

Court No. - 12

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

Applicant :-

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

Counsel for Applicant :- Prashant Shukla

Counsel for Opposite Party :- G.A., Vijay Kumar Verma, Vinod Kumar
Tiwari

Hon'ble Pankaj Bhatia,J.

1. Heard the counsel for the applicant-complainant, Sri Vinod Kumar Tiwari who appears for the accused as well as learned AGA and perused the record.

2. The bail cancellation application has been filed seeking to cancel the bail granted to accused - respondent no.2 by the learned Additional District and Sessions Judge/Special Judge, POCSO Act-1st Lucknow in FIR/Case Crime No.83 of 2021 under sections 354-Ka, 376-AB, 504 and 506 IPC, P.S. Krishna Nagar, District Lucknow.

3. The present case is a sad case, which reflects the manner in which, the fighting parents have dragged the daughter to settle the scores amongst themselves.

4. The facts, in brief, are that an application was filed on 08.02.2021 under section 156(3) Cr.P.C. alleging that on 26.08.2020, when the minor daughter of the accused and the complainant who is the mother, was sleeping in the room, the accused who is the father entered into the room and molested her and allegations were levelled that he inserted the hand in the undergarments of the victim and tried to rub the private part and tried to penetrate through his finger. The medical of the victim was not got done. Based upon the said, initially the FIR came to be lodged under section 354-Ka read with section 504 and 506 IPC and section 7/8 POCSO Act. Subsequently, after investigation, the FIR was filed under sections 376,

504, 506 IPC read with section 3/4 POCSO Act.

5. The father (accused), had filed a bail application which was not pressed and subsequently, on his moving second bail application, the bail was granted by the learned Special Judge, POCSO Act by means of a detailed order dated 01.11.2021.

6. While granting the bail, the court had noticed that there was a matrimonial dispute in between the present applicant and the father of the victim. The court also noticed that the victim was not medically examined, the medical examination was specifically refused by the complainant. The court also noticed that on account of the matrimonial discord, the applicant was staying separately from her husband since the year 2010 and the child was also born in the year 2010 whereas in the application under section 156(3) Cr.P.C., it was alleged that the incident happened on 26.08.2020. The court also noticed that in the annexure filed on 29.09.2020, there was no mention of the incident that allegedly took place on 26.08.2020. The court also noticed that since the year 2010, the victim along with her mother was staying in the parental home with the two daughters. The court also noticed that in the application under section 125 Cr.P.C., there was no reference of the alleged incident which took place on 26.08.2020. The court noticing that the accused, on account of such allegation, was in custody since 10.08.2021 and had no criminal history was enlarged on bail.

7. While arguing the present bail cancellation application, the counsel for the applicant relies upon the judgement of this court in the case **Junaid vs. State of U.P. and another; 2021 SCC Online All 463**, wherein general directions were issued that CWC and HCLSC shall be joined as a necessary parties to all bail applications filed under the POCSO Act. It was also directed that the DLSA will be a party in bail application in district courts. It was also directed that the child or her parents or legal guardians shall be impleaded as a party without disclosing their names.

8. In the light of the said directions given in the

argued that in the second bail application, the DLSA or the victim were not made a party and thus, the bail application should be cancelled.

9. Reliance is also placed upon an order passed by this court in **Bail No.8227 of 2021 (Rohit vs. State)** in which the court had noticed section 439(1-A) of the Cr.P.C., in which there was an obligation cast of hearing the person/victim while hearing the bail application under section 376 IPC. It was also noticed that it was incumbent upon the court to ensure that the service of notice of bail application of the informant is done, which is also in terms of the mandate of Section 40 of the POCSO Act.

10. Thus, founded on the directions given in the two orders referred above, the counsel for the applicant - complainant argues that the bail granted to the accused respondent no.2 deserves to be set aside.

11. This court had also called for the status of the trial, which was received through communication dated 12.05.2022 in which it was stated that on 20.04.2022, the charge was framed and thereafter the matter was fixed for adducing of the evidence.

12. The counsel for the accused opposes the bail cancellation application by arguing that while granting bail, the court had noticed the conduct of the complainant, the mother through whom the complaint was filed and had noticed that although the parties were staying separately since the year 2010 and litigation had happened in between them in which, there was no reference of the alleged incident to have taken place as was stated in the application under section 156 (3) Cr.P.C. coupled with the fact that the court had also noticed that there were no medico-legal examination, which was refused at the instance of the mother of the informant, the court had granted bail.

13. Although, this court had issued directions for impleading DLSA as a party, and the mandate of Section of POCSO also prescribes for hearing a party, however, while hearing the bail cancellation

application, it is necessary for this court to consider whether the accused has misused the liberty of bail or not, to which there is no material on record to suggest that the accused has misused the liberty. In fact it is clearly noticeable that it is the mother, the present applicant herein, who has misused the process of law in inflicting bald and scandalous allegations which are on the face of it wrong as observed by the order granting bail. The cancellation of bail, is a serious matter and affects the life and liberty of the accused and should not be interfered casually as is being sought by the present applicant.

14. This court has no hesitation in holding that the present applicant has from the very inception misused the process of law in making reckless allegations.

15. Thus, for the reasons as recorded above, the present bail cancellation application is **rejected with a cost of Rs.20,000/- (Twenty Thousand)** to be deposited by the applicant before the District Legal Services Authority. The court is restraining itself from imposing a heavier cost as, prima-facie the applicant has misused the process of law which cannot be condoned by this court.

16. In case, the costs are not paid within a period of two months from today and a certificate of payment is not deposited before the Senior Registrar within a period of two months from today, the Senior Registrar shall take steps for recovery of the amount as arrears of land revenue through the District Magistrate, Lucknow.

17. Let a copy of this order be sent before the Senior Registrar Lucknow for compliance and further action.

Order Date :- 20.9.2024
VNP/-

[Pankaj Bhatia, J]