

Serial No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on:- 23.10.2024
Pronounced on:- 04.11.2024

B.A. No. 379/2021
CrIM No. 2214/2021

Anu Bala, Age 36 years,
W/O Amit Kumar Bhagat,
R/O Sungal Morh, Akhnoor,
Assistant Director, Fisheries Jammu.

...Petitioner(s)

Through: Mr. S.S. Ahmed, Advocate.
Mr. Rahul Raina, Advocate.

Vs

1. Rajesh Singh (Inspector Fisheries),
S/O Babu Singh, R/O Village Changal,
Hiranagar, District Kathua;

2. UT of J&K Th. SHO, Police Station, Nagrota, Jammu.

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.... Respondent(s)

Through: Mr. Jasbir Singh Jasrotia, Advocate for R-1.
Mr. Pawan Dev Singh, Dy. AG for R-2.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. This application has been moved under Section 439(2) of CrPC, seeking cancellation of bail granted to Rajesh Singh the accused/respondent No. 1 herein in a case registered at Police Station Nagrota, Jammu vide FIR No. 360/2021, vide order dated 08.11.2021 (for short, '**impugned order**') passed by the Court of learned Additional Sessions Judge, Jammu (hereinafter referred to as the, "**Sessions Court**") in an application for grant of bail, in B.A. No. 338/2021 titled, "**Rajesh Singh Vs. UT of J&K**" and rejecting the application for cancellation of Bail No. 272/2021 moved by the complainant-Anu Bala/petitioner herein.

2. Before proceeding further, it would be in the fitness of things to narrate the factual background of the case, leading to filing of this application for cancellation of bail. For the convenience, the applicant/petitioner shall be referred as 'complainant' and non-applicant/respondent No. 2 as 'accused' as per their status in the case FIR.

3. On the complaint of the complainant, who was working as Assistant Director Fisheries Jammu, a case was registered at Police Station, Nagrota Jammu, vide FIR No. 360/2021 against the accused-Inspector Fisheries, for commission of offence under Section 3(1)(r) of the SC/ST (Prevention of Atrocities) Act, 1989 (*hereinafter referred to as the, "Atrocities Act"*). The accused was arrested by the concerned police on 26.08.2021. Thereafter, on 27.08.2021, he moved a bail application before the Court of learned Principal Sessions Judge, Jammu, which was assigned to the Court of learned 1st Additional Sessions Judge, Jammu for disposal under law and the same was presented before the Court of learned 1st Additional Sessions Judge, Jammu on the same day and the said Court was pleased to call report from the concerned Police and the bail application was posted on 31.08.2021.

4. It is averred in the petition that in view of the fact that bail application of the accused was listed on 31.08.2021 before the Court of learned 1st Additional Sessions Judge, Jammu, he, in order to secure bail at the earliest, immediately moved yet another bail application on 27.08.2021 itself, which was assigned to the

Additional Sessions Court (for short '**Sessions Court**'), which also directed Nagrota Police, to file a report in the matter on 28.08.2021, however, since the report was not filed on the said date, i.e., 28.08.2021, the 'Sessions Court' proceeded to grant interim bail to the accused vide order dated 28.08.2021. It is alleged that the accused intentionally, malafidely and deliberately, did not disclose this fact to the Sessions Court, that his earlier application was sub-judice before the Court of learned 1st Additional Sessions Judge, Jammu and not even a whisper regarding pendency of the earlier bail application was made, in the subsequent bail application.

5. It is further averred in the instant application for cancellation of bail that on 31.08.2021, the accused's counsel appeared before the Court of learned 1st Additional Sessions Judge, but did not disclose this fact to the said Court also, that accused has been already released on bail on 28.08.2021 by the Additional Sessions Court and also in view of the fact that the report was not filed by the SHO, Police Station Nagrota even before the Court of learned 1st Additional Sessions Judge, Jammu, the matter was ordered to be listed on 02.09.2021, awaiting report of the SHO, Police Station, Nagrota. On 02.09.2021, the accused moved an application before the Court of learned 1st Additional Sessions Judge, seeking withdrawal of the bail application pending before the said Court, which was allowed on the said date, i.e., vide order dated 02.09.2021, but the accused even in the said application sought further liberty to file a fresh bail application when in fact, he

was already released on bail, vide order dated 28.08.2021 by the Additional Sessions Court.

6. The complainant alleged that when she came to know about this fact, she immediately filed an application, seeking cancellation of bail before the Court on 03.09.2021, primarily, on the ground that the accused has obtained the concession of interim bail by playing fraud, misrepresentation, concealment and suppression of vital facts from the Court, which vide order dated 08.11.2021, allowed the bail application and made the interim bail absolute, while rejecting complainant's application for cancellation of bail. The aforesaid acts of fraud, misrepresentation, concealment and suppression of vital facts by the accused, it was urged, has constrained the petitioner to approach this Court, by way of this application, for cancellation of bail.

7. **Objections** on behalf of accused have been filed, wherein it has been stated that the complainant as Assistant Director is senior to him, who has been working as Inspector in Department of Fisheries and was posted at Jammu vide Order No. 8 of 2020 dated 09.01.2020. The Directorate of Fisheries vide Circular dated 18.01.2021, issued instructions to dispense with the practice of placing field staff in the District/Project Offices.

8. It is next pleaded in the objections that the accused, even after the issuance of the Circular in relation to the services of the field staff being utilized in various offices of District/project, found the practice of utilizing the services of Class IV (Field Staff) in

different offices of Districts/projects was going on in the Department of Fisheries at Sidhra, due to which, the work in the field was suffering a lot and while referring to the Circular dated 08-01-2021, requested the complainant to post such officials from her office to the field offices in order to meet the shortage of staff in the field and for smooth functioning; that the complainant inspite of the requests of the accused to post field staff in the parent offices, kept on using the services of field staff, in violation of the abovementioned Circulars dated 26.12.2020 and 08.01.2021. Aggrieved by such actions of the complainant, the accused once again requested her to deploy the field staff to their parent offices through a letter, mentioning therein, as to how the complainant by misusing her official position, has been flouting the circulars, issued by the Director Fisheries.

9. It is further pleaded in the objections that since the accused was following the issue of posting of the field staff to their parent offices, complainant started harassing him by misusing her position by seeking explanations and even by sending false complaints against him to the superior officers. The accused replied to the explanations asked by the complainant. In the meanwhile, he also requested the Director Fisheries, Government of UT of J&K, for the administrative action against the complainant, for misusing her office, by using the services of the field staff for her personal affairs, in contravention of official circulars.

10. It is further pleaded that pursuant to the transfer order dated 03.08.2021, the accused joined to his new place of posting at Samba, but the complainant, again in order to harass him, refused to issue his LPC/Service Book, on the basis of false allegation of non-submission of official record.

11. It is averred in the objections that the complainant in order to succeed in her nefarious design, has tried her level best to get the accused suspended from the services, but when the complainant failed to get him suspended, she on 25.08.2021 by abusing the process of law, lodged false and frivolous FIR No. 360/2021 dated 25.08.2021 at Police Station, Nagrota under section 3(l)(r) of the Atrocities Act against the accused. The complainant earlier in the FIR, firstly alleged that the accused, has committed the offence under the Atrocities Act, but later on, also got added Section 354 IPC in the same FIR.

12. It is the stand of the accused that on 25.08.2021, he was called by the officials of Police Station, Nagrota, informing him about complaint being filed against him, for which he was required in Police Station, Nagrota. On 26.08.2021, the accused reached Police Station, Nagrota and the concerned police officials, who were hand in glove with the petitioner, detained/arrested him.

13. Having been arrested, the accused requested one of his friends to get him bailed out from the custody of the police. Thereafter, one Advocate, namely, Mr. Deepak Gupta approached him at P/S Nagrota and he gave vakalatnama (Power of Attorney) on

26-08-2021 to said Advocate. However, the said Advocate did not inform him that on which day, the bail application would be filed. Thereafter, on 27.08.2021, the accused was produced before the JMIC (Munsiff), Jammu by the Investigating officer for Judicial remand and in the court premises, he also met Mr. Jasbir Singh Jasrotia, Advocate, who happened to be his counsel in one of his service matters, which was pending before this Court Since 2018. The accused requested Mr. Jasbir Singh Jasrotia, Advocate to get him bailed out, as he was not aware of the fact that whether any bail application was filed or not, because the said Adv. Deepak Gupta has not got his signatures on any bail application and the accused was under the impression that till date, no bail application was filed. It is because of these facts the accused signed the bail application as well as vakalatnama on 27.08.2021 and applied for the bail before the Court of learned Principal Sessions Judge, Jammu, who transferred his application to the Sessions Court, which vide order dated 28.08.2021, granted interim bail to the accused, which was later on made absolute on 08.11.2021.

14. After knowing the fact of bail being granted to the accused, the complainant sent a legal notice to all the higher officers of Fisheries Department including Principal Secretary to Government Jammu and Kashmir etc., seeking suspension of the accused; that the complainant is so desperate to get him suspended that after sending legal notice, seeking suspension of the respondent No. 1, she even filed one application for cancellation of

bail before the trial Court and in the said application, she made some new allegations against the accused, which were never reported by her in her complaint submitted to Police Station, Nagrota. Thereafter, the complainant succeeded in her nefarious design by getting the accused suspended from his service. However, the Director Fisheries thereafter vide order No. 106 Fisheries of 2022 dated 08.03.2022 re-instated the accused. The complainant was hell bent to get the accused suspended and ultimately, getting him terminated from the services.

15. Thereafter, on false and frivolous complaint against the accused, she got the order dated 03.09.2022 passed by the learned City Judge, Jammu, wherein a direction was passed to the non-applicant to proceed in accordance with the law as mentioned under Section 156 (3) Cr.P.C. Thereafter, Police Station, Nagrota registered FIR No. 339/2022 on 17.09.2022 against the accused under Section 409 IPC. The accused being aggrieved by FIR No. 339/2022 filed an application for grant of anticipatory bail before the Court of learned Principal Sessions Judge, Jammu, which Court vide order dated 22.09.2022, granted interim bail to him, which was made absolute and additionally, filed one petition under section 482 CrPC for quashing the said FIR before this Court. This Court while granting interim relief vide order dated 11.10.2022, stayed the said FIR. The complainant has falsely implicated the accused by way of false and frivolous allegations in order to convert service matter/dispute between them into criminal litigation and in the process, filed the

instant petition to get the bail granted to him cancelled. Therefore, the same is nothing, but an abuse of process of law and deserves dismissal.

16. It is further averred in the objections that as per the settled law, the 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. According to learned counsel for the accused, the challan in the FIR No. 360/2021 has already been filed and the trial has commenced and the accused is neither required for investigation nor has ever jumped the conditions imposed while granting bail. The trial Court after considering the bail application filed by the accused, after appreciating the settled law governing the subject and with proper application of judicial mind, had granted the bail to the accused vide impugned order dated 08.11.2021.

17. This Court has powers to consider the application for cancellation of bail in terms of Sub-Section (2) of Section 439 of CrPC, which for ready reference is extracted as follows:-

“Section 439–Special powers of High Court or Court of Session regarding bail –

- (1)
- (2) ***A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”***

18. The legal point, that falls for consideration of this Court to be adjudicated upon is that, whether the respondent, who was

accused in the case, in which he had been granted bail by the Sessions Court should not have been granted the bail in view of his having not approached the Court with clean hands, as he is alleged to have misled the Court below by not disclosing that he had already moved an application, which was pending before a Court of coordinate jurisdiction, in which notice had been issued and a date had been given for filing of objections.

19. The Apex Court in case titled, “**Dalip Singh Vs. State of UP & Ors.**”, reported as (2010) 2 SCC 114” has held in para-1 of the judgment, which is profitable to be extracted as under:-

“1. For many centuries, Indian society cherished two basic values of life i.e., ‘Satya’ (truth) and ‘Ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

20. It is well settled in law that a discretionary or equitable relief is to be granted to a petitioner, ‘who approaches the Court for

such relief, must come with frank and full disclosure of facts and if he fails to do so and suppresses material facts, his application is liable to be dismissed'. The Apex Court in catena of judgments has held that if the applicant does not disclose full facts and suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the petition, without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it and that if the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.

21. The Apex Court in a case titled, "**Welcom Hotel & Ors. Vs. State of Andhra Pradesh & Ors.**", reported as AIR 1983 SC 1015" has held that a party, which has misled the Court in passing an order in its favour is not entitled to be heard on merits of the case. The accused in the case on hand, is essentially alleged to have resorted to 'forum shopping' or in other words 'bench hunting' to somehow secure bail, by suppressing this important fact that he had already moved an application for grant of bail, which was subjudice before a court of coordinate jurisdiction, that both the applications were moved by the accused on the same day. The accused had withdrawn his earlier application when in his subsequent application he had already been granted bail.

22. The Apex Court in a case titled, “**State of Maharashtra Vs. Pankaj Gagshi Gangar**, reported as (2022) 2 SCC 66”, has deprecated the forum shopping or bench hunting. Para-9.2 of the aforesaid judgment is relevant and is extracted as under:-

“9.2 It is required to be noted that by the detailed judgment and order, the learned Special Judge/MCOCA refused to release the accused on bail. The accused challenged the same before the High Court. The bail application preferred by the accused was heard by the learned Single Judge. Learned Single Judge was not inclined to release the accused on bail and therefore the accused withdrew the same and thereafter preferred the writ petition before the Division Bench of the High Court under the guise of challenging the vires of MCOCA and without noticing the above, the Division Bench of the High Court has released the accused on bail that too by way of interim relief, which otherwise the accused could not get before the learned Single Judge and he withdrew the bail application. The aforesaid can be said to be forum shopping by the accused which is highly deprecated and which cannot be approved. On this ground also, the accused is not entitled to be released on bail and the impugned order passed by the High Court releasing the accused on bail deserves to be quashed and set aside.”

23. The Apex Court also in a case titled, “**Vijay Kumar Ghai & Ors. Vs. The State of West Bengal & Ors.**, reported as (2024) 1 SCC 544” has held that the obiter dicta and observations of the judiciary has aided in streamlining the concept of forum shopping in the Indian legal system. The Courts have condemned the practice of forum shopping by litigants and termed it as an abuse of process of law. The Apex Court in a case titled, “**Union of India & Ors. Vs. Cipla Ltd. & Anr.**, reported as (2017) 5 SCC 324” has given one

classic example of forum shopping when a litigant approaches one Court for relief, but does not get the desired relief and then approaches another Court for the same relief.

24. Forum shopping has been termed as disreputable practice by the Courts and has no sanction and paramountcy in law. In spite of the Apex Court condemning the practice of forum shopping, the respondent/accused had filed a bail application initially before the Court of learned Principal Sessions Court, who assigned the case to the Court of learned 1st Additional Sessions Judge, Jammu and when the interim relief was not granted, the case was posted on a next date, inviting objections from the other side, the respondent/accused moved another application before the Principal Sessions Court, which assigned his second application to the Court of learned Additional Sessions Judge, Jammu. This not only speaks about the conduct of the respondent as accused and litigant, but also of the Court, which had assigned his two applications on the same date to two different Courts.

25. Another important factor in the case, which has not escaped the attention of this Court is that on perusal of the bail application, wherein the respondent had been granted initially an interim bail and then the same was made absolute, was moved without arraying the complainant as respondent in the application in evident breach of the statutory requirement embodied in Sub-Sections (3) and (5) of Section 15-A of the SC/ST Act. The Apex Court while observing in case titled, "**Hariram Bhambi**

Vs. Satyanarayan & Anr., reported as *2021 SCC OnLine SC 1010* has held that atrocities against members of the Scheduled Castes and Scheduled Tribes are not a thing of the past and they continue to be a reality in the society even today. Hence, the statutory provisions, which have been enacted by the Parliament as a measure of protecting the constitutional rights of persons belonging to the Scheduled Castes and Scheduled Tribes, must be complied with and enforced conscientiously.

26. Sub-Section (3) of Section 15-A of the SC/ST Act provides that a reasonable and timely notice must be issued to the victims or their dependent. This would entail that the notice is served upon victims or their dependants at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well. Sub-section (5) of Section 15-A of the aforestated Atrocities Act, also provides that a victim or his dependant shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceeding or arguments and file written submissions on conviction, acquittal or sentencing. On a harmonious reading of both the Sub-sections (3) and (5) of Section 15-A of the Act, it can be safely concluded that on filing of a

bail application for being released in a case under the SC/ST (Prevention of Atrocities Act, the complainant or his dependent is to be issued a notice or is required to be heard at the time of consideration of bail plea.

27. In view of the aforesaid statutory provisions, it was incumbent upon the Court below to hear the victim/complainant before consideration of the application for grant of bail moved by the accused/respondent herein. Neither the complainant/victim was arrayed as party by the accused as non-applicant, nor the Court directed her to be arrayed as one of the non-applicants or to invite objections from her to the bail application moved by the accused.

28. The case on hand seems to be classic in its nature in view of the fact, as narrated in the pleadings that the complainant as Assistant Director, Fisheries is the superior officer, senior to the accused, who was working under her as Inspector Fisheries; that in view of the departmental rumblings in the working of both these officers, it has been alleged by the complainant that she was not only abused in the name of her caste, but was also given the choicest abuses, uttered obscene words, outraged her modesty and touched inappropriately by the accused/respondent herein, as narrated by her in the statement recorded under Section 164 CrPC during investigation of the case. The investigation of the case has been concluded into a charge-sheet having proved the commission of offences punishable under Sections 3(1)(r) of the SC/ST Act and Sections 354, 294 & 509 of the IPC.

29. From the material available on record, it has been sufficiently established that the accused as applicant before the Court below, while moving his bail application had resorted to worst form of the bench hunting/forum shopping, inasmuch as, he had initially moved an application, which was assigned to one Court and on not finding any interim relief, he moved another application, which was assigned to another Court, which after a day granted interim relief. The respondent as applicant, as is borne from the record of both the Courts below, even after getting the interim bail, got his bail application adjourned to another date by the earlier Court and at his leisure sought withdrawal on the 3rd date, i.e., 02.09.2021 when he was admitted to interim bail on 28.08.2021. Such a conduct on part of the litigant is not appreciable and is required to be deprecated, as no litigant should be allowed to pollute the pure stream of justice in any manner. The order impugned on this count is not tenable and is liable to be set aside. The impugned order otherwise in view of not complying with the statutory requirements of Sub-Sections (3) and (5) of Section 15-A of the SC/ST Act to afford right of being heard to the victim at the consideration of bail, is also not tenable and is liable to be set aside on that count as well.

30. The Scheme of the SC/ST (Prevention of Atrocities) Act, 1989 is to improve the socio-economic conditions of the Scheduled Caste and Scheduled Tribes being vulnerable and marginalized sections of the society, who had faced historical degradation in view

of the untouchability being practised against them. Though almost all the offences, which are made punishable carry a punishment of imprisonment for a term, which shall not be less than six months and may extend to five years and fine, but all the offences provided are to be tried by a Special Court, to be headed by a Sessions Judge, meaning thereby that the offences are required to be tried by a Court presided over by a Senior Judicial Officer.

31. In the case on hand, if it cannot be described as a travesty of justice, however, it certainly amounts to undermining the fairness of justice, when the Sessions Court presided over by a very Senior Judicial Officer had observed the mandatory statutory provisions provided under Sections (3) and (5) of Section 15-A of the Atrocities Act in utter breach and granted bail to the accused without issuance of Notice to the victim/complainant and without affording her opportunity of being heard. The Court below has also ignored the material placed by the complainant while seeking cancellation of interim bail, regarding manipulations and misleading the Court by bench hunting or forum shopping to obtain the interim bail, which was explicit and writ large on the face of the record. The impugned order is, thus, not tenable and is liable to be set aside.

32. Having regard to the aforesaid reasons and the discussions made hereinabove, this application for cancellation of bail is allowed and the order impugned dated 08.11.2021, granting bail to the accused is quashed/set aside with a direction to him, to surrender before the trial Court on **11.11.2024 at 10.00 AM**,

seeking further orders. The trial Court, on his surrender shall remand him to judicial custody. In case of default, in surrender, trial court shall issue non-bailable warrant (NBW) to procure his presence. The accused, however, shall be at liberty to move the trial Court for grant of fresh bail after he surrenders his custody and the trial Court shall decide the application, if moved for grant of bail, uninfluenced by the observations made by this Court in this judgment, which are limited for disposal of the instant application.

33. Before parting with the judgment, it is considered to be prudent that the judgment is circulated for information and compliance to all the Special Courts constituted under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities), Act in both the Union Territories of J&K and Ladakh. Meanwhile, to create awareness among vulnerable/marginalized sections of the society, members of the Scheduled Castes and Scheduled Tribes and public at large with regard to rights conferred under the Act and also to provide relief of cash and kind, as provided under Schedule-I of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, a copy of this judgment is directed to be sent to Member Secretaries of the State Legal Services Authorities of J&K and Ladakh with a request to organize seminars/symposia through legal literacy camps and para-legal volunteers, in their awareness programmes, in the interest of general public.

34. Petition is, accordingly, ***disposed of*** alongwith connected application(s).

(M A CHOWDHARY)
JUDGE

JAMMU
04.11.2024
RamKrishan

Whether the order is speaking? Yes
Whether the order is reportable? Yes

