

Court No. - 27

Case :- APPLICATION U/S 482 No. - 6779 of 2022

Applicant :- Rajendra Kumar And 2 Others

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

Counsel for Applicant :- Tanay Hazari

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the entire record.

2. The instant application under Section 482 Cr.P.C. has been filed by the applicants praying inter alia the following reliefs:-

"a. Issue and order for quashing the Proceedings and Set aside the Bail Cancellation Order dated 01.09.2022 under the Sessions Trial No. 812/2021 in re: State of U.P. v. Ram Bachan and Ors delivered by the Ld. Sessions Judge annexed as Annexure No. 1.

b. Issue an order directing the Police to release the Applicants from Judicial Custody on Bail."

3. In view of the order which is proposed to be passed today, notice to opposite party No.2 is hereby dispensed with.

4. From the pleadings, it transpires that the applicants were granted bail vide order dated

22.11.2021 passed by the learned Sessions Judge, Raebareli in Bail Application No.2638 of 2021 arising out of Sessions Trial No.812 of 2021 (State vs. Ram Bachan and others).

5. The learned trial court was informed that the witnesses and the complainant of the aforesaid Sessions Trial No.812 of 2021 are being threatened of dire consequences by the applicants herein. The aforesaid Sessions Trial No.812 of 2021 was fixed on 01.09.2022 for recording evidence of prosecution witnesses. However, taking note of the fact that the present applicants are threatening the witnesses and the complainant to desist from prosecuting the case, the learned trial court kept the application moved to the aforesaid effect on record and a copy of the same was directed to be sent to Superintendent of Police, Raebareli for appropriate action directing him also to provide necessary security to the witnesses by the learned trial court.

6. The learned trial court thereafter found that by the order dated 22.11.2021 passed in the Bail Application No.2683 of 2021, the applicants herein were enlarged on bail, inter alia, on the condition that they shall not temper with the evidence and shall also not intimidate the witnesses. They shall also not seek any adjournment, if the witnesses are present for being examined. In case of seeking adjournment when the prosecution witnesses are present, the same shall be considered as misuse of liberty of bail granted to

the applicants. Thereafter, the learned trial court found the aforesaid conduct of the applicants to be violation of conditions of bail subject to which they were enlarged on bail vide order dated 22.11.2021. Therefore, the learned trial court directed to the applicants to be taken into custody and also passed the impugned order dated 01.09.2022 canceling the bail granted to the applicants vide order dated 22.11.2021 passed in Bail Application No.2638 of 2021. Consequently, the applicants were directed to be lodged in the District Jail.

7. In aforesaid factual background, it has been submitted by the learned counsel for the applicants that the impugned order is patently illegal insofar as it has been passed on the basis of vague allegations levelled against the applicants. It has also been submitted that it is settled law that parameters for grant of bail and for cancelling an order granting bail are settled and specified. The cancellation of bail is a serious matter and should be dealt with accordingly as the same concerns, the personal liberty of the persons who have been enlarged on bail.

8. Learned counsel for the applicants has further submitted that in case, there was any grievance to the victim, the complainant or any witness as aforesaid, they were at liberty to move an application for cancellation of bail of the applicants who would have got an opportunity of showing cause by filing a reply to the same and thereafter

appropriate order based on the facts and circumstances of this matter, could have been passed by the learned trial court. However, the impugned order has come to be passed in flagrant violation of the settled procedure in respect of cancellation of bail which is not sustainable at all.

9. Per contra, learned A.G.A. has opposed the prayer by stating that the impugned order has been passed by the learned trial court to ensure proper conduct of trial of Sessions Trial No.812 of 2021. However, he has very fairly stated that the same could not have been passed without issuing notice to the opposite party No.2 and without affording a reasonable opportunity of showing cause to the applicants.

10. Having heard the learned counsel for the applicants, learned A.G.A. for the State and upon perusal of record, it requires to be made clear that it is settled law that once bail has been granted by a competent court after due consideration of facts and circumstances of the case, the same should not be cancelled in a mechanical manner without there being any supervening circumstance(s) which are not conducive to the fair trial. It cannot be cancelled on a prayer or request from the side of the complainant/ investigating agency/ victim, unless and until, it is shown to the satisfaction of the court concerned that the same is being misused and is no longer conducive, in the interest of justice, to allow the accused persons

any further to remain on bail. No doubt, the bail can be cancelled only in those discerning few cases where it is established that a person to whom the concession of bail has been granted, is misusing the same.

11. The Hon'ble Supreme Court in **Samarendra Nath Bhattacharjee vs. State of W.B. and another** reported in **(2004) 11 SCC 165**, has pointed out as to what should be the approach of the court dealing with the matter of cancellation of bail. In the instant case, the High Court cancelled the bail which was earlier granted to the accused. The Hon'ble Supreme Court observed that the High Court has approached the case as if it is an appeal against the conviction by giving findings on factual issues which are yet to be decided. Thus, the Hon'ble Supreme Court found the matter to be too premature which is likely to prejudice the trial. That apart, since the only ground on which the cancellation of bail could have been ordered being the ground of intimidation, the same was not satisfactorily proved. Therefore, in view of the Hon'ble Supreme Court, the High Court erred in cancelling the bail granted to the accused.

12. In the case at hand too, the fact of alleged intimidation or extending threat to the complainant and witnesses, was intimated to the learned trial court. No application stating the facts of such intimidation was moved to the learned trial court. Be that as it may, the learned trial court atleast ought to have provided a reasonable and sufficient opportunity

to the applicants/ accused persons to show cause against such an application or prayer made by the prosecution for cancellation of the bail granted to the applicants as the same was likely to affect personal liberty of the applicants/ accused persons adversely.

13. In **Mehboob Dawood Shaikh vs. State of Maharashtra** reported in **(2004) 2 SCC 362**, it has been held by the Hon'ble Supreme Court that the cancellation of bail are never be resorted to lightly.

14. The Hon'ble Supreme Court in **Gurdev Singh and another vs. State of Bihar and another** reported in **(2005) 13 SCC 286**, has held that cancellation of bail cannot done without giving notice to the accused and giving him an opportunity of being heard.

15. In **P.K. Shaji alias Thammanam Shaji vs. State of Kerala** reported in **(2005) 13 SCC 283**, the Hon'ble Supreme Court has again held that the accused must be heard before his bail is cancelled.

16. In view of the aforesaid settled legal propositions, this court finds the impugned order which came to be passed by the learned trial court without issuing notice to the applicants and without affording them a reasonable and sufficient opportunity of hearing is patently illegal being in flagrant violation of whatever has been held by the Hon'ble Supreme Court in **Samarendra Nath Bhattacharjee's case (supra)**, **Mehboob Dawood Shaikh's case**

(supra), Gurdev Singh's case (supra) and in **P.K. Shaji alias Thammanam Shaji's case (supra)**. it has, thus, caused miscarriage of justice to the applicants.

17. The upshot of aforesaid discussion is that the instant application under Section 482 Cr.P.C. deserves to be allowed and the impugned order dated 01.09.2022 passed by the learned Sessions Judge, Raebareli in Sessions Trial No.812 of 2021 (State vs. Ram Bachan and others) also deserves to be set aside to the extent it concerns cancellation of bail granted to the applicants and taking them into custody as a consequence thereof only.

18. Accordingly, the instant application under Section 482 Cr.P.C. is **allowed**. The impugned order dated 01.09.2022 passed by the learned Sessions Judge, Raebareli in Sessions Trial No.812 of 2021 (State vs. Ram Bachan and others) is hereby set aside as indicated above.

19. The learned trial court is directed to release the applicants after obtaining the fresh personal bonds and two sureties each in the like amount to the satisfaction of the court concerned.

20. It is also made clear that the learned trial court shall be at liberty to issue notice to the applicants stating therein the grounds which are to be considered by it for cancellation of bail granted to the applicants. It shall thereafter decide the same

expeditiously in accordance with law after affording reasonable opportunity of hearing to the parties.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 30.9.2022

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