguish the personal liberty which has been earlier granted and therefore, the court in casual manner without in depth examination of the facts and circumstances of the case, can not allow such application for cancellation of bail. While dealing with the bail cancellation application the Court must be circumspect in cancelling the bail already granted.

36. Further, there is no allegation that opposite party no.2 after released on bail is either threatening the applicant or victim or is trying to tamper the prosecution evidence.

37. Therefore, from the discussed above, in my view, the instant bail cancellation application is devoid of merit and is, accordingly, **dismissed**.

38. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail cancellation application and the said observations shall have no bearing on the merits of the case during trial.

Order Date:- 23.11.2023
SKM