

Neutral Citation No. - 2023:AHC:120267

**A.F.R.**

**Court No. - 83**

**Case :-** CRIMINAL MISC. BAIL CANCELLATION APPLICATION  
No. - 172 of 2022

**Applicant :-** Smt. Shanti Rani Agarwal

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

**Counsel for Applicant :-** Ashish Kumar Singh, Imran Ullah

**Counsel for Opposite Party :-** G.A., Nand Lal Pandey, Suyash Pandey

**Hon'ble Krishan Pahal, J.**

1. Heard Sri Imran Ullah, learned counsel for the applicant, Sri Nand Lal Pandey, learned counsel for the opposite party no. 2 and Sri V.K.S. Parmar, learned A.G.A. for the State.

2. The instant bail cancellation application has been filed on behalf of the applicant (complainant) with the prayer to cancel the bail granted to opposite party no. 2 by the court concerned in Case Crime No. 520 of 2020 under Sections 147, 420, 467, 468, 471, 387, 447, 504, 506 IPC, Police Station George Town, District Prayagraj.

**PROSECUTION STORY:**

3. The informant Smt. Shanti Rani Agarwal lodged an FIR at P.S. George Town on 30.9.2020 stating that she had purchased the plot no. 8/49 at C.Y. Chintamani Road, George Town, Prayagraj, from its original owner Dr. Pant. Adjacent to it, Anil Dwivedi @ Gulab Dwivedi had purchased a plot of dimension 30 x 72 ft. in resale. Subsequent to it, opposite party no. 2 Anil Dwivedi had illegally taken possession on the part of the land of the informant and had even undertaken illegal construction. On being objected by the informant, the opposite party no. 2 is stated to have threatened the applicant/informant alongwith his associates and had even demanded a ransom of Rs. 15 lakhs. The said illegal construction was ordered to be demolished by the Prayagraj Development Authority. The opposite party no. 2 is stated to have prepared forged documents and is stated to have again demanded ransom from her.

**RIVAL CONTENTIONS:**

**CONTENTIONS ON BEHALF OF THE APPLICANT:**

4. Learned counsel for the applicant has stated that after lodging of the FIR, the final report (charge sheet) was submitted by the investigating agency on 25.1.2021 and the cognizance was taken on 2.2.2021. The applicant challenged the said charge sheet and the order of cognizance by filing a petition under Section 482 Cr.P.C. as Application No. 10351 of 2021 before this Court and it was dismissed on merits vide order dated 6.10.2021.

5. The opposite party no. 2 filed an anticipatory bail application before the Sessions Judge, Allahabad, which was not pressed and was dismissed as such.

6. Subsequent to it, the applicant moved the second anticipatory bail application before the Sessions Judge, Allahabad, which was allowed by Additional Sessions Judge, Court No. 1, Allahabad vide order dated 23.12.2021 till the filing of the final report (charge sheet). The said order was taken by the applicant by concealing the fact that already the charge sheet was filed on 25.1.2021 and the cognizance had been taken by the court on 2.2.2021 and even the petition under Section 482 Cr.P.C. was dismissed on 6.10.2021.

7. Learned counsel has further stated that subsequent to it, the opposite party no. 2 challenged the said order of this Court dated 6.10.2021 passed in the petition filed under Section 482 Cr.P.C., by filing Special Leave to Petition (Criminal) No. 9987 of 2021, which was dismissed by the Supreme Court on 5.1.2022.

8. The applicant moved the third anticipatory bail application before the Sessions Judge, Allahabad, which was allowed by the Additional Sessions Judge, Court No. 1, Allahabad vide order dated 25.2.2022, by taking into consideration the fact that the applicant was already granted bail till submission of final report (charge sheet), as such, he was also entitled for anticipatory bail till conclusion of trial.

9. Learned counsel has next stated that the said order has been granted as the opposite party no. 2 has played fraud with the court, as such, is a nullity. No sanctity can be accorded to the said order as the first order on merits passed by this Court on the second anticipatory bail application of the applicant dated 1.11.2021 was taken by keeping the court in dark about the fact that the final report (charge sheet) had already been filed.

10. Learned counsel has stated that in light of the judgement of this Court passed in ***Shivam vs. State of U.P. and Another***<sup>1</sup>, the applicant was not entitled for bail, as such, he has concealed the very fact to get that order. Paragraphs 43(6) and (8) of the aforesaid judgement state that the anticipatory bail cannot be granted to an accused after submission of charge sheet:-

*“(6) Where there exists a civil remedy but on the same set of allegations, civil wrong and criminal wrong both are made out and charge-sheet has been submitted only regarding the criminal wrong,*

*(8) Where the accused has unsuccessfully challenged the charge-sheet before this Court or any proceedings are pending before this Court regarding the charge sheet submitted against the accused;”*

11. Learned counsel has also placed reliance on paragraph 45 (vi) of ***Shivam vs. State of U.P. and Another (supra)*** wherein it is opined that the clear pleading should be made in the anticipatory bail application that after submission of charge-sheet, the applicant has not approached any court and no such proceeding is pending.

12. Learned counsel has placed reliance on the judgement of the Apex Court passed in ***S.P. Chengalvaraya Naidu vs. Jagannath***<sup>2</sup>, wherein it has been held as under:-

*“The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”*

13. Learned counsel has placed reliance on the judgement of the Apex Court passed in ***A.V. Papayya Sastry & others vs. Governmnet of A.P. & Others***<sup>3</sup>, wherein it has been held as follows:-

*“It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Even the Chief Justice Edward Coke proclaimed “Fraud avoids all judicial acts, ecclesiastical or temporal”.*

14. It was also opined in the said judgement that a judgement, decree or order obtained by fraud by the first Court or by the final court has to be

1. *AIR Online 2021 All. 484*

2. *1994 AIR 853, 1994 (1) 1*

3. *Appeal (Civil) No. 5097 of 2004*

treated as a nullity by every Court, superior or inferior. It can be challenged in any Court at any time, in appeal, revision, writ or even in collateral proceedings. Lord Denning had observed that in the leading case of *Lazarus Estates Ltd. v. Beasley*, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, that “No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud.”

15. Learned counsel has placed reliance on the judgement of the judgement of the Apex Court passed in ***Puran vs. Rambilas and another***<sup>4</sup>, wherein it was held as under:-

*“11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.) reported in AIR 1978 SC 179. In that case the Court observed as under:-*

*"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S. 439 (2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.”*

16. It was laid down in this judgement that even the complainant being an aggrieved person, can move the bail cancellation application. Learned counsel has stated that any party seeking relief from a court has to come with clean hands and as such, in light of the aforesaid judgements, any order garnered by playing fraud with it, has no sanctity in law and is thus, liable to be set aside.

17. Learned counsel has stated that as the second bail application was taken by playing fraud with it, and the third anticipatory bail application was based on the second anticipatory bail, as such, said order dated 25.2.2022 is a nullity and is liable to be set aside.

**CONTENTIONS ON BEHALF OF OPPOSITE PARTY NO. 2:**

18. Learned counsel for the opposite party no. 2 has vehemently argued that the informant (applicant herein) should have brought the said fact of

---

4. 2001 SCC (Cri) 1124

fraud, if any, to the notice of the court concerned and he has wrongly assailed the said order before this court.

19. Learned counsel has next stated that the prosecution was granted ample time and the impugned orders are detailed orders, as such, and have attained finality. The applicant has not misused the said orders granted to him. There is no criminal history of the applicant and no FIR or even NCR has been instituted against him subsequent to the said orders dated 1.11.2021 and 25.2.2022.

20. Learned counsel has stated that it was the duty of the prosecution to bring all the material facts before the Court. The prosecution itself has failed to bring to the notice of the Court the factum of the petition filed under Section 482 Cr.P.C. by the opposite party no. 2. Learned counsel has next stated that the bail cancellation application should have been moved by the State and the complainant cannot be allowed to initiate bail cancellation proceedings.

21. Learned counsel has also placed reliance on the judgement of the Apex Court passed in ***Satender Kumar Antil vs. Central Bureau of Investigation and another***<sup>5</sup>, wherein it has been opined that the court has ample powers to recall its orders, so the application should have been moved before the Sessions Judge, Allahabad itself.

22. Learned counsel has placed much reliance on the judgement of the Apex Court passed in ***Gurcharan Singh and others vs. State (Delhi Administration)***<sup>6</sup>, wherein it was held that ordinarily, the High Court will not use its discretion to interfere with an order of bail granted by Sessions Judge in favour of an accused. It has been held as under :-

*“25. The question of cancellation of bail u/s. 439(2), Cr. P. C. of the new Code is certainly different from admission to bail u/s. 439(1), Cr. P. C. The decisions of the various High Courts cited before us are mainly with regard to the admission to bail by the High Court under section 498, Cr. P.C. (old). Power of the High Court or of the Sessions Judge to admit persons to bail under section 498, Cr. P.C. (old) was always held to be wide without any express limitations it], law. In considering the question of bail justice to both sides governs the judicious exercise of the court's judicial discretion. The only authority cited before us where this Court cancelled bail granted by the High Court is that of The State v. Captain Jagjit Singh(1). The Captain was prosecuted along with others for conspiracy and also under section 3 and 5 of the Indian Official Secrets Act, 1923 for passing on official secrets to a foreign agency. This Court found a basic error in the order of the High Court in treating the case as falling under section 5 of the Official Secrets Act*

---

5. 2022 SCC Online SC 825,

6. (1978) 1 SCC 118,

*which is a bailable offence when the High Court ought to have proceeded on the assumption that it was under section 3 of that Act which is a non-bailable offence. It is because of this basic error into which the High Court fell that this Court interfered with the order of bail granted by the High Court.*

*26. In the present case the Sessions Judge having admitted the appellants to bail by recording his reasons we will have to see whether that order was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere with his discretion in granting the bail.*

*27. Ordinarily the High Court will not exercise its discretion to interfere with an order of bail granted by the Sessions Judge. in favour of an accused.”*

23. Learned counsel has also placed reliance on the judgement of the Apex Court in the case of ***Nityanand Rai vs. State of Bihar and Another***<sup>7</sup>, wherein the bail cancellation order passed by the High Court was set aside by the Apex Court.

24. Learned counsel has further placed reliance on the judgement of the Apex Court in the case of ***Union of India vs. K.A. Najeeb***<sup>8</sup>, wherein it was opined that the liberty guaranteed by Article 21 read with Part III of the Constitution of India covers within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. The parameters for granting and cancelling of bail were distinguished in it, whereby it was stated that the bail once granted by the trial court may be cancelled by the same court only in case of new circumstances/evidence, failing which, it would be necessary to approach the higher court exercising appellate jurisdiction.

25. In the case of ***Manoj Kumar Khokhar vs. State of Rajasthan***<sup>9</sup>, it was opined by the Apex Court that the rights of the informant/victim are to a limited extent and they cannot be extended to overtake the State to challenge the bail order.

#### **CONCLUSION:**

26. The Supreme Court in ***Jagjeet Singh vs Ashish Mishra @ Monu***<sup>10</sup>, dealing with the question of the ‘right of the victim’ to be heard, has categorically expressed “*Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially*

---

7. (2005) 4 SCC 178

8. (2021) 3 SCC 713

9. (2022) 3 SCC 501

10. AIR 2022 SC 1918

*when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”*

27. The Supreme Court in the case of ***Deepak Yadav vs State of U.P.***<sup>11</sup>, has dealt with the issue as follows:

“30. 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). A two-Judge Bench of this Court in ***Dolat Ram And Others v. State of Haryana***<sup>12</sup> 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 accused absconding*
- (v) Likelihood of/actual misuse of bail*
- (vi) Likelihood of the accused tampering with the evidence or threatening witnesses.*

31. 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:-

- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*
- b) 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.*
- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.*
- d) Where bail has been granted on untenable grounds.*
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*

---

11. *AIR 2022 SC 2514*

12. *(1995) 1 SCC 349*

*f) 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.*

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

32. In ***Neeru Yadav v. State of Uttar Pradesh And Another***<sup>13</sup> 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"*

*13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:*

*"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a*

---

13. (2016) 15 SCC 422,



*controlling power upon will and appetite be placed somewhere; and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.” [ Alfred Howard, The Beauties of Burke (T. Davison, London) 109.]*

.....

*17. That apart, it has to be remembered that justice in its conceptual eventuality and connotative expanse engulfs the magnanimity of the sun, the sternness of mountain, the complexity of creation, the simplicity and humility of a saint and the austerity of a Spartan, but it always remains wedded to rule of law absolutely unshaken, unterrified, unperturbed and loyal.*

.....

37. There is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. 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 basic principles laid down in a catena of judgments by this Court.

28. The Apex Court in ***Mahipal v. Rajesh Kumar Alias Polia and Another***<sup>14</sup> 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."*

29. The clean hands doctrine states that one “who comes into equity must come with clean hands.” This doctrine requires the court to deny equitable relief to a party having violated good faith with respect to the subject of the claim. The purpose of the doctrine, as elucidated in ***Colby Furniture Company, Inc. v. Belinda J. Overton***<sup>15</sup> is to prevent a party from obtaining relief when that party’s own wrongful conduct has made

---

14. *AIR 2020 SC 670*

15. *299 So.3d 259*

it such that granting the relief would be against equity and good conscience.

30. The clean hands doctrine is an affirmative defense that the defendant may claim as has been held in *Holy Family Catholic School v. Boley*<sup>16</sup>, that the plaintiff's abuse of the account necessitated a finding that the plaintiff had "unclean hands" and that requiring the defendant to continue granting relief would be against good conscience.

31. It is admitted to both the parties that the charge sheet was submitted in the case on 25.1.2021 and subsequently, the cognizance was taken by the trial court on 2.2.2021. The said final report (charge sheet) and the summoning order were challenged by the opposite party no. 2 by filing a petition under Section 482 Cr.P.C., which was dismissed by this Court on 6.10.2021. The anticipatory bail application of the opposite party no. 2 was allowed by the court subsequent to the dismissal of the petition under Section 482 Cr.P.C. on 1.11.2021. The said order was passed by the concerned court without being apprised of the fact of the final report (charge sheet) having been filed and the opposite party no. 2 (applicant therein) having failed in the petition under Section 482 Cr.P.C. Thus, it follows from the said order that the said order was not proper in light of the judgement of this Court passed in *Shivam vs. State of U.P. and Another (supra)*, as the concerned court was kept in dark about the said facts referred above as it was mentioned in it that the anticipatory bail application is being allowed till the submission of report under Section 173 (2) Cr.P.C.

32. The third anticipatory bail application was allowed by the concerned court on 25.2.2022 by taking into consideration the fact that the applicant was on anticipatory bail till the submission of final report (charge sheet) and has not misused it. The third anticipatory bail itself being based on the second anticipatory bail order dated 1.11.2021 is itself bad in the eyes of law, as such, it cannot be sustained. The said orders dated 1.11.2021 and 25.2.2022 are whimsical and perverse. Any order taken by suppressing facts is bad and cannot be sustained. As the very foundation is weak, any subsequent order based on it also cannot be accorded any sanctity and is also unsustainable. The judgements referred by learned counsel for the opposite party no. 2 do not apply to the present case as he has not come to the court with clean hands and has taken the orders by concealing the facts, as such, the order dated 25.2.2022 is set aside and quashed.

---

16. 847 So.2d 371 (2002)

33. Accordingly, the instant bail cancellation application is *allowed*.

34. However, two weeks' time from the date of pronouncement of this Judgment is granted to opposite party no. 2 to surrender before the concerned Trial Court and thereafter it will be open for opposite party no. 2 to pray for regular bail, which may be considered in accordance with law laid down by the Apex Court in the case of *Satender Kumar Antil (supra)*.

**(Justice Krishan Pahal)**

**Order Date :- 31.5.2023**

Shalini