



2025:AHC:171609

HIGH COURT OF JUDICATURE AT ALLAHABAD

**CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. - 828
of 2023**

Nirmal Prasad Gupta

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Bibhuti Narayan Singh
Counsel for Opposite Party(s) : Alok Mishra, Ashok Kumar Upadhyay,
G.A.

Court No. - 87

HON'BLE SANTOSH RAI, J.

1. Heard Sri Bibhuti Narayan Singh, learned counsel for the applicant and learned A.G.A. for the State.
2. The present bail cancellation application has been filed with a prayer to cancel the bail of opposite party no.2 granted by order dated 15.11.2023 passed by Additional Sessions Judge (Fast Track Court No.1), Maharajganj in Bail Application No.1859 of 2023 (Kanhaiya Lal Gupta versus State of U.P.) arising out of Complaint Case No.4794 of 2017, under Sections 406, 419, 420, 467, 468 and 120-B I.P.C., P.S. Sonauli, District Maharajganj.
3. As per office report dated 22.03.2024 notices have been served personally upon opposite party no.2.
4. Tersely, as per prosecution story, the applicant was the Assistant Teacher in Sri Subhash Chadra Bose Junior High School, Sonauli District Maharajganj. Opposite party no.2, who is the Manager of the aforesaid school, after retirement of the applicant has informed to the applicant that there is requirement of five cheques without mentioning the amount, name and date on 25.03.2017 and directed him to appear in the school for verification of payment of arrears by the Basic Education Officer & Finance and Account Officer. The applicant has provided five cheques without mentioning the amount, name and date by his signature. On 12.05.2017 the applicant came into know that by way of his cheques except no. no.635781 opposite party no.2 has got a sum of Rs.33,46,115/- transferred in his own account and in the account of his family.
5. Learned counsel for the applicant/complainant submits that this is the first bail cancellation application which is being filed before this Court on behalf of the applicant. No other bail cancellation application has been filed or

pending before this Court or any other court. The present bail cancellation application is being filed by the applicant for cancellation of the bail order of opposite party no.2 dated 15.11.2023 passed by Additional Sessions Judge (Fast Track Court No.1), Maharajganj in Bail Application No.1859 of 2023 (Kanhaiya Lal Gupta versus State of U.P.) arising out of Complaint Case No.4794 of 2017, under Sections 406, 419, 420, 467, 468 and 120-B I.P.C., P.S. Sonauli, District Maharajganj.

6. Learned counsel for the applicant/complainant further submitted that the opposite party no.2 is not cooperating in the trial proceeding and learned trial court has not considered the relevant materiel of evidence which is available on record and wrongly granted bail to opposite party no.2. Learned counsel for the applicant/informant admitted that no any other case has been registered against opposite party no.2 except this case.

7. It is prayed that the bail order of opposite party no.2 dated 15.11.2023 passed by Additional Sessions Judge (Fast Track Court No.1), Maharajganj in Bail Application No.1859 of 2023 (Kanhaiya Lal Gupta versus State of U.P.) arising out of Complaint Case No.4794 of 2017, under Sections 406, 419, 420, 467, 468 and 120-B I.P.C., P.S. Sonauli, District Maharajganj may be cancelled and a direction be issued to the opposite party no.1 to ensure the arrest of opposite party no.2 and produce before the learned Magistrate for taking him in judicial custody during investigation of Complaint Case No.4794 of 2017, under Sections 406, 419, 420, 467, 468 and 120-B I.P.C., P.S. Sonauli, District Maharajganj.

8. Learned counsel for the applicant/complainant submits that accused Kanhaiya Lal Gupta has violated the conditions of the bail which has been granted by the Additional Sessions Judge (Fast Track Court No.1), Maharajganj on 15.11.2023. The notice has already been served to the opposite party no.2 by Chief Judicial Magistrate, Maharajganj, which is available on record but none appeared on behalf of the opposite party no.2 to contest the bail cancellation application.

9. Learned AGA submits that for the purpose of cancellation of bail, it is required to prove by cogent and reliable evidence regarding the fact that supervening circumstances have arisen after the grant of bail and the accused persons are misusing the liberty or tampering the evidence or threatening the victim or witnesses or interfering in the investigation/trial proceeding.

10. In ***Dolat Ram and Others v. State of Haryana (1995) 1 SCC 349***, the Hon'ble Supreme Court has observed as follows:

"5. 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non - bailable case in the first instance and the cancellation of bail already granted."

*The aforesaid view was reiterated in **X v. State of Telangana and Another reported in [(2018) 16 SCC 511]**.*

*8. In **Dataram Singh v. State of Uttar Pradesh [(2018)3 SCC 22]**, it was observed by the Hon'ble Supreme Court in the manner as follows:*

"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."

Therefore, while considering an application to cancel the bail on the ground of non compliance of the conditions, the court has to consider the question whether the alleged violation amounts to an attempt to interfere with the administration of justice or as to whether it affects the trial of the case in which the accused is implicated."

11. Cancellation of bail is an order, which interferes with the liberty of the individual. Hence, it must not be lightly resorted to. It stands on a footing these scenarios are also different. In a plethora of decisions, the Supreme Court has identified and listed out a list of circumstances in the nature of

being supervening circumstances, which could warrant an order from the court leading to cancellation of bail. The list in the words of the court itself is illustrative and not exhaustive. The Supreme Court to illustrate the same in the case of ***Abdul Basit alias Raju & others v. Md. Abdul Kadir Choudhary, (2014) 10 SCC 754***. The Hon'ble Supreme Court illustrate the grounds of cancellation of the bail which are as follows (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.

12. Thus, in cancellation of bail, the Court has ample power to exercise enough discretion. But no guidelines is given by the statute as to when and how it is to be exercised. However, the bail granted to an accused can be cancelled when the person on bail commits the very same offence, hampers the investigation, tampers with the evidence, runs away to a foreign country, goes underground/beyond the control of his sureties or commits any act of violence against the police/witnesses. In such cases, the High Court/Court of session can direct any person released on bail be arrested. Nevertheless, the power is to be cautiously used in due consideration of the facts and circumstances of the case. Thus, the cancellation of bail application should be based upon the principle that whether the accused is fleeing from justice or tempering with the evidences/witnesses or he has violated the bail conditions.

13. Bail granted once should not be cancelled in a routine or mechanical manner. Very cogent reasons are necessary for cancelling the bail already granted. The absence of any post-release misconduct is a compelling reason to reject an application for cancellation of bail. While considering the bail cancellation application, the question of enough liberty of the accused is to be put in juxtaposition with a societal concerned in the crime at hand, the latter desertion priority over the over-more.

14. The reason for cancelling bail and the grounds for rejecting bail are distinct circumstances, each requiring a different approach. When considering a bail application, the court focuses on the potential breach of bail conditions and must maintain an open and flexible stance. In contrast, when assessing a bail cancellation application, the court adopts a more stringent approach, examining not only the possibility of violations but also whether actual violations have occurred. In this context, the court demands concrete evidence or wrongdoing.

15. In this case, at hand, the applicant/informant has not adduced reliable and cogent materials/facts regarding the cancellation of bail, whereas the burden lies upon the applicant/informant that the accused opposite party no. 2 has violated bail conditions, therefore, on the basis of supervening circumstances, bail granted in favour of accused should be cancelled.

16. The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. I may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a 'prima facie' case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.

17. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellant Court would be well within its power to set aside and cancel the bail as held in the cases of ***Puran v. Ram Bilas and another*, (2001) 6 SCC 338 and *Narendra K. Amin (Dr.) v. State of Gujarat and another*, (2008) 13 SCC 584.**

18. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted.

19. In ***Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508**, Hon'ble Supreme Court held: in 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 bail 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."

20. It is well settled that the consideration applicable for cancellation of bail and consideration for challenging the order of grant of bail on the ground of arbitrary exercise of discretion are different. While considering the application for cancellation of bail, the Court ordinarily looks for some supervening circumstances like; tampering of evidence either during investigation or during trial, threatening of witness, the accused is likely to abscond and the trial of the case getting delayed on that count etc. Whereas, in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration is whether there was improper or arbitrary exercise of discretion in grant of bail.

21. From perusal of the impugned order dated 15.11.2023, it appears that the dispute between the parties is related to business transaction and five cheques have been issued. Accused Kanhaiya Lal Gupta was summoned in Complaint Case no.4794 of 2017. No reliable material has been placed before the Court that the applicant is not cooperating. It is duty of the prosecution to produce prosecution witnesses for recording evidence. No any kind of argument had been submitted that examination of chief of the witnesses have been recorded and accused is not cooperating in cross examination. Thus, on the basis of relevant material available on record and nature of incident learned trial court has rightly enlarged on bail conditionally by order dated 15.11.2023.

22. From the perusal of the relevant record, it appears that accused opposite party no.2, Kanhaiya Lal Gupta enlarged on bail in Complaint Case No.4794 of 2017, under Sections 406, 419, 420, 467, 468 and 120-B I.P.C., P.S. Sonauli, District Maharajganj vide order dated 15.11.2023 passed by Additional Sessions Judge (Fast Track Court No.1), Maharajganj on furnishing a personal bond of Rs.1,00,000/-.

23. Thus, in the light of submissions made by both the parties, grounds as mentioned in the bail cancellation application, paucity of cogent & reliable material regarding violation of bail conditions and considering all the supervening circumstances of the case, this Court is of the considered view

that bail cancellation application has no merits, hence, liable to be dismissed.

24. Accordingly, the bail cancellation application is **dismissed**.

(Santosh Rai,J.)

September 19, 2025

Asha