

Court No. - 68

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 297 of 2024

Applicant :- Kuldeep Guleria

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Aushim Luthra,Pranav Tiwary,Ramji Shukla,Vinay Kumar Singh

Counsel for Opposite Party :- G.A.,Ishwar Chandra Tyagi

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Manish Tiwary, learned counsel assisted by Shri Aushim Luthra, learned counsel for the applicant of the bail cancellation application, learned A.G.A. as also Shri Adarsh Bhushan, learned counsel, who has put in appearance on behalf of the opposite parties no. 2 & 3 in opposition to the bail cancellation application.

2. The instant bail cancellation application at the instance of the applicant-Kuldeep Guleria has been filed seeking the cancellation of the bail of the opposite parties no. 2 & 3 namely Varun Dua and Neeraj Dua, who have been enlarged on bail by the learned Court of Additional Sessions Judge/Special Judge POCSO Act (First), Gautam Buddh Nagar in Case Crime No. 22 of 2021 u/s 323, 352, 504, 506, 308 I.P.C., P.S. Beta-2, District Gautam Buddha Nagar vide order dated 21.5.2024.

3. Shri Manish Tiwary, learned Senior Counsel submits that the applicant Kuldeep Guleria is the informant in F.I.R. No. 22 of 2021. The F.I.R. was lodged on 14.1.2021 u/s 323, 352, 504, 506 I.P.C. P.S. Beta-2, District Gautam Buddha Nagar against the opposite parties no. 2 & 3 along with two unknown persons alleging that on 14.1.2021 at around 16.45 hours the applicant was going along with his friend / victim Sachin Wadhwa in his vehicle and when they reached Site-4 Greater Noida ahead of Madhaiya Round Circle the victim had parked his car and was attending nature's call, the applicant was sitting inside the Car when suddenly a white coloured car bearing Registration No. DL-2CAQ-2946 came from which 3-4 persons alighted and started

abusing and beating the applicant. The opposite parties 2 and 3 caused grievous hurt to Sachin Wadhwa intending to kill him in which Sachin Wadhwa suffered critical injuries on his private parts. The opposite parties 2 & 3 also threatened Sachin Wadhwa to kill him and his family members. Sachin Wadhwa was admitted to Yatharth Hospital, Greater Noida for treatment. On 29.9.2021, charge-sheet was filed against the opposite parties no. 2 & 3 in the Court of C.J.M. Gautam Buddha Nagar and cognizance was taken by the Court concerned and summons were issued to the opposite parties no. 2 & 3. The opposite parties no. 2 & 3 avoided appearance and summons, bailable warrants, non-bailable warrants having failed to secure the presence of the opposite parties proclamation u/s 82 and 83 Cr.P.C. were issued on 14.2.2024. The anticipatory bail plea of the opposite parties was rejected vide order dated 26.07.2024 passed by the learned Additional Sessions Judge, Gautam Buddha Nagar. The application u/s 482 Cr.P.C. No. 8387 of 2024 at the instance of the opposite parties no. 2 & 3 was disposed of vide order dated 12.4.2024 refusing the prayer challenging the order dated 25.9.2023 and 14.2.2024 as also the entire proceedings of the Case No. 344-D of 2021 arising out of Case Crime No. 22 of 2021, however granting liberty to the opposite parties no. 2 & 3 to apply for bail before the concerned Court within four weeks, which was directed to be considered expeditiously in the light of the law laid down by the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Another** reported in **2021(10) SCC 773**. For a period of 30 days from the date of the order or till applying for bail, no coercive measures was directed to be taken against the opposite parties. Thereafter application for regular bail was filed by the opposite parties before the District and Sessions Judge, Gautam Buddha Nagar, which has been allowed by the order dated 21.05.2024 cancellation of which has been sought by means of the present application.

4. Shri Manish Tiwary, learned Senior Counsel appearing for the applicant in the bail cancellation application submits that the cancellation has been sought on the following grounds:-

i) The learned Additional Sessions Judge has proceeded to grant bail to the opposite parties no. 2 & 3 proceeding on the erroneous assumption that they have no criminal antecedents, which they deliberately concealed. Case against the opposite parties no. 2 & 3 is pending in F.I.R. No. 116 of 2019 registered at P.S. Preet Vihar, Delhi along with Complaint Case No. 1179 of 2020 registered in the Court of Chief Metropolitan Magistrate, Karkardooma, Delhi

as also complaint dated 10.08.2019 registered at P.S. Kundli Sonipat, Haryana.

ii) The learned Additional Sessions Judge failed to consider the conduct of the accused-opposite parties as they deliberately did not appear before the trial court.

iii) The opposite parties 2 & 3 are habitual offenders and after their release on bail have threatened the applicant and the victim-Sachin Wadhwa with life threats and have been creating pressure upon them to change their statement.

iv) The order granting bail to the opposite parties no. 2 & 3 suffers from non-application of mind and ignorance of the materials placed on record to demonstrate the conduct of the opposite parties no. 2 & 3 which dis-entitled them to be released on bail. Reliance has been place on the decision of the Apex Court in the case of Prasanta Kumar Sarkar Vs. Ashish Chatterjee reported in 2010 (14) SCC 496 and in the case of Mahipal Vs. Rajesh Kumar 2020(2) SCC 118.

v) The learned Additional Sessions Judge while granting bail to the opposite parties 2 & 3 overlooked the false affidavits submitted by them while applying for anticipatory bail as also the application u/s 340 Cr.P.C. filed by the victim Sachin Wadhwa before the Court.

vi) The learned Additional Sessions Judge failed to consider the criminal antecedents, the medico-legal reports of the date of the incident, the conduct of the opposite parties 2 & 3 as also the subsequent case lodged against them, which releasing them on bail vide order dated 21.05.2024.

vii) The learned Additional Sessions Judge manifestly erred in law in granting the benefit of the decision of the Apex Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and Another reported in 2021 (10) SCC 773 inasmuch as the principle laid down in the aforesaid case would be available to an accused, who co-operates with the investigation and has not evaded the process of law, which is not the case with the opposite parties no. 2 & 3.

5. Elaborating the above grounds by placing relevant paras of the affidavit filed in support of the bail cancellation application as also the rejoinder affidavit Shri Manish Tiwari, learned Senior Counsel submits that the bail granted to the opposite parties no. 2 & 3 by

the order of the Additional Sessions Judge, Gautam Buddha Nagar in the instant Case Crime No. is liable to be cancelled.

6. Per contra, Shri Adarsh Bhushan, learned counsel for the opposite parties no. 2 & 3 in opposition to the bail cancellation application submits that the opposite parties no. 2 & 3 were not aware of the present proceedings as no summons were served upon them. However, when the proceedings u/s 82 and 83 Cr.P.C. were initiated on 14.2.2024 they approached this Hon'ble Court by means of a 482 Cr.P.C. Petition No. 8387 of 2024, which was disposed of in the light of the law laid down in ***Satender Kumar Antil Vs. Central Bureau of Investigation and Another (Supra)*** and in pursuance of the order dated 12.04.2024 passed therein the opposite parties are below seven years and the Additional Sessions Judge, Gautam Buddha Nagar after considering the materials evidence as well as the criminal history available on records rightly granted bail to the opposite parties no. 2 & 3 surrendered on 7.5.2024. The opposite parties are innocent and have been falsely implicated in this very case. They have not concealed anything from the Court. All offences alleged against the opposite parties are below seven years and the learned Additional Sessions Judge, Gautam Buddha Nagar after considering the materials, evidence as well as the criminal history available on record rightly granted bail to the opposite parties no. 2 & 3 vide order dated 21.5.2024 which call for no interference. It is also argued that the interim bail cancellation application of the applicant was rejected vide order dated 7.5.2024 and the present application also deserves the same fate.

7. In the above backdrop, this Court proceeds to consider the bail cancellation application.

8. The mechanism for cancellation of bail is provided in law in order to ensure that justice will be done to the Society by preventing the accused, who had been set at liberty by the bail order from tampering with the evidence. The cancellation of bail takes away the liberty granted by the Constitution and affirmed by an order of the Court, which granted bail. Cancellation of bail necessarily involves the review of a decision already made and this should be exercised very sparingly and with due caution. The High Court derives its powers to cancel a bail already granted from Section 439(2) Cr.P.C. It is now a settled preposition that cancellation of bail is an order which interfere with the liberty of the individual and stands on a footing different from that of rejection of bail and hence the criteria applied for cancelling a bail is different. The cancellation of bail is not limited to supervening

events or events which take place after the grant of bail. An order which is tarnished by patent illegality or perversity and which does not assign reasons for the order can definitely be set aside in a proceedings under 439(2) Cr.P.C. An order granting bail based on irrelevant material or an order which does not take into consideration relevant material can also be cancelled in exercise of powers u/s 439(2) Cr.P.C.

9. The Apex Court in **Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Another** reported in **2010 (4) SCC 496** in para nos. 9 and 10 observed as under:-

" 9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles [laid down in a plethora of decisions of this Court on the point](#). It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (See: [State of U.P. through CBI Vs. Amarmani Tripathi](#)²; [Prahlaad Singh Bhati Vs. NCT, Delhi & Anr](#)³; [Ram Govind Upadhyay Vs. Sudarshan Singh & Ors](#)⁴)

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In [Masroor](#) (supra), a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows:

"Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence."

(2005) 8 SCC 21 (2001) 4 SCC 280 (2002) 3 SCC 598 (See also: [State of Maharashtra Vs. Ritesh](#)⁵; [Panchanan Mishra Vs. Digambar Mishra & Ors](#)⁶; [Vijay Kumar Vs. Narendra & Ors](#)⁷; [Anwari Begum Vs. Sher Mohammad & Anr](#)⁸)"

10. In a more recent decision, the Apex Court in the case of **Deepak Yadav Vs. State of Uttar Pradesh and Another** reported in **2022 (8) SCC 559** in para nos. 33, 34, 35 and 36 observed as

under:-

"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 dis entitles 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 Vs. State of Uttar Pradesh And Another 18, the accused was granted bail by the High Court. In an appeal against the order 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 :-

"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 and have not been taken note of bail 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"

" 35. This Court in [Mahipal](#) (Supra) held that: -

"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."

34. A two-Judge Bench of this Court in [Prakash Kadam And Others Vs. Ram Prasad Vishwanath Gupta And Another](#)¹⁹ held that:-

"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 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."

11. Now analyzing the case at hand in the light of the decisions aforementioned as also from the materials brought on record the Court finds that the conduct of the opposite parties no. 2 & 3 has been far from overboard inasmuch as they had been avoiding appearance before the Trial Court and only when all attempts to avoid presence having failed after issuance of summons, bailable warrants, non-bailable warrants, proclamation u/s 82 & 83 Cr.P.C. rejection of their 482 Cr.P.C. petitioner that they applied for bail. Initially interim bail was granted and thereafter regular bail was granted vide order dated 21.5.2024. Initially the opposite parties were released on interim bail. Cancellation of the interim bail was sought on cogent grounds but rejected vide order dated 7.5.2024. The Court finds substance in the submissions made by Shri Manish Tiwary, learned Senior Counsel taken note of in the proceedings paras. A perusal of the order dated 21.5.2024 granting bail to the opposite parties no. 2 & 3 reveals that the parameters laid down by the Apex Court for grant of bail have been overlooked and on an erroneous appreciation of the law laid down in the case of **Satender Kumar Antil (Supra)** the learned Additional Sessions Judge proceeded to grant bail in utter haste and in a casual and cavalier manner, which order does not inspire confidence of the Court particularly with regard to the conduct of the opposite parties in concealing their criminal antecedents from the Court despite being painted out by the applicant herein.

12. In view of the above and also taking note of the facts pleaded in the rejoinder affidavit that on 23.10.2024 the opposite parties threatened the victim Sachin Wadhwa in the Karkardooma District Court premises at New Delhi and on the call made to the police of the said threat on 112 for police assistance on N.C.R. having been registered, cases having been registered against the opposite parties no. 2 & 3 subsequent to they being released on bail vide order dated 21.05.2024 the Court is of the opinion that it is a fit case for cancelling the bail granted to the opposite parties no. 2 & 3.

13. Accordingly, the instant bail cancellation application stands ***allowed.***

14. The bail granted by learned Additional Sessions Judge/Special Judge, POCSO Act (First), Gautam Buddha Nagar in Case Crime No. 22 of 2021, under sections 323, 352, 504, 506, 308 I.P.C., Police Station Beta-2, District Gautam Buddha Nagar, vide order dated 21.05.2024, stands cancelled.

Order Date :- 27.2.2025
VS