

Court No. - 64

Case :- CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. - 224 of 2024

Applicant :- Om Prakash

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

Counsel for Applicant :- Radhey Shyam Yadav

Counsel for Opposite Party :- G.A., Santosh Kumar Singh

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Radhey Shyam Yadav, learned counsel for the applicant, Sri Vivek Singh holding brief of Sri Santosh Kumar Singh, learned counsel for the opposite party no.2, Sri Ajay Singh, learned AGA-I for the State and perused the record.

3. This is an application under Section 439 (2) Cr.P.C. filed by the first informant for cancellation of bail granted to opposite party no.2 Ankit vide order dated 7.8.2020 passed by a coordinate Bench of this Court in Criminal Misc. Bail Application No.5 of 2020 (Ankit Vs. State of U.P.) in Case Crime No.119 of 2019, u/s 302 IPC, P.S. Farah, District Mathura.

4. The facts of the case are that a FIR was lodged on 21.3.2019 under Section 302 IPC by Om Prakash against Hari Chandra, Ankit, Dauji and Bheemsen. The contents of the FIR are not being dilated herein since they have no relevance at this stage. The opposite party no.2 Ankit who is an accused was granted bail by another Bench of this Court vide order dated 7.8.2020 in Criminal Misc. Bail Application No.5 of 2020 (Ankit Vs. State of U.P.). The said order reads as under:-

"Heard Sri Dharendra Kumar Srivastava, learned counsel for the applicant, Sri Adhyuta Nand Pandey, learned counsel for the informant and Sri G. P. Singh, learned A.G.A. for the State are present.

This Bail Application (under Section 439 Cr.P.C.) has been moved for seeking bail in Case Crime No. 119 of 2019, under Section 302 of I.P.C., P.S. Farrah, District Mathura, during pendency of the trial.

As per the F.I.R., which has been lodged by the son of the deceased, it is stated therein that his father had gone to his field on 20.03.2019 in the evening for sleeping. At about 09:00PM on the same day when the informant was returning after giving milk to his father he had seen the accused applicant along with other co-accused named in the F.I.R. coming toward his field. On the next day, at about 7:30AM, one Gopal informed him that his father had been murdered and thereafter he reached on the spot and found the dead body of his father lying on cot in his field.

It has been argued on behalf of the learned counsel for the accused applicant that accused applicant has been falsely implicated in this case; he is totally innocent; the recovery of Baka is shown to have been made four months after the occurrence from an open place, which has been planted. The co-accused Dauji whose case is at par with the case of the accused applicant has already been granted bail by co-ordinate bench of this Court vide order dated 16.06.2020 in Criminal Misc. Bail Application No. 13983 of 2020, copy of order is taken on record and on this basis he is claiming parity. He has no previous criminal history but after this case one more case has been slapped against the accused applicant being Case Crime No. 258 of 2019, under Section 147, 452, 504, 307 & 506 of I.P.C., in which bail application is yet to be filed. The accused applicant is in jail since 07.06.2019; if the accused is released on bail, he will not misuse the liberty of bail.

Learned A.G.A. as well as learned counsel for the informant have opposed the bail and drawn attention towards the statement of independent witness Jagdish who has stated that he had seen the accused applicant coming from the side where the dead body of the deceased was lying and he has also drawn attention towards the statement of co-accused Jogendra that a case was pending regarding illegal possession over the land of the informant and because of this enmity the accused applicant murdered the father of the informant.

Looking to the fact that there is only circumstantial evidence and no direct evidence is available on record and no conclusive report has been received till date in respect of the weapon having been used which is alleged to have been used in commission of offence and recovery was also made from an open place; quantum of the punishment, nature of the offence and period of detention in jail, without expressing any opinion on the merits, this case is found to be a fit case for bail.

Let the applicant Ankit involved in aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

- 1. The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.*
- 2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.*
- 3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.*

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Taking into consideration that Covid-19 is continuing and due to which certified copy would not be possible to be obtained by the applicant, therefore, if a copy of this order downloaded from the official website of Allahabad High Court and self attested by the counsel for the applicant is placed before the Court, the same would be entertained. "

5. A counter affidavit to the said bail cancellation application has been filed on behalf of opposite party no.2 to which learned counsel for the applicant submits that he does not propose to file any rejoinder affidavit.

6. The ground as pleaded and argued to press the prayer for cancellation of bail of opposite party no.2 while placing para nos.7 to 10 of the affidavit in support of bail cancellation application are that the opposite party no.2 was creating pressure upon the applicant for settlement in the said matter by mutual consent and when the applicant denied, he was threatened for dire consequences after which a FIR was lodged as Case Crime No.0014 of 2023 under Sections 147, 506, 507 IPC, Police Station Kotwali Farah, District Mathura. It is next pleaded that the conditions of the bail granted to the opposite party no.2 are not being complied with by him and there is breach of the conditions and as such the bail be cancelled. It is further submitted that if the bail of the opposite party no.2 is not cancelled, the trial of the present matter will not be properly conducted. The opposite party no.2 tried to make pressure on the applicant for settling the matter outside the Court and when he did not do so, threat of dire consequences was given and as such it is necessary to cancel the bail granted to opposite party no.2.

7. Per contra, learned counsel for the opposite party no.2 vehemently opposed the prayer as prayed by learned counsel for the applicant and argued that the allegations therein are totally vague and concocted just in order to create a false case against the accused for creating a ground for cancellation of his bail. It is further submitted that although in the subsequent case being Case Crime No.0014 of 2023, a charge sheet dated 17.4.2023 has been filed after investigation against Dauji, Bheemsen and Harish Chandra and the opposite party no.2 herein under Section 506 and 507 IPC but filing of the charge sheet alone would not go to show that the accused persons are actually involved in the present matter and culpability of the accused has to be tried and decided in trial and in the said case the applicant has been granted bail vide order dated 18.10.2023 passed by Civil Judge (S.D.), Fast Track Court/ACJM, Mathura in bail application no.3739 of 2023 (State Vs. Dauji and others). In the present matter, the trial has started and is under progress before the court of Additional Sessions Judge, 1st Mathura. It is submitted that just in order to make a ground for cancellation of bail, the subsequent FIR has been lodged without any credible evidence therein. It is submitted that the opposite party no.2 has not violated any of the condition of the order dated 7.8.2020 by which he has been granted bail. The present bail cancellation application be thus dismissed. Learned counsel for the State has also been heard.

8. After having heard learned counsel for the parties and perusal of the records, it is

evident that the opposite party no.2 has been granted bail by another Bench of this Court vide order dated 7.8.2020. The ground as taken is of extending threat to the applicant who is the first informant of the matter after release on bail by the accused-opposite party no.2. An FIR is stated to have been lodged for the same on which a charge sheet is stated to have been filed. The opposite party no.2 is on bail in the said case also. The law for cancellation of bail is quite distinct with that of the considerations for grant of bail.

9. In the case of **Dolat Ram v. State of Haryana : (1995) 1 SCC 349** the Apex Court held that :

"4. Rejection of 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 bail, 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."

(emphasis supplied)

10. Further in the case of **X. v State of Telangana & Anr. : (2018) 16 SCC 511** the Apex Court in paragraphs 14, 15 and 18 held as under:

"14. 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 adverting to the distinction, a Bench of two learned Judges of this Court in *Dolatram v State of Haryana*, (1995) 1 SCC 349 observed that:

"4. 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 of 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.

15. These principles have been reiterated by another two Judge Bench decision in *Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan*, (2011) 5 SCC 296 and more recently in *Dataram Singh v State of Uttar Pradesh*, (2018) 3 SCC 22:

"23. 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."

11. The Apex Court in the case of **Myakala Dharmarajam & Ors. v. State of Telangana & Anr. : (2020) 2 SCC 743** has in paragraph 8 held as under:

"8. In *Raghubir Singh v. State of Bihar*, (1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused misuses his liberty by

indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

12. The law relating to exercise of powers for cancellation of bail has been stated by the Apex Court in the case of **Deepak Yadav v. State of U.P. : (2022) 8 SCC 559**. It has been held as follows:

"C. Cancellation of bail

31. This Court has reiterated in several instances that 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 trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

32. A two-Judge Bench of this Court in *Dolat Ram v. State of Haryana* [*Dolat Ram v. State of Haryana*, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] laid down the grounds for cancellation of bail which are:

- (i) interference or attempt to interfere with the due course of administration of justice;
- (ii) evasion or attempt to evade the due course of justice;
- (iii) abuse of the concession granted to the accused in any manner;
- (iv) possibility of the accused absconding;
- (v) likelihood of/actual misuse of bail;
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

33. It is no doubt true that cancellation of bail cannot be limited to the

occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , the accused was granted bail by the High Court. In an appeal against the order [*Mitthan Yadav v. State of U.P.*, 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under : (SCC p. 513, para 12)

"12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, indisputably the superior court

can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court."

(emphasis supplied)

35. This Court in *Mahipal* [*Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] held that : (SCC p. 126, para 17)

"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

36. A two-Judge Bench of this Court in *Prakash Kadam v. Ramprasad Vishwanath Gupta* [*Prakash Kadam v. Ramprasad Vishwanath Gupta*, (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848] held that : (SCC p. 195, paras 18-19)

"18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. ...

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

13. Although the FIR has been lodged with an allegation of extending threats to the applicant and charge sheet has been submitted but the applicant in the said case is on bail granted by the competent court. The trial of the said matter is yet to proceed and it is yet to be adjudicated whether the applicant is guilty or not. Giving opinion

in the said case may not be proper at this stage. The trial in the present matter is going on. As per the law as settled for cancellation of bail, no such ground exists for interference in the present bail cancellation application.

14. The present bail cancellation application is hereby **rejected**.

15. However, the trial court is directed to take up the trial and conclude the same expeditiously as per Section 309 Cr.P.C. without granting any undue adjournments to either of the parties.

(Samit Gopal, J.)

Order Date :- 2.5.2025
Gaurav Kuls