

**A.F.R.**

**Court No. - 19**

**Case :-** CRIMINAL MISC. BAIL CANCELLATION APPLICATION  
No. - 13 of 2024

**Applicant :-** Soni

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko. And  
Another

**Counsel for Applicant :-** Sumit Kumar Srivastava

**Counsel for Opposite Party :-** G.A.,Murli Manohar Srivastava

**Hon'ble Subhash Vidyarthi J.**

1. Heard Shri Sumit Kumar Srivastava, the learned counsel for the applicant, Shri Anant Pratap Singh, the learned AGA for the State and Shri Murli Manohar Srivastava, the learned counsel appearing on behalf of the opposite party No.2.
2. By means of the instant application filed under Section 439 (2) Cr.P.C., the applicant has sought cancellation of an order dated 19.12.2023 passed by this Court in Criminal Misc. Anticipatory Bail Application No.2945 of 2023, whereby this Court had granted anticipatory bail to the opposite party no. 2 in Case Crime No.214 of 2023 under Sections 143, 147, 148, 307, 326, 447, 506 IPC, Police Station-Sohra Mau, District-Unnao.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 12.12.2023 against ten persons stating that the accused persons forcibly took possession of the land of the informant's father. They were raising a boundary wall around the land for the past two days. They poured petrol on her father on 12.12.2023 and set him ablaze. The opposite party no. 2 had contended that he has falsely been implicated in the present case for the reason that a dispute regarding the land in question was going on in the Court of Sub Divisional Magistrate, Hassanganj, Unnao, instituted by Surya Kumar Singh – uncle of the opposite party no. 2, which was decided in his

favour by means of a judgment and order dated 17.11.2023, whereby a report submitted by the Revenue Inspector was accepted and demarcation was ordered to be carried out on the spot. On 30.11.2023, the Tehsildar had passed an order constituting a team of officials for carrying out demarcation on the spot and accordingly demarcation was carried out on 09.12.2023. After demarcation of the disputed land on the spot, the uncle of the opposite party no. 2 had secured the disputed land by raising a boundary wall around the land on 09.12.2023 itself. The victim had committed self immolation and newspaper reports to this effect were published online on 12.12.2023 at 12:12:27 i.e. immediately after the incident.

4. This Court took into consideration the aforesaid facts and noted that although the F.I.R states that the victim was saved by persons present nearby and some passersby and he was taken to the hospital, statement of none of those persons had been recorded by the investigating officer. This Court found that there was a property dispute between the parties, which had been settled by the competent authority by ordering demarcation and demarcation had actually being carried out on the spot, but the informant had alleged that there was a property dispute due to which the accused persons had forcibly taken possession of the land in dispute without making any mention of the order passed by the competent court. There is no eye witness of the incident as alleged in the F.I.R. The dispute having already been settled in favour of the accused persons, prima facie there appears to be no motive for them to cause the incident. No independent person has given statement implicating the opposite party no. 2. Keeping in view the aforesaid facts, this Court granted anticipatory bail to the opposite party no. 2.

5. The ground on which the applicant is seeking cancellation of the order dated 19.12.2023 is concealment of material facts by the opposite party No.2 in as much as it was not brought to the notice of the Court at the time of hearing of the application on 19.12.2023 that the opposite party No.2 had already been arrested at about 23:50 hours on 18.12.2023.

6. The opposite party No.2 has filed a counter affidavit bringing on record a copy of the order dated 17.11.2023 passed by the SDM, Hassanganj, Unnao accepting the demarcation report submitted by the Revenue Inspector regarding the property which was in dispute between the parties.
7. The applicant has filed a rejoinder affidavit running into 236 pages. The applicant has disclosed her qualification to be merely literate and her occupation to be a Shopkeeper. The index appended to the rejoinder affidavit mentions photocopies of the judgments passed by the Hon'ble Apex Court and the Hon'ble High Courts as Annexure No.RA-03, without specifying as to how many and which judgments have been annexed with the rejoinder affidavit. A reference of the judgments filed as Annexure No.RA-03 has been made in the Para-18 of the rejoinder affidavit, which also merely states that "A photocopy of judgments of apex court and high court are being collectively annexed collectively herewith as and marked as **Annexure No.RA-03** to this rejoinder affidavit".
8. This paragraph also does not contain the name and other particulars of the judgments that have been annexed as Annexure No.RA-03. The contents of Para-18 of the rejoinder affidavit have been verified by the deponent on the basis of her personal knowledge.
9. Chapter IV of Allahabad High Court Rules deals with Affidavits And Oath Commissioners. Rule 8 of Chapter IV is as follows: -

***"Affidavits filed or presented in Court:-***

*The provisions of Rules 5,6 and 11 of Chapter IX shall, so far as may be, apply to an affidavit filed or presented in Court. It shall be in the language of the Court and shall bear the general hearing:*

*"In the High Court of Judicature at Allahabad."*

*The affidavit and every exhibit annexed thereto shall be marked with the particulars of the case or proceeding in which it is sworn.*

*The affidavit shall contain no statement which is in the nature of an expression of opinion or argument."*

Rule 10 of Chapter IV provides that an affidavit may be sworn by any person having knowledge of the facts deposed to therein. Rule 12 of Chapter IV provides as follows: -

***“Facts to be within the deponent's knowledge or source to be stated :-***

*Except on interlocutory applications, an affidavit shall be confined to such fact as the deponent is able of his own knowledge to prove.*

*On an interlocutory application when a particular fact is not within the deponent's own knowledge, but is based on his belief or information received from others which he believes to be true, the deponent shall use the expression "I am informed and verily believe such information to be true, "or words to that effect, and shall sufficiently describe for the purpose of identification, the person or persons from whom his information was received.*

*When any fact is stated on the basis of information derived from a document, full particulars of that document shall be stated and the deponent shall verify that he believes such information to be true.”*

10. As per the aforesaid provisions contained in the Allahabad High Court Rules provides, the affidavit ought to be confined to such facts, as the deponent is able to prove on her own knowledge. In case the any averment is not in her personal knowledge, and she has made the averment on the basis of information received from some other source, she must have discloses the source of information. There is a clear prohibition against making statements which are in the nature of arguments. Therefore, the annexing of photocopies of numerous precedents with the rejoinder affidavit is against the provisions contained in the Allahabad High Court Rules.
11. Moreover, the manner in which photocopies of seven judgments have been annexed without any index or even list of those judgments, leaves it for the Court to go through the entire rejoinder affidavit running into 236 pages, and in case the Court fails to omit any of the case annexed with the rejoinder affidavit, as otherwise it will be open for the applicant to allege that this Court has passed the order without application of mind to the material available on record. This has resulted in wastage of precious time of the Court which could have been utilized for dispensation of justice to some litigant also. The Court deprecates this conduct of the learned Counsel for the applicant

in filing photocopies of numerous precedents alongwith the rejoinder affidavit in violation of the provisions of the Allahabad High Court Rules.

12. Now I proceed to deal with each and every case-law annexed with the rejoinder affidavit.

13. The first judgment annexed with the rejoinder affidavit is of **Kusha Duruka v. The State of Odhisha**: (2024) 4 SCC 432, and he learned Counsel has placed reliance on the following portion of this judgment:

“4. In *Dalip Singh v. State of U.P.* (2010) 2 SCC 114, this Court noticed the progressive decline in the values of life and the conduct of the new creed of litigants, who are far away from truth. It was observed as under :

*“1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.*

*2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”*

(emphasis in original)

14. In **Kusha Duruka** (Supra), the Hon’ble Supreme Court has also referred to an earlier decision in the case of **Moti Lal Songara Vs. Prem Prakash @ Pappu and another**: (2013) 9 SCC 199, wherein the Hon’ble Supreme Court held that:-

*“19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-respondent is justified in law. We have clearly stated that though the respondent was fully aware about*

*the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim *suppressio veri, expressio falsi*, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused- respondent tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to playpossum.*

*20. The High Court, as we have seen, applied the principle "when infrastructure collapses, the superstructure is bound to collapse". However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand."*

(emphasis in original)

15. A copy of the judgment in the case of **Sushila Aggarwal and Others v. State (NCT of Delhi) and another**: (2020) 5 SCC 1 has also been annexed with the rejoinder affidavit, wherein the Hon'ble Supreme Court referred to a decision in **Gurbaksh Singh Sibbia v. State of Punjab**, (1980) 2 SCC 565, wherein it was held that the provisions of Section 438 Cr.P.C. can be invoked after the arrest of the accused. The grant of anticipatory bail to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

16. **Sushila Aggarwal** refers to the following passage from the judgment in **Gurbaksh Singh Sibbia** (Supra): -

*"94. The proper course of action ought to be that after evaluating the averments and accusation available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or*

*modifying the conditions of bail any time if liberty granted by the court is misused. The bail granted by the court should ordinarily be continued till the trial of the case.*

.....

*96. It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail be exercised either at the instance of the accused, the Public Prosecutor or the complainant on finding new material or circumstances at any point of time.”*

17. The next judgment annexed with the rejoinder affidavit is a judgment dated 3.12.2009 rendered by the Hon’ble Supreme Court in **Dalip Singh v. State of U.P.**, (2010) 2 SCC 114, wherein the Hon’ble Supreme Court referred to the following passage from an earlier decision in the case of **Prestige Lights versus State Bank of India**: (2007) 8 SCC 449: -

*“6. In Prestige Lights Ltd. V. State Bank of India (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court’s jurisdiction under article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in R v Kensington Income Tax Commissioners (1917) 1 K.B. 486, and observed:*

*“In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”*

\* \* \*

*21. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or*

*entertain the appellant's prayer for setting aside the orders passed by the Prescribed Authority and the Appellate Authority."*

18. A copy of an order dated 31.05.2023 passed by a Co-ordinate Bench of this Court in **Smt. Shanti Rani Agarwal versus State of U. P. and another**, Criminal Misc. Bail Cancellation Application No.172 of 2022, has also been annexed with the rejoinder affidavit, wherein it was held that :-

*"29. The clean hands doctrine states that one "who comes into equity must come with clean hands." This doctrine requires the court to deny equitable relief to a party having violated good faith with respect to the subject of the claim. The purpose of the doctrine, as elucidated in Colby Furniture Company, Inc. v. Belinda J. Overton's is to prevent a party from obtaining relief when that party's own wrongful conduct has made it such that granting the relief would be against equity and good conscience."*

19. Another judgment rendered by another Co-ordinate Bench of this Court in **Rajesh Kumar Sharma v. C.B.I.**, Criminal Misc. Anticipatory Bail Application No.4633 of 2022 decided on 9.12.2022, has been annexed with the rejoinder affidavit and it merely follows the dictum of the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia** (Supra).

20. The next judgment annexed with the rejoinder affidavit is of **Smt. Ramendri v. State of U.P.**, application under Section 482 No.5094 of 2021 decided on 24.02.2022, which refers to a judgment of the Hon'ble Supreme Court in **Prestige Lights Limited v. State Bank of India** (2007) 8 SCC 449, which has already been referred above.

21. As the learned Counsel for the applicant has unnecessarily multiplied the number of judgments, it would be relevant to refer to a decision of this Court in **Abbas Ansari v. State of U.P.**, 2023 SCC OnLine All 2466, wherein this Court held that: -

*"29. Keeping in view the conduct of the learned Counsel for the applicant in supplying a compilation of 13 judgments running into 242 pages, without even an index, and placing only one judgment of the Delhi High Court and leaving it for the Court to go through the remaining 12 judgments, the Court is constrained to observe that an increasing tendency of supplying multiple case-laws, without connecting the same to the facts and circumstances of the case in hand is being observed nowadays."*

*This results in wastage of precious time of the Court and creates an unnecessary obstacle in expeditious dispensation of justice.*

*30. It would be proper and sufficient if the learned Counsel put up a proposition and then submit a case-law in support thereof. In case any proposition is supported by any land-mark judgment which has been followed consistently and repeatedly, it would be sufficient to cite that land-mark judgment, or at the most one more latest judgment in which it was followed or reiterated. The Counsel should not supply case laws without putting up a proposition and they should avoid the temptation of citing multiple case-laws on a single point, which does not make any beneficial difference. The learned Counsel are expected to assist the Court in arriving at a decision expeditiously without wasting the precious time of the Court so that the same time may be better utilized in the interest of some other litigants.”*

22. The learned counsel for the applicant has also annexed a judgment rendered by Hon’ble Single Judge of Rajasthan High Court sitting at Jaipur in **Sunil Kallani v. State of Rajasthan** in Criminal Misc. Bail Application No.9155 of 2019 decided on 25.10.2021, wherein the Hon’ble Single Judge held that the anticipatory bail would not lie and would not be maintainable if a person is already arrested and is in custody of police or judicial custody in relation to another criminal case which may be for similar offence or for different offences.

23. The next judgment annexed with the rejoinder affidavit is of **Sumant Kumar Rathi Vs. State of U.P. & Another** 2008 SCC OnLine All 1200, wherein this Court cancelled a bail granted by the Session Court to a person accused of a very serious offence in which the injured sustained fire arm injury at the abdomen inside the house of her in laws only after six months of her marriage without even providing sufficient opportunity to the prosecution to place the correct facts and the Sessions Judge even failed to consider the statement of the injured recorded u/s. 161, Cr.P.C. Sessions Judge also failed to consider that after sustaining the injury the injured had got paralyzed. His Court held that when Session Court has granted bail to the accused on the basis of the irrelevant and inadmissible evidence then this Court must certainly cancel the bail.

24. The last judgment annexed with the rejoinder affidavit is of **Shri T.K. Dutta v. Pawan Kumar Didwani and Anr.** 1995 Criminal Law Journal 3274, in which an Hon'ble Single Judge of Kolkata High Court held that where the accused had obtained bail by falsely claiming that he was suffering from Myocardial Infraction, only on consideration of the "serious condition his health", by practising fraud upon the Court for obtaining the said Order, the bail order was liable to be cancelled.
25. It is no doubt correct that a litigant approaching the Court or setting the process of law in motion should do so fairly and with clean hands. But unfortunately in the present case, it is the applicant herself, who did not observe this basic principle while lodging the FIR falsely alleging that the accused persons had forcibly taken possession of the land in dispute whereas the possession of the land in dispute had been delivered by Competent Revenue Authorities by adopting due process of law. Therefore, it appears that it is the informant herself who has set the criminal law in motion by not only concealing the relevant fact that the possession of the land in dispute had been handed over to the opposite party No.2 by adopting due process of law but making a false statement by alleging that the possession had been taken forcibly.
26. So far as the submission of learned counsel for the applicant that the applicant had already been arrested when this Court passed an order for anticipatory bail, suffice it to say that the opposite party no. 2 had filed the anticipatory bail application on 16.12.2023, after giving its notice to the learned Government Advocate on 14.12.2023. Therefore, the opposite party No.2 had filed the anticipatory bail application while he was not in custody.
27. When the notice of the application was given while the opposite party No.2 was not in custody and the application was also filed when the opposite party No.2 was not in custody, therefore, the opposite party No.2 has not concealed the fact of his arrest in the anticipatory bail application as he had been not arrested till filing of the anticipatory bail application.

28. So far as the question of learned counsel for opposite party No.2 having concealed the facts of arrest of opposite party No.2 from this fact is concerned, the opposite party No.2 was arrested at 23:50 hours on 18.12.2023 and this Court has no reason to presume that the learned counsel for the opposite party No.2 had knowledge of arrest of opposite party No.2, when he advanced his submissions before this Court when the case was taken up as fresh on 19.12.2023.
29. Therefore, the allegation of concealment of fact is not correct either against the applicant or against his learned counsel.
30. The order dated 19.12.2023 has been passed after taking into consideration all the relevant facts and circumstances of the case, as has been noted in the preceding paragraphs of this order, including the facts that the applicant has falsely alleged in the F.I.R. that the accused persons had taken possession of the land in dispute forcibly. The learned Counsel for the applicant has failed to make out any ground for cancellation of the bail order dated 19.12.2023.
31. The application for cancellation of bail order dated 19.12.2023 lacks merit and the same is hereby *dismissed*.

**(Subhash Vidyarthi J)**

**Order Date:** 29.05.2024

-Amit K-