

orders of the civil court would be binding on the Magistrate.”

15. Thus, considering the report of the Naib Tehsildar concerned and the Lekhpal concerned dated 13.04.2023 regarding the possession of the petitioners and the entry in CH Form 45 vide order dated 07.09.1972, it can be fairly concluded that the petitioners are in peaceful possession of Plot No. 287 Ka and the two story house constructed over it and there is no apprehension of the breach of peace. The Original Suit No. 1262 of 2023 filed by the respondents is pending decision between the parties.

16. After analysing the aforesaid facts and circumstances and the submissions advanced by the parties, the order dated 28.08.2023 (Anneuxre-1) passed by the learned Additional Sessions Judge-I, Court No.1, Jaunpur in Criminal Revision No.167 of 2023 (Rajkumar and others vs. State of U.P. and others), arising out of Case No.4287 of 2022, under Section 145 Cr.P.C. is hereby set-aside, affirming the order dated 15.04.2023 passed by the Sub Divisional Magistrate, Tehsil Mariahu, District-Jaunpur.

Accordingly, the writ petition is allowed.

(2024) 11 ILRA 536
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.11.2024

BEFORE
THE HON'BLE KRISHAN PAHAL, J.

Criminal Misc. Bail Cancellation Application No.
 532 of 2023

Vinod Singh

...Applicant

Versus

State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:

Chandrika Patel, Gunjan Jadwani

Counsel for the Opposite Parties:

G.A., Shubham Kesarwani

(A) Criminal Law - Criminal Procedure Code, 1973 - Section – 438 (1)(ii) - Indian Penal Code, Sections – 420, 467, 468, 471, 386, 397, 115, 323, 504 & 506 - Bail Cancellation Application – order of trial court granting Anticipatory Bail – by allowing second Anticipatory Bail Application – wherein the accused/opposite party no. 2 has not approached the court below with clean hand – Court finds that, - opposite party no. 2 has criminal antecedents and that too has not explained, as such, the order granting anticipatory bail to the applicant cannot be sustained and him being a practicing advocate makes his case worse –held, the court seeks to strike a delicate balance between safeguarding individual liberty and upholding the interest of justice and public safety - hence, he impugned order is not sustainable and is liable to be set aside – accordingly, instant bail cancellation application is allowed – direction issued to opposite party no. 2 to surrender before the trial court with liberty to avail the remedy for regular bail. (Para - 18, 23, 24)

Application allowed. (E-11)

List of Cases cited:

1. Deepak Yadav Vs St. of U.P - AIR 2022 SC 2514,
2. Dolat Ram & ors. Vs St. of Har.– (1995) I SCC 349,
3. Neeru Yadav Vs St. of U.P. & anr. - (2016) 15 SCC 422,
4. Mahipal Vs Rajesh Kumar @ Polia & anr. - AIR 2020 SC 670,
5. Colby Furniture Company, Inc. Vs Belinda J. Overton – 299 So. 3D 259,

6. Holy Family Catholic School Vs Boley – 847 So. 2D 371 (2002),
7. Ash Mohammad Vs Shiv Raj Singh – (2012) 9 SCC 446,
8. Brij Nandan Jaiswal Vs Munna Jaiswal – AIR 2009 SC 1021,
9. Anil Kumar Tulsyani Vs St. of U.P. – 2006 (55) ACC 1014 (SC),
10. Sompal Singh Vs Sunil Rathi – 2005 (1) SCJ 107,
11. St. of U.P. Vs Amarmani Tripathi – (2005) 8 SCC 21,
12. St. of Mah. Vs Sitaram Popat Vetal – AIR 2004 SC 4258.
13. Satender Kumar Antil Vs C.B.I.& anr. - 2022 SCC Online SC 825.

(Delivered by Hon'ble Krishan Pahal, J.)

1. List has been revised.
2. Rejoinder affidavit filed by learned counsel for the applicant is taken on record.
3. Heard Ms. Gunjan Jadwani, learned counsel for the applicant and Sri Shubham Kesarwani, learned counsel for the opposite party no.2 as well as Sri Ashutosh Srivasava, learned A.G.A. for the State and perused the record.
4. By means of the present bail cancellation application, applicant is assailing the order dated 09.06.2023 passed by learned Sessions Judge, Rampur in Second Anticipatory Bail Application No. 906 of 2023 under Sections 420, 467, 468, 471, 386, 397, 115, 323, 504, 506 IPC, Police Station Kotwali, District Rampur in Complaint Case No. 5206 of 2022 during the pendency of trial.

5. Learned counsel for the applicant has stated that the accused/opposite party no.2 has not approached the said Sessions Court with clean hands, as such concealed the factum of criminal antecedents of two previous cases. The said fact can be verified from the order of the Sessions Judge dated 09.06.2023 passed in Crl. Misc. Anticipatory Bail Application No. 906 of 2023. It is true that he has been granted bail by this Court but the suppression of the said fact indicates that he is not entitled for anticipatory bail.

6. Per contra, learned counsel for the accused/opposite party no.2 has opposed the present bail cancellation application on the ground that the accused/opposite party no.2 is an advocate and he has categorically explained his criminal antecedents in both the cases in which closure report was filed and, as such, he did not mention the said fact, but it is true that he is on bail in case he was convicted.

7. In rebuttal, learned counsel for the applicant has stated that non-mentioning of criminal antecedents clearly goes against him and he has suppressed this fact. He has not approached the said court with clean hands, as such, the order dated 09.06.2023 is liable to be set aside.

8. The anticipatory bail application of co-accused Sadhna Singh and Sarla was also set aside by this Court on similar grounds for not explaining the criminal antecedents and the said order has been affirmed by the Supreme Court and, as such, the bail cancellation application is liable to be allowed.

9. The Supreme Court in the case of **Deepak Yadav vs State of U.P.**, 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** 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.

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** the accused was granted bail by the High Court. In an appeal against the order of the High Court, Supreme 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 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.

10. The Supreme Court in **Mahipal v. Rajesh Kumar Alias Polia and Another** 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."

11. 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** is to prevent a party from obtaining relief when that party's own wrongful conduct has made it such that granting the relief would be against equity and good conscience.

12. The clean hands doctrine is an affirmative defense that the defendant may claim as has been held in **Holy Family Catholic School v. Boley**, 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.

13. The saying of Jonathan Swift:-

"Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through."

14. The applicant carried more responsibility in explaining the criminal antecedents as he is a legal professional.

The saying of Jonathan Swift applies to him.

15. The Supreme Court in umpteen number of cases has laid down that while granting bail to an accused, the Court should also take into consideration the criminal history of the accused. The criminal antecedents of an accused though always not determinative of question whether bail is to be granted or not, yet there relevance cannot be totally ignored.

(i) **Ash Mohammad Vs. Shiv Raj Singh,**

(ii) **Brij Nandan Jaiswal Vs. Munna Jaiswal,**

(iii) **Anil Kumar Tulsiyani Vs. State of U.P. ,**

(iv) **Sompal Singh Vs. Sunil Rathi,**

(v) **State of U.P. Vs. Amarmani Tripathi,**

(vi) **State of Maharashtra Vs. Sitaram Popat Vetal,**

16. It is true that the aforesaid judgments deal with regular bail application, but the yardsticks for anticipatory bail application are stricter to that of regular bail applications and the powers are to be used sparingly.

17. The parameters for granting anticipatory bail differ significantly from those for regular bail, as they address distinct legal situations and serve unique purposes. The primary objective of anticipatory bail is to protect an individual from arrest in anticipation of being accused of a non-bailable offense, especially when the allegations do not appear credible as his arrest could tarnish his image in the society.

18. A crucial consideration is the criminal antecedents of the accused, which must be seriously evaluated. If the accused has a history of criminal behavior, unexplained or otherwise, it could weigh heavily against the grant of anticipatory bail.

19. Given the preventive nature of anticipatory bail, the parameters and conditions imposed are typically stricter. These measures are necessary to prevent any misuse of the bail and to ensure the accused does not obstruct the course of justice by tampering with evidence, influencing witnesses, or evading trial.

20. Ultimately, the court seeks to strike a delicate balance between safeguarding individual liberty and upholding the interests of justice and public safety.

21. It is true that the opposite party no.2 has criminal antecedents and that too has not been explained, as such, the order granting anticipatory bail to the applicant cannot be sustained and him being a practising advocate makes his case worse. His anticipatory bail was hit by Section 438(1)(ii) Cr.P.C. also.

22. After hearing the parties and taking into consideration that the accused/respondent no.2 has not mentioned the factum of previous criminal antecedents. Although, it may be true that the closure report may have been filed. It is further added that the counsel for the accused/respondent no.2 has even not filed the said closure reports or any order indicating the accepting of said closure report in this counter affidavit also and it has also to be considered that the fact finds mentioned in paragraph no.3 of the bail

order dated 09.06.2023 whereby it has been stated that the accused/respondent no.2 has no criminal antecedents. Therefore, the impugned order dated 09.06.2023 passed by Sessions Judge, Rampur in Crl. Misc. Anticipatory Bail Application No. 906 of 2023 is not sustainable and is liable to be set aside.

23. In view of the above, the instant bail cancellation application is allowed. The impugned bail order dated 09.06.2023 passed by learned Sessions Judge, Rampur is hereby set aside.

24. However, three 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 them 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 vs. Central Bureau of Investigation and another.**

(2024) 11 ILRA 541
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.11.2024

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Appeal No. 2289 of 2022

Ram Krishna @ Ram Kishan ...Appellant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Aman Kumar, Surendra Pal

Counsel for the Respondents:
G.A.