

Court No. - 68

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 442 of 2021

Applicant :- Naumaan

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

Counsel for Applicant :- Vivek Kumar Singh, Mayank Yadav

Counsel for Opposite Party :- G.A., Mohammad Faisal Khan

Hon'ble Dr. Gautam Chowdhary, J.

1. The instant bail cancellation application has been moved on behalf of the informant for cancelling the bail granted to the accused-opposite party nos.2 in Case Crime No.278 of 2021 under Sections 376, 504, 506 I.P.C., and Section 3/4 of POCSO Act, Police Station Civil Lines, District Muzaffar Nagar.

2. List revised. None appears to press this bail cancellation application of the opposite party no.2 although the name of learned counsel for the opposite party no.2 has been shown in the cause list.

3. Learned counsel for the applicant submits that the accused-opposite party no.2 has been granted bail by learned Court below without considering the factual and legal aspect of the matter. He further submits that the victim was minor at the time of incident inspite of the same, the learned Court below has granted bail to the accused-opposite party no.2 considering the ossification test of the victim. Learned counsel further argued that the applicant had produced the school leaving certificate before the Investigation Officer, wherein the age of the victim has been recorded as 31.01.2008, thus the victim was aged about 12 years at the time of incident. It is thus contended that learned Court has illegally granted bail to the accused-opposite party no.2.

4. On the other hand, the learned A.G.A. submits that no illegality or perversity has been committed by the learned court below while granting bail to the accused-opposite party no. 2.

5. The sole ground taken by learned counsel for the applicant for cancelling the bail of the accused-opposite party no.2 is that the victim was minor at the time of incident and her date of birth has been recorded as 01.01.2008 in the school leaving certificate issued by Head Master, Prathmik Vidyalaya Colony, Kanya-2, District Muzaffar Nagar. The certificate also shows

that the victim was admitted in the said institution on 28.07.2017 and had left on 05.09.2018 and had studied for about one year, which school leaving certificate was produced by the applicant before the Investigating Officer to demonstrate that the victim was minor and to be made a part of the case diary, however, the same has not been taken on record. The ground is not sufficient for cancelling the bail granted to the accused-opposite party no.2.

6. Accordingly, after perusing the order impugned as well as pleadings of the instant case as well as arguments advanced by learned for the parties, this Court is of the opinion, that learned counsel for the applicant could not point out any good ground for cancelling the bail granted to the opposite party no.2 in exercise of powers conferred under 439 (2) Cr.P.C.

7. Accordingly, the relief as sought by the applicant is refused.

8. At this stage, learned counsel for the applicant submits that the applicant as well as victim are being threatened by the accused-opposite party no.2 and his associates, on account of which, the trial could not be concluded, thus they apprehends danger to their life and liberty and some protection may be granted to the applicant so that the trial may be concluded expeditiously.

9. Keeping in mind that the instant bail cancellation application has been filed in the year 2021 and that the trial has not yet not been concluded however, in case that the informant-applicant apprehends danger to his life and liberty, the applicant may move appropriate application on the proforma prescribed in the Witness Protection Scheme 2018 alongwith a certified copy of this order for redressal of his grievances, as raised in the instant bail cancellation application, before the competent authority as has been defined under Section 2 (c) of the Witness Protection Scheme, 2018, which scheme has been approved by Hon'ble Apex Court in **Mahender Chawla and others Vs. Union of India** reported in **(2019) 14 SCC 615**, within a week from today, same shall be considered and decided as expeditiously as possible, preferably within a period of one month from date of filing such application, strictly in accordance with the Witness Protection Scheme 2018.

10. With the aforesaid observations, the instant bail cancellation application stands disposed of.

Order Date :- 20.11.2023

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