

Court No. - 86

Case :- APPLICATION U/S 482 No. - 42137 of 2023

Applicant :- Pramod Kumar Rathore

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

Counsel for Applicant :- Pankaj Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and learned AGA for the State.

2. By means of instant application under Section 482 Cr.P.C., the applicant has challenged the order dated 10.10.2023 passed by Session Judge, Agra in Criminal Appeal No. 165 of 2023 (Pramod Kumar Rathore Vs. Smt. Anchala Agrawal), under Section 138 of N.I. Act, P.S. New Agra, District- Agra, by which the application 14-B with the prayer to grant some more time for depositing 20% of the amount of fine/ compensation awarded in compliance of order dated 19.7.2023 has been rejected and bail granted to the applicant vide order dated 19.7.2023 has been cancelled.

3. Learned counsel for the applicant has submitted that the applicant in the instant case was tried by the Presiding Officer, Special Judge (138 of N.I. Act), Agra, on a complaint filed by the opposite party No. 2, the trial court convicted the applicant under Section 138 of Negotiable Instruments Act and directed him to pay Rs. 8,40,000/- (Rs. 7 lakh being the cheque amount and Rs. 1,40,000/- as interest) to the opposite party No. 2.

4. Being aggrieved and dissatisfied by the said order, the applicant preferred an appeal before the Session Court and filed an

application for grant of bail under Section 389 Cr.P.C. The Sessions Judge, Agra allowed the bail application on the condition that the applicant shall furnish a personal bond and two sureties of Rs. 20,000/- to the satisfaction of the Court concerned and in compliance of the provision contained in Section 148 N.I. Act to deposit 20 % of the fine or compensation awarded by the trial court and remaining amount of fine or compensation was stayed by the court below vide order dated 19.7.2023.

5. Pursuant to the order dated 19.7.2023, the applicant was released on bail on furnishing a personal bond of Rs. 20,000/- to the satisfaction of the court concerned, however despite lapse of two months, the applicant though continued to enjoy the privilege of bail but did not deposit the 20 % amount of the fine or compensation amount awarded by the trial court being a condition for the grant of bail and instead moved an application for granting further time to deposit the said amount which was disposed of vide order dated 25.9.2023 to the intent that if the due amount under order dated 19.7.2023 is not deposited by the date fixed (10.10.2023), further order shall be passed looking to such non-compliance and no further time shall be allowed. Again on 10.10.2023, the applicant deliberately did not comply the order dated 19.7.2023 for deposition of 20% of the fine or compensation amount awarded by the trial court and further moved an application with the prayer to grant some more time for depositing the amount, which application has been dismissed by the court below and his bail has been cancelled.

6. Being aggrieved and dissatisfied by the said order, the present application u/s 482 Cr.P.C. has been filed.

7. Learned counsel for the applicant has submitted that deposition

of the 20% of fine or compensation amount as envisaged under Section 148 of N.I. Act is not an absolute rule, therefore, the applicant cannot be compelled to deposit 20% of the fine or compensation amount awarded by the Appellate Court for his release on bail and, therefore, the impugned order rejecting his bail is absolutely illegal and liable to be set aside.

8. In order to buttress his argument, learned counsel for the applicant has relied upon the decision in Criminal Appeal No. 2741 of 2023 (Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd. and ors.

9. Per contra, learned AGA has vehemently opposed the said prayer and has supported the impugned order. He has further submitted that as per the provision contained in Section 148 N.I. Act, the appellate court while releasing the applicant on bail may direct him to deposit such sum which shall be a minimum of 20 % of the fine or compensation awarded by the trial court. Pursuant to the said provision, the Appellate Court at the time of granting bail to the applicant has directed him to deposit 20% of the fine or compensation amount being one of the condition for being released on bail, however even after further time being granted to him vide order dated 25.9.2023 has not deposited the said amount and is enjoying the privilege of bail and thus, his clearly violated the condition imposed upon him at the time of passing of order for his release on bail.

10. Learned AGA has further submitted that the applicant is repeatedly seeking time for depositing the said amount and despite time being granted to him, he has not deposited the said amount and has been continuously violating the condition imposed upon him for his release on bail and, therefore the court below has

rightly cancelled his bail by the impugned order, and, there is no illegality or error in passing the impugned order, which is just, proper and legal and do not call for any interference by this Court. He has further submitted that the case cited by the counsel for the applicant is based on completely different facts where the cheque amount of Rs. 2,52,36,985/- with interest thereon at the rate of 9% per annum was directed to be paid and looking to the huge sum of money being 20% of the amount of compensation awarded, the Apex Court keeping in view huge sum of money to be paid at the time of hearing of the appeal had held that mandatory deposition of the 20% of the amount of compensation was not an absolute rule, however, in the present case only an amount of Rs. 1,68,000/- was required to be deposited by the applicant, however despite repeatedly granting further time to deposit the amount the applicant did not deposit the said amount and deliberately flouted the order granting bail consequent thereto his bail has been cancelled. Furthermore for not fulfilling the condition granting him bail, the case cited by the applicant is clearly distinguishable and is not applicable in the facts of the present case.

11. Having considered the rival submissions made by the learned counsel for the parties and taking into consideration the fact that the applicant was granted bail on a condition that he shall deposit 20% of the compensation amount, within two months of his release on bail, however despite expiry of the period of two months, the applicant though, continued to enjoy the privilege of bail, but did not fulfil the condition of bail of depositing 20% of the compensation amount as envisaged in Section 148 of N.I. Act and imposed by the Appellate Court as a condition for his release on bail and, thus, the applicant has repeatedly violated the condition of bail and has failed to deposit the amount, as such his

bail has rightly been cancelled. There is absolutely no illegality or error in passing the impugned order, which is just, proper and legal and the case cited by the counsel for the applicant is clearly distinguishable on facts and as such, the impugned order passed by the court below cancelling his bail is just, proper and legal and do not call for any interference by this Court.

12. The present application under Section 482 is devoid of merit and is accordingly dismissed.

Order Date :- 24.11.2023

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