

Court No. - 15

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 66 of 2023

Applicant :- Amit Kumar Singh

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

Counsel for Applicant :- Akshat Kumar

Counsel for Opposite Party :- G.A.,Anurag.S.Kaalesh

ALONG WITH

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And Another

Counsel for Applicant :- Akshat Kumar

Counsel for Opposite Party :- G.A.,Anurag Srivastava
Kaalesh,Ramakar Shukla,Ramakar

Hon'ble Mohd. Faiz Alam Khan,J.

1. Above placed both the applications are pertaining to same case crime number and arising out of same First Information Report and thus for the purpose of convenience both the applications are being disposed of by a common judgment.

2. Heard Shri Vivek Raj Singh, learned Senior Advocate, assisted by Shri Shantanu Mishra, holding brief for Shri Aksha Kumar, learned counsel for the applicant, Ms. Rani Singh, brief holder appearing for the State as well as Shri Anurag Srivastava Kaalesh, learned counsel appearing for opposite party no.2 in Bail Cancellation Application No. 66 of 2023 and Shri Ramakar Shukla appearing for the opposite party no.2 in Bail Cancellation Application No. 65 of 2023

3. These two Bail Cancellation Applications have been moved by the informant/ applicant- **Amit Kumar Singh** with the prayer to set aside the orders dated 14.06.2023 passed by the District & Sessions Judge, Lucknow, whereby the facility of bail has been granted to opposite party no.2 Lal Bahadur Yadav and Manoj Yadav in Case Crime / FIR No. 460 of 2022, under Sections 406, 420, 467, 468, 471, 120-B, 506 IPC, Police

Station Gomti Nagar, Lucknow, by passing separate orders and to cancel the bail granted to opposite party no.2/ accused persons.

4. Learned Senior counsel, Shri Vivek Raj Singh while drawing attention of this Court towards the orders dated 14.6.2023, passed by the Sessions Judge, Lucknow, whereby the facility of bail has been extended to the opposite parties no.2, Lal Bahadur Yadav and Manoj Yadav submits that the facility of bail has been granted in favour of opposite party no.2/ accused, by the Sessions Judge without considering the merit and the amount siphoned by the accused persons and without considering the gravity of the offence.

5. It is further submitted that opposite party no.2, namely, Lal Bahadur Yadav and Manoj Yadav were working as Manager of the Petrol Pumps, namely Filling Centre situated at Transport Nagar, Lucknow and the other one situated at Gomti Nagar. The informant along with his father and mother, namely Shri Kaushalendra Singh and Smt. Pushpa Singh are the partners of the Firm and having regard to the age and ailment of his parents the applicant is managing the affairs of the petrol pumps and other business. The opposite party no.2 along with 2 other accused persons, namely, Manoj Yadav (Assistant Manager) (opposite party no.2 in Bail Cancellation Application No. 65 of 2023) and Ajay Gupta (Accountant) hatched a criminal conspiracy in order to misappropriate huge amount of the petrol pumps which they were looking after and in this regard they all in connivance with each other had forged fabricated documents such as, bills/ daily ledger and other documents of the petrol pumps and have siphoned crores of rupees.

6. It is further submitted that at the time of lodging of the FIR the applicant/ informant was not aware of the modus operandi adopted by the accused persons to misappropriate huge amount and when he deputed a chartered accountant for the purpose of detailed audit and he provided documents to him applicant it was revealed that for the last three years the accused persons have siphoned amount of more than 3 crores.

7. It is further submitted that the opposite parties in connivance with the other accused persons have also misappropriated huge amount using fleet cards. It is submitted that fleet cards are issued by the Indian Oil Corporation to big fleet owners, which are used by particular vehicles in the fleet to purchase fuel from the Indian Oil Petrol Pumps. The accused persons have swapped these fleet cards belonging to the Transport Nagar Branch at the Gomti Nagar Branch so that misappropriation may be easily made.

8. It is further submitted that accused persons/ opposite party no.2 has also made fake fleet cards and by doing this they earned huge amount of money which has been deposited by them in their bank accounts while the accused/opposite parties were working on a meager salary of Rs. 12000 -15000/-.

9. It is further submitted that in connivance with other accused persons the opposite parties also manipulated ledgers and other documents of the petrol pumps and when the misdeeds of accused persons are surfaced in the year 2020 they undertook that they will give a justification for this mismanagement committed by them and will return the whole money. During the course of audit performed by the chartered accountant difference in amount was also noticed in the ledger maintained at petrol pump and entries made in the daily soft ware, reflecting the misappropriation committed by the opposite parties.

10. It is vehemently submitted that Sessions Judge while passing the impugned orders of granting bail did not appreciate the gravity of offences and also obtained bail bond in the routine manner to the tune of Rs. 75,000/- only which would not be sufficient to safe-guard the amount misappropriated.

11. It is also submitted that so much so the report prepared by the chartered accountant was part and parcel of the investigation and the same has not even been discussed by the Sessions Judge and one co-accused, namely, Ajay Gupta who was an accountant and was granted anticipatory bail by the High Court has gone absconding and process of 82-83 Cr.P.C. has been issued against him, therefore it is also on the cards that the instant applicant may also abscond and will not be available for trial.

12. It is vehemently submitted that the bail orders passed in favour of the accused persons Lal Bahadur Yadav and Manoj Yadav be cancelled and they be taken in to custody.

13. Learned Senior counsel has placed reliance on the law laid down by the Hon'ble Supreme Court in the cases of ***Neeru Yadav Vs. State of U.P.***- (2014) 16 SCC 508, ***Mahipal Vs. Rajesh Kumar @ Polia and another*** – (2020)2 SCC 118 and ***Chaman Lal vs. State of U.P.*** -(2004) 7 SCC 525.

14. Learned AGA on the other hand submits that it is for this Court, having regard to the facts and circumstances of the case to take, appropriate decision and keeping in view the material evidence collected by the Investigating Officer, Sessions Judge, Lucknow has committed manifest illegality in granting bail to

the opposite no.2 as the allegations against him were grave.

15. Shri Anurag Srivastava Kaalesh, learned counsel appearing for opposite party no.2 Lal Bahadur Yadav in Bail Cancellation Application No. 66 of 2023 submits that no illegality or to say any irregularity has been committed by the Sessions Judge, Lucknow in granting the facility of bail to the accused Lal Bahadur Yadav and the same has been granted after discussing merits of the case and also considering the long custody period for the accused.

16. It is further submitted that the accused/ opposite party no.2 Lal Bahadur Yadav was Manager at Shri Filling Station, Gomti Nagar, Lucknow only and it is only to save taxes the informant had chalked out a mechanism and his salary was disbursed from other petrol pump located at transport Nagar and it is impossible for a person to manage both petrol pumps. It is also relevant to note that there is difference between principles of grant of bail and cancellation of bail on an appeal made against the orders granting bail and very cogent and overwhelming circumstances are required for an order directing the cancellation of bail already granted.

17. It is further submitted that as the accused Lal Bahadur Yadav was only the Manager at Gomti Nagar, Petrol Pump he was not having any concern with the accounts of other petrol pump of the informant, which were managed by an expert accountant of the informant, namely, Ajay Gupta and his team comprising of Ashish Bajpai, Abhay Bajpai, Deepak Singh, Arvind Tiwari and Anshuman and this fact was also communicated by the accused /opposite party no.2 to the Investigating Officer. Thus it was the duty of the accountant Ajay Gupta and his team to prepare monthly assessment sheets and also to get it verified by the chartered accountant and he has been granted anticipatory bail, vide order dated 9.11.2022 by this court in Anticipatory Bail Application No. 1856 of 2022.

18. It is further submitted that audit report relied on by the informant is not part and parcel of the investigation and charge sheet and the same has not been filed before the trial court yet, therefore the contention of learned Senior Counsel that this report has not been relied on by the Sessions judge, is misconceived.

19. It is also submitted that in the entire case diary the Investigating Officer has not recorded the statement of any fleet card holder and therefore this allegation is not having any substance.

20. It is further submitted that fixing the amount of personal bond or surety bond is the prerogative of the trial court and object of the same is to ensure the presence of the accused person before the trial court and is not to safeguard the amount allegedly misappropriated and the same can never be construed for the recovery of any money.

21. It is also submitted that speedy trial is a fundamental right of a person and since the accused was in custody for more than one year and no audit report was produced before the trial court for the purpose of framing charges and it was shown that audit is still going on, the trial court has rightly granted the bail to the opposite party no.2.

22. It is also submitted that all the charged offences against the accused persons are triable by the Magistrate and the case is only for misappropriation and embezzlement of money and thus no illegality or to say any irregularity has been committed by the trial court/ Sessions Judge in granting bail to the accused Lal Bahadur Yadav.

23. Reliance has also been placed by learned counsel for opposite party no.2/ accused on the law laid down by the Hon'ble Supreme Court in the case of *Bhattacharya v. National Investigation Agency* reported in 2022(1) Law Herald (SC)596 and *Mohd. Muslim @ Hussain v. State (NCT of Delhi)* reported in 2023(1) Law Herald (SC) 882.

24. Shri Ramakar Shukla, learned counsel appearing for opposite party no.2/ accused in Bail Cancellation Application No. 65/2023 submits that the facility of bail has been granted to the accused in the instant case as all the allegations alleged against the applicant in this case are false, concocted and could not be believed.

25. It is further submitted that on the basis of identical facts, another false FIR was filed with regard to another petrol pump wherein the opposite party no.2/ accused was neither an employee nor he was having any concern with the same.

26. It is further submitted that audit report which is being highlighted by the applicant has never been made the part of the case diary and could not be placed against the applicant/ accused.

27. It is further submitted that in another FIR lodged on the basis of identical allegations the applicant has been granted bail by this Court, vide order dated 11.5.1012 passed in Bail Application No. 6575 of 2022 while another co-accused,

namely, Ajay Gupta who was an accountant has been granted facility of anticipatory bail, vide order dated 9.4.2022 passed in Anticipatory Bail Application No. 1856 of 2022.

28. It is also submitted that the bail has been granted by the Sessions Judge, after considering all the facts and circumstances of the case as well as the material available on record and by assigning reasons and the same may not be termed as irregular or illegal as the same shows application of mind by the Sessions Judge on the facts and circumstances of the case.

29. It is also submitted that the application would abide by any condition which has been placed by this Court in Cril Misc. Bail Application No. 6575 of 2022 and by the Session Judge in impugned order therefore the bail cancellation moved on behalf of the informant is liable to be dismissed.

30. Having heard learned counsel for the parties and having perused the record, it is to be recalled that there is difference between the bail matter for grant of bail and for cancellation of bail already granted. The question before this court is as to whether the Session Judge was justified in granting bail to the accused under section 439 Cr.P.C. and whether there are any supervening circumstances which would warrant the cancellation of bail granted by session court.

31. While discussing the principles on cancellation of bail Hon'ble Supreme Court in Dr. Naresh Kumar Mangla Vs Anita Agarwal & Ors., while considering cancellation of an order of anticipatory bail opined as under :-

*"19. The Constitution Bench has reiterated that the correctness of an order granting bail is subject to assessment by an appellate or superior court and it may be set aside on the ground that the Court granting bail did not consider material facts or crucial circumstances. A two judge Bench of this Court, in **Kanwar Singh Meena vs. State of Rajasthan** noted that: (SCC pp. 185-86, para 10)*

"10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each

criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail.

Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

(emphasis supplied)

20. Recently, this Court in **Myakala Dharmarajam vs. The State of Telangana** reiterated the above principles and stated: (SCC p. 746. para 9)

"9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the Accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail."

32. Hon'ble Supreme Court in '**X vs. The State of Telangana and others**' reported in MANU/SC/0583/2018, while distinction

between the rejection of bail and cancellation of the same opined as under:-

" In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In advertent to the distinction, a Bench of two learned Judges of this Court in **Dolatram v State of Haryana** MANU/SC/0547/1995 : (1995) 1 SCC 349 observed that:

"Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

These principles have been reiterated by another two Judge Bench decision in **Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan** MANU/SC/0581 /2011 : (2011) 5 SCC 296 and more recently in **Dataram Singh v State of Uttar Pradesh** MANU/SC/0085/2018:2018 (2) SCALE 285:

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

33. Perusal of the impugned orders would reveal that the said orders have been passed after providing opportunity of being heard to the (State D.G.C. (Crl.)) and the Sessions Judge had discussed all the relevant submissions of the counsels. He has also recorded in detail the arguments/ submissions advanced by the D.G.C. (Crl) in support of his submissions to reject the plea of bail. Perusal of these orders would sufficiently reveal that almost all the submissions which have been raised before this Court for the purpose of canceling the facility of bail already granted in favour of opposite parties have been raised by the D.G.C. (Crl.) before the Sessions Judge. The Sessions Judge has also considered the audit details and also the conduct of the accused persons including the opposite parties of instant applications. The Sessions Judge has also noticed in paragraph 5 of the impugned bail orders that while one FIR bearing Case Crime No. 033/2023 had already been lodged at Police Station Sarojini Nagar, Lucknow under Sections 420, 406, 120-B, 467, 468, 471, 506 IPC, against the accused persons, on the basis of identical allegations, in order to deny the facility of bail and to ensure that the accused persons are not released from jail another First Information Report was lodged. The Sessions Judge also noticed that with regard to Case Crime No. 033/2022, the opposite parties/accused persons before this court have already been granted bail by the High Court, vide orders dated 11.5.2023 passed in Crl. Misc. Bail Application No. 6376/2022 and in Crl. M. Bail App. No. 6575 of 2022 and also noticed that accused Ajay Gupta who was an accountant and was looking after of the accounts of the Firms/ Petrol Pumps has also been released on Anticipatory Bail, vide order dated 9.11.2022 passed in Crl. Misc. Anticipatory Bail, Application under Section 438 Cr.P.C. No. 1856 of 2022. It is also noticed by the Sessions Judge that the charge sheet in this case has already been submitted and the accused persons are in jail in this case since 10.10.2022 while the plea of bail was being considered on 14.6.2023 and with regard to the similar allegation they have already been granted bail by the High Court in FIR lodged bearing Case Crime No. 033/2022.

34. A perusal of the impugned orders passed by the Sessions Judge concerned would sufficiently demonstrate that the Sessions Judge has given elaborate reasons for extending the facility of bail to the accused persons/opposite parties. It is also to be noticed that on the basis of similar allegations the applicants had been already granted bail by the High Court in other F.I.R. No. 33/2022 when their plea of bail was being considered by the Sessions Judge with regard to the second FIR (instant case) and it also appears to be an admitted situation that all the offences charged against the accused persons are triable

by the Magistrate. There cannot be any dispute in the proposition that the charge sheet has already been submitted.

35. Thus having regard to all the facts and circumstances of the case the impugned orders dated 14.6.2023 passed by the Sessions Judge appears to be well reasoned and every aspect of the case appears to have been taken into cognizance. It cannot be said that the said orders are devoid of reasons and thus, for the reasons mentioned above I do not find any illegality in the impugned orders passed by the Sessions Judge, Lucknow. In result, the instant bail cancellation applications appears to be devoid of force and are hereby *dismissed* as such.

Order Date :- 24.1.2024

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