

Court No. - 65

**Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 683 of 2023**

Applicant :- Irfan

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Sarvajeet Singh

Counsel for Opposite Party :- G.A., Bharat Singh

Hon'ble Rajeev Misra, J.

1. Heard Mr. Ajay Kumar, the learned counsel for applicant, the learned A.G.A. for State and Mr. Birendra Singh, Advocate, holding brief of Mr. Bharat Singh, the learned counsel representing accused-opposite parties 2 and 3.

2. Perused the record.

3. This application for cancellation of bail has been filed by first informant-Irfan seeking cancellation of bail granted to accused-opposite parties 2 and 3 vide order dated 18.01.2017 passed in Criminal Misc. Bail Application No. 759 of 2017(Yakub Shah and Another Vs. State of U.P.). For ready reference, the order dated 18.01.2017 is reproduced hereinunder:-

"Sri Umesh Chandra Tiwari, Advocate has filed his Vakalatnama today on behalf of first informant / complainant, which is taken on record.

Heard learned counsel for the applicants, learned A.G.A and learned counsel for the first informant and perused the record.

Learned counsel for the applicants contended that applicants have been falsely implicated in the N.C.R Case No. 255 of 2015, in which matter the N.C.R was lodged by the first informant regarding the alleged incident dated 03.10.2015, for causing injuries to his brother ? Usman by the applicants and two others; that as per inquiries mentioned in injury report at Annexure No. 2, single lacerated wound of 02 c.m. X 0.5 c.m scalp deep on left side of the head was sustained by the deceased, on account of which, he is alleged to have been succumbed on 05.10.2015; that in F.I.R general and common role for causing injuries with Lathi ? Danda to the deceased has been assigned to all the four persons and no specific role has been assigned to the applicants for causing single injury; that in view of the facts that single injury was caused to the deceased / victim; in the F.I.R the applicants may not be considered to be the authors of the above injury; that the applicants did not commit the incident in question dated 03.10.2015 and did not cause any injury to the deceased with the Lathi or Danda; that the

appellants have no criminal history; that the applicants undertake that they will not make misuse the liberty of bail; that the applicants are in custody since 19.10.2015.

Learned A.G.A for the State and Sri Umesh Chandra Tiwari, counsel for first informant / complainant have vehemently opposed the prayer of bail.

Upon hearing learned counsel and perusal of record and considering the complicity of accused, severity of punishment, as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

Let the applicants Yakub Shah and Akbar Shah be released on bail in Case Crime No. 765 of 2015, under Sections 304, 504 of I.P.C, Police Station ? Kadar Chowk, District ? Budaun, on furnishing a personal bond and two sureties each in the like amount by each of them to the satisfaction of Magistrate / Court concerned, subject to following conditions:-

i. The applicants will co-operate with the trial and remain present personally on each and every date fixed for framing of charge, recording of evidence as well as recording of statement under Section 313 Cr.P.C. or through counsel on other dates and in case of absence without sufficient cause, it will be deemed that they are abusing the liberty of bail enabling the court concerned to take necessary action in accordance with the provisions of Section 82 Cr.P.C. or Sections 174-A and 229-A I.P.C.

ii. The applicants will not tamper with the prosecution evidence and will not delay the disposal of trial in any manner whatsoever.

iii. The applicants will not indulge in any unlawful activities.

The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison."

4. Present application for cancellation of bail came up for orders on 27.10.2023 and this Court passed the following order:-

"1. Heard Mr. Ajay Kumar, Advocate, holding brief of Mr. Sarvajeet Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. At the very outset, the learned counsel for applicant contends that the scope of the present application for cancellation of bail be confined in respect of accused-opposite party 2 alone. He, therefore, contends that he be permitted to delete the names of accused-opposite parties 4 and 5 from the cause title of the present application for cancellation of bail.

3. Prayer made by the learned counsel for applicant is bona-fide. Same is not opposed by the learned A.G.A.

4. Accordingly, it is allowed.

5. Let necessary amendment in the cause title of this application for cancellation of bail be carried out by the learned counsel for applicant during course of the day.

6. This application for cancellation of bail has been filed by first informant seeking cancellation of bail granted in favour of accused opposite parties 2 and 3 by this Court vide order dated 18.01.2017 passed in Criminal Misc. Bail Application No. 759 of 2017 (Yakoob Shah and Another Vs. State of U.P.).

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

8. Issue notice to accused-opposite parties 2 and 3.

9. Notice shall be made returnable on 20.11.2023.

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

11. Matter shall re-appear for orders as fresh on 20.11.2023"

5. A counter affidavit has been filed on behalf of accused-opposite parties 2 and 3. In the counter affidavit, a specific plea has been taken that the Bail Cancellation Application No. 2399 of 2020 has already been filed by applicant before court below. During the pendency of aforementioned application for cancellation of bail, present application for cancellation of bail has been filed. As such, the applicant is pursuing parallel remedies, which is not permissible in law.

6. It is then contended by the learned counsel representing accused-opposite parties 2 and 3 that even otherwise, there is nothing on record to show that accused-opposite parties 2 and 3 have either jumped the bail or have terrorized the witnesses inasmuch as, there is no material on record to substantiate the ground taken in the application for cancellation of bail. He, therefore, contends that present application for cancellation of bail is misconceived.

7. When confronted with above, the learned counsel for applicant could not overcome the same.

8. Having heard, the learned counsel for applicant, the learned A.G.A. for State and the learned counsel representing accused-opposite parties 2 and 3 this Court finds that applicant is pursuing parallel remedies for the same relief which is not permissible in law. Applicant has already approached the court below for seeking cancellation of bail granted to accused-opposite parties 2 and 3.

Furthermore, there is nothing on record to show that accused-opposite parties 2 and 3 have either jumped the bail or they are terrorizing the witnesses after having been enlarged on bail, in view of above, this Court does not find any good or sufficient ground to entertain the present application for cancellation of bail.

9. As a result, present application for cancellation of bail fails and is liable to be rejected.

10. It is accordingly **rejected**.

Order Date :- 16.12.2023

Vinay