

consultation with various authorities and experts.

115. The State Government to provide necessary support to Ms. Richa Upadhyay, HJS/Secretary, DLSA, Gautam Budh Nagar and the District Probationary Officer, Jhansi to accomplish this task. Copy of the said individual child care plan shall be provided to the jail authorities, CWC and BSA. The District Magistrate, Jhansi shall also ensure that the aforesaid child care plan is duly implemented by the concerned authorities of the local administration.

116. The CWC, Jhansi shall prepare a regular report regarding implementation of the aforesaid plan and submit a report to the concerned authorities.

X. Circulation of copies for compliance

117. Learned Additional Advocate General to ensure service of copy of this judgement for necessary compliance upon the following authorities:

- i. Principal Secretary, Women and Child Development, Government of U.P.
- ii. Principal Secretary, Law/Legal Remembrancer, Government of U.P.
- iii. Director General of Police, Government of UP
- iv. Principal Secretary, (Prisons), Government of UP
- v. Principal Secretary (Basic Education), Government of UP
- vi. Principal Secretary, Health and Medical Education, Government of UP
- vii. CWC members in all districts
- viii. District Jail Superintendents of all district jails
- ix. Police Chiefs of all districts

- x. District Probationary Officers of all districts
- xi. Director, JTRI, Lucknow
- xii. District Magistrate, Jhansi

118. Registrar General to ensure that a copy of this order is provided to Ms. Richa Upadhyay, Additional District Judge/Secretary, DLSA, Gautam Budh Nagar.

119. A copy of this order translated in Hindi to be served to the applicant.

(2025) 1 ILRA 53

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 21.01.2025

BEFORE

THE HON'BLE ASHUTOSH SRIVASTAVA, J.

Criminal Misc. Bail Application No. 29850 of 2020

Sreedhar Prasad

...Applicant

Versus

State of U.P.

...Opposite Party

Counsel for the Applicant:

Counsel for the Opposite Party:

Criminal Law - Indian Penal Code, 1860 - Sections 420, 467, 468 & 120-B - Information Technology Act, 2000 - Section 66 - Code of Criminal Procedure, 1973 - Section 362 (Now Section 403, BNSS 2023) - Bail - Application for modification of order - Maintainability - High Court vide order dated 12.10.2020 enlarged applicant on bail on his furnishing a personal bond of Rs. 1 Lac with two sureties (one should be of his family members) each in like amount to satisfaction of Court concerned. (Para 2)

Applicant contended that he lodged in jail for long time and unable to arrange sureties and can be released on filing personal bonds without monetary obligations. (Para 4)

Held, taking note of fact that applicant though released earlier on bail has remained in custody since 15.07.2019 on account of non-fulfilment of condition of providing one surety of his family member, prayer for modification of condition granted - Thus, by allowing said application, Court deleted condition mentioned in impugned order. (Para 15, 17)

Modification application allowed. (E-13)

List of Cases cited:

1. Rakesh Kumar Paul Vs St. of Assam reported in 2017(15) SCC 67
2. Hussainara Khatoon & ors. Vs Home, Secretary, St. of Bihar, 1980 (1) SCC 81
3. R. D. Upadhyay Vs St. of Andhra Pradesh, 1996 (3) SCC 422
4. Girish Gandhi Vs The St. of U. P., Writ Petition No. 149 of 2024, order dated 12.10.2020, (Para 22, 23)
5. Narayan Prasad Vs St. of Bihar & ors., reported in 2019(14) SCC 726
6. Sanjeev Kapoor Vs Chandana Kapoor & ors., reported in 2020 (13) 172
7. Ramadhar Sahu Vs The St. of M. P., reported in 2023 LiveLaw (SC) 945, (Para 4, 5)

(Delivered by Hon'ble Ashutosh
Srivastava, J.)

In Ref.: Criminal Misc.
Modification Application

1. This is an application seeking modification of the order dated 12.10.2020

passed in Criminal Misc. Application No. 29850 of 2020 to the extent of removing the condition of one family member as a surety and direct the release of the applicant on his furnishing a personal bond along with any two sureties each in the like amount to the satisfaction of the court concerned or pass any other and further orders in the interest of applicant considering the present facts and circumstances of the case.

2. It is contended that the applicant filed Criminal Misc. Bail Application aforementioned seeking regular bail in Case Crime No. 0816 of 2017, under Sections 420, 467, 468, 120-B IPC and Section 66 of Information Technology Act, Police Station Kotwali City, District Bijnore. This Court vide order dated 12.10.2020 was pleased to enlarge the applicant on bail on his furnishing a personal bond of Rs. 1 Lac with two sureties (one should be of his family members) each in the like amount to the satisfaction of the Court concerned.

3. It has been submitted that the applicant has not been able to obtain bail on account of the fact that he has not been able to arrange a family member to stand as his security as directed by this Court while granting bail vide order dated 12.10.2020 and has been languishing in jail since 15.07.2019. His father has expired and his family comprises of his Mother and Wife, who are home makers and two daughters, one of whom is working in Vishakhapatnam and the other studying in Mumbai.

4. Learned counsel has placed reliance upon the Apex Court decision in the case of **Rakesh Kumar Paul Vs. State of Assam** reported in **2017(15) SCC 67** to buttress

the point that in matters of personal liberty and Article 21 of the Constitution of India it is not always advisable to be formalistic or technical and the bail order is liable to be modified as prayed to enable the applicant to avail the benefit of the bail order. Placing further reliance upon **1980 (1) SCC 81 (Hussainara Khatoon & others Vs. Home, Secretary, State of Bihar)** as also **1996 (3) SCC 422 (R. D. Upadhyay Vs. State of Andhra Pradesh)**. It is contended that accused lodged in jail for long time and unable to arrange sureties can be released on filing personal bonds without monetary obligations.

5. Learned counsel for the applicant has invited attention to Para 22 of the decision of the Apex Court in the case of **Girish Gandhi Vs. The State of Uttar Pradesh (Writ Petition No. 149 of 2024)**, quoted herein-below to submit that the order dated 12.10.2020 be suitably modified.

"22. Whether it is to get individuals, to stand as a guarantor for a loan transaction or as a Surety in a criminal proceeding, the choice for a person is very limited. It will very often be a close relative or a longtime friend. In a criminal proceeding, the circle may get even more narrowed as the normal tendency is to not disclose about the said criminal proceeding to relatives and friends, to protect one's reputation. These are hard realities of life in our country and as a court of law we cannot shut our eyes to them. A solution, however, has to be found strictly within the framework of the law.

23. From time immemorial, the principle has been that the excessive bail is no bail. To grant bail and thereafter to impose excessive and onerous conditions,

is to take away with the left hand, what is given with the right. As to what is excessive will depend on the facts and circumstances of each case. In the present case, the petitioner is experiencing a genuine difficulty in finding multiple sureties. Sureties are essential to ensure the presence of the accused, released on bail. At the same time, where the court is faced with the situation where the accused enlarged on bail is unable to find sureties, as ordered, in multiple cases, there is also a need to balance the requirement of furnishing the sureties with his or her fundamental rights under Article 21 of the Constitution of India. An order which would protect the person's fundamental right under Article 21 and at the same time guarantee the presence, would be reasonable and proportionate. As to what such an order should be, will again depend on the facts and circumstances of each case."

6. The modification application has been vehemently opposed by the learned AGA by submitting that the application seeking modification of the bail order is hit by the embargo imposed by Section 362 Cr.P.C. and hence not maintainable and the remedy lies elsewhere.

7. I have heard the learned counsel for the applicant, learned AGA for the State and have given my anxious consideration to the submissions advanced by the respective counsels.

8. Section 362 Cr.P.C. contained in Chapter XXVII of the Cr.P.C. reads as under:-

"362. Court not to alter judgment.

Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

9. The equivalent Section 403 contained in Chapter XXIV of the BNSS 2023 read as under:-

"403. Court not to alter judgment.

Save as otherwise provided by this Sanhita or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

10. The embargo put on the criminal court by Section 362 Cr.P.C. (Section 403 BNSS) is with a purpose and object. The criminal justice delivery system does not clothe criminal courts with power to alter or review the judgment or final order disposing of the case except to correct the clerical or arithmetical error. After the judgment delivered by a criminal court or passing of the final order disposing of the case the court becomes functus-officio and any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law.

11. The expression "Save as otherwise provided by this Code/Sanhita or by any other law for the time being in force" contained in Section 362 Cr.P.C./Section 403 BNSS, 2023 is relaxed in following two conditions"-

(i) Save as otherwise provided by the Code of Criminal Procedure/BNSS, 2023

(ii) Any other law for the time being in force.

12. Section 362 Cr.P.C. of which Section 403 BNSS is pari-materia has been interpreted by the Courts of law. The Apex Court in the case of **Narayan Prasad Vs. State of Bihar and others**, reported in **2019(14) SCC 726** has held that the prohibition under Section 362 Cr.P.C. is absolute; after the judgment is signed even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same. The judgment further held that inherent power under Section 482 Cr.P.C. was purported to avoid the abuse of the process of the Court and to secure the ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code.

13. In the case of **Sanjeev Kapoor Vs. Chandana Kapoor and others**, reported in **2020 (13) 172** after analyzing various decisions, however, held that the embargo as contained in Section 362 Cr.P.C. was clearly relaxed in proceedings under Section 125 Cr.P.C. and the maintenance proceedings initiated by the wife under Section 125 Cr.P.C. which had been finally disposed off with terms of settlement arrived at Section the husband and wife were rightly restored on the application of the wife seeking recall on non compliance of the conditions by the husband.

14. Recently, the Apex Court in the case of **Ramadhar Sahu Vs. The State of Madhya Pradesh** reported in **2023 LiveLaw (SC) 945** observed that Section 362 which prohibits modification of a judgment or final order will not be applicable in an order for refusal of bail.

The relevant paras of the decision of the Apex Court is quoted hereunder:-

"4. The opinion of the High Court, in the impugned order, is that in the event the High Court granted bail to the appellant without compliance of the conditions specified in the earlier order of a Coordinate Bench, that would constitute modification of the order and Section 362 of the Code prohibits such modification of a judgment or final order.

5. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant's application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order"

15. In view of the above, taking note of the fact that the applicant though released on bail vide order dated 12.10.2020 has remained in custody on account of non-fulfillment of the condition of providing one surety of his family

member, I am inclined to grant the prayer for modification of the condition, to meet the ends of justice.

16. In view of the above, the modification application stands **allowed**.

17. Accordingly, in the 4th & 5th line of the order dated 12.10.2020 is modified to the extent that the condition mentioned as **"one of the surety should be of his family member"** is hereby deleted.

(2025) 1 ILRA 57
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.01.2025

BEFORE

THE HON'BLE SANJAY KUMAR SINGH, J.

Criminal Misc. Bail Application No. 35494 of
2024

Om Prakash Kushwaha **...Applicant**
Versus
State of U.P. **...Opposite Party**

Counsel for the Applicant:

Himanshu Mishra, Kamlesh Kumar Dwivedi,
Suvansit Kumar Jaiswal

Counsel for the Opposite Party:

G.A., Vijay Kumar Mishra

A. Criminal Law – Bharatiya Nyaya Sanhita – Sections 64, 74 & 351 – Evidence Act, 1875 – Section 65B – Rape – CCTV footage show the presence of applicant and victim together in a hotel and WhatsApp chatting proof that applicant was taking advantage of withdrawing the case lodged by him against the victim's brother and used it to make physical relation with her – There is no inconsistency in the FIR version and St.ment of victim u/s 180 and 183 of BNSS – Effect – Held, from the medical