

Judge, SC/ST Act, Gautam Buddha Nagar was not having any power provided as per law for passing an order of re-investigating the matter in reference of the petitioner.

20. With regard to issue no. II, learned counsel for the petitioner specifically took a ground while submitting written submissions that there was hardly any occasion available before learned Additional District and Sessions Judge-II/Special Judge, SC/ST Act, Gautam Buddha Nagar to pass any other order except rejecting or allowing the anticipatory bail application preferred at the behest of Dr. Gyanendra Aggarwal. The issue before the learned Sessions Judge was for consideration of anticipatory bail filed by Dr. Gyanendra Aggarwal and there was no other issue under Section 438 Cr.P.C to deal with other matters and the observations made by learned Sessions Judge was uncalled for and moreover on the basis of the observation, the direction issued to concerned Investigating Officer for re-investigation is liable to be set aside.

21. In view of the aforementioned facts and circumstances and discussions made in the light of the judgments as referred above rendered by Hon'ble Apex Court as well as by different High Courts, part of the direction, contained in order dated 17.05.2024 under para no. 14 specifically issuing direction to concerned Investigating Officer for re-investigation, is hereby set aside.

22. The instant petition stands *allowed* accordingly.

(2025) 2 ILRA 99

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.02.2025

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Matters Under Article 227 No. 15602 of 2024

Rajesh Kumar Sharma ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Deepak Pandey, Lavlesh Kumar Sharma

Counsel for the Respondents:

G.A.

Criminal Law-The Constitution of India, 1950-Article 227 - The Code of Criminal Procedure, 1973-Section 439(2)---

Bail cancellation application can only be preferred under Section 439(2) Cr.P.C--- The procedure has not mandated for seeking cancellation of bail through preferring petition under Article 227 of the Constitution of India and the prayer made in the instant petition for seeking quashing the order only to the extent insofar as it considers the non-bailable offences against the respondent as bailable and granted anticipatory bail to the respondent cannot be considered since the same is directly seeking cancellation of the bail as extended in favour of respondent.

Petition dismissed. (E-15)

List of Cases cited:

1. Srikant Upadhyay & ors. Vs St. of Bihar & ors., 2024 (3) SCR 421
2. Abdul Basit Vs Mohd. Abdul Kadir Chaudhary, 2014 (10) SCC 754

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

1. Heard Sri Deepak Pandey, learned counsel for petitioner, Sri Anand Sagar Dubey, learned AGA-I for respondent no. 1 and Sri Rohan Gupta, learned counsel for respondent no. 2.

2. After hearing in detail, while reserving the judgment, all the learned counsels appearing for the parties were requested to submit their written arguments along with relied upon judgments within a week and the same has been received and are available in the records.

Petitioner's submissions

3. Present writ petition has been preferred for challenging the order dated 17.05.2024 passed by learned court of Additional District and Sessions Judge-II/Special Judge, SC/ST Act, Gautam Buddha Nagar through which anticipatory bail application under Section 438 Cr.P.C. has been allowed and bail has been extended on certain conditions which are mentioned in the order which impugned the present petition and are five in numbers.

4. Learned counsel for the petitioner while assailing the order dated 17.05.2024 submitted that despite the bailable warrants having been issued against the respondent no. 2, the anticipatory bail application preferred at the behest of respondent no. 2 has been allowed and the same is in violation of the verdict rendered by Hon'ble Apex Court in case of *Srikant Upadhyay and others vs. State of Bihar and others, 2024 (3) SCR 421*.

5. Learned counsel for the petitioner further submitted that although order dated 17.05.2024 is under challenge but a direction contained in the same order through which Inquiry Officer has been directed to re-investigate the role of respondent no. 2 is not under challenge. Substantiating the arguments for not challenging part of the order impugned dated 17.05.2024, learned counsel for the

petitioner sought the attention of the Court over the prayer clause which is reproduced herein below:

"(i) to quash the order dated 17.05.2024 only to the extent in so far as it considers the Non Bailable Offences against the respondent no. 2 as Bailable and grants Anticipatory Bail to the respondent no. 2 in contemptuous violation of the Hon'ble Supreme Court's judgment in the case of Srikant Upadhyay & ors. vs. State of Bihar & Anr. (SLP (Cri.) No. 7940 of 2023) [2024] 3 SCR 421. "

6. It is also submitted by learned counsel for the petitioner that various grounds have been taken while preferring the instant petition which is squarely covered with the judgment of *Srikant Upadhyay (supra)* and as such part of the order dated 17.05.2024 except one part of the order dated 17.05.2024 is liable to be set aside.

Respondent's submissions

7. Per contra, Sri Rohan Gupta, learned counsel appearing on behalf of respondent no. 2 submitted through his written submission that after issuing bailable warrants on dated 12.04.2024 respondent no. 2 appeared in person before learned court concerned by way of preferring anticipatory bail application and the same was rightly allowed vide order dated 17.05.2024 and none of the grounds contained the violation of the terms and conditions which was fixed by learned concerned court while extending bail in favour of the respondent no. 2 and the anticipatory bail can only be denied, if the accused had been absconding despite summons, non-bailable warrants as well as proclamation under Section 82 Cr.P.C. and

the order of extension of anticipatory bail granted in favour of respondent no. 2 can only be cancelled when the conditions recorded in the order granting anticipatory bail have been violated or there is substantial evidence to indicate that respondent no. 2 has misused the liberty granted, has obstructed the course of justice or has committed further crimes. However, in the present case, no such incident has occurred and no such evidence has been brought on record to indicate violations of any such conditions which have been laid down by Hon'ble Apex Court from time to time.

8. A judgment of Hon'ble Supreme Court has also been relied by learned counsel for respondent no. 2 i.e. ***Abdul Basit vs. Mohd. Abdul Kadir Chaudhary, 2014 (10) SCC 754*** which has been relied upon by judgments of this Court while dismissing cancellation of anticipatory bail petition in Crl. Misc. Bail Cancellation Application no. 646 of 2022 (Zeba Parveen vs. State of U.P. and another), wherein it has been held that under chapter XXXIII Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) Cr.P.C. empowers the High Court to direct any person who has been released on bail under chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally, the grounds for cancellation of bail broadly are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country,

(vi) attempt to make himself scarce by going underground or becoming unavailable to the Investigating Agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrious and non-exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution is not completing the investigation in sixty days after the defect is cured by the filing of charge sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However in the last mentioned case, one would expect very strong ground indeed. (Raghubir Singh vs. State of Bihar, [(1986) 4 SCC 481].

9. Learned counsel for respondent no. 2 submitted that undisputedly petitioner had been participating in the investigation and extending his full cooperation despite order of stay of arrest having been granted by this Court in Writ Petition no. 13160 of 2023. It is also submitted by learned counsel for respondent no. 2 that respondent no. 2 approached this Court under Section 482 Cr.P.C. bearing no. 8717 of 2024 on 12.03.2024, assailing the charge sheet and subsequently due to backlog of cases, the interim application could finally be heard and decided and a stay was granted on the proceedings of the lower court vide order dated 20.08.2024. Therefore the bailable warrant had also been issued during pendency of the aforesaid application under Section 482 and this fact was duly before the court below at the time of passing orders sought to be impugned and as such in the light of above it is submitted by learned counsel for

respondent no. 2 that the present petition is completely frivolous and an abuse of process of law and therefore is liable to be dismissed with cost.

10. Sri Anand Sagar Dubey, learned AGA-I who appeared on behalf of State submitted his written submission but the entire averments and facts along with relied upon judgments are the same one which he submitted in Petition under Article 227 no. 13987 of 2024 since petition no. 13987 of 2024 (connected) and 15602 of 2024 (present) were clubbed with each other and heard together and as such in both the petitions the stand of the learned AGA was the same.

Observations and Conclusion

11. After hearing the rival submissions extended by learned counsel for the parties, it is crystal clear that one hand petitioner is challenging extension of bail in favour of respondent no. 2 and in the connected petition petitioner was supporting direction contained in order which impugned the present petition, meaning thereby petitioner is seeking bail cancellation through the instant petition but at the same time intended to restore direction passed by learned Additional Sessions Judge-II/Special Judge, SC/ST Act, Gautam Buddha Nagar which is available in the impugned order through which the direction was issued to re-investigate the matter for ascertaining role of respondent no. 3.

12. As per the procedure, bail cancellation application can only be preferred under Section 439(2) Cr.P.C. but in the instant matter cancellation of bail has been sought through challenging order through which bail has been extended in favour of respondent no. 2. It is a trite law that while seeking bail, it is only the bail cancellation order which is not amenable for putting into challenge before higher court. The

grant of bail is not an order which has been adjudicated on the basis of pleadings exchanged but it is extension and grant for ensuring personal liberty ensured as per procedure on the basis of certain conditions and as such the prayer made through the instant petition is not maintainable wherein certain part has been prayed to be restore and consideration of grant of anticipatory bail has been sought to be set aside.

13. The procedure has not mandated for seeking cancellation of bail through preferring petition under Article 227 of the Constitution of India and the prayer made in the instant petition for seeking quashing the order dated 17.05.2024 only to the extent insofar as it considers the non-bailable offences against the respondent no. 2 as bailable and granted anticipatory bail to the respondent no. 2 cannot be considered since the same is directly seeking cancellation of the bail as extended in favour of respondent no. 2.

14. In view of the aforementioned facts and circumstances, and in the light of the discussions made above and by giving highest regard to the judgments rendered by Hon'ble Apex Court and the judgment passed by this Court, relying upon the verdict of Hon'ble Apex Court, the instant petition stands *dismissed* accordingly.

(2025) 2 ILRA 102
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.02.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 1287 of 2025

Anil Kumar Srivastava **...Applicant**
Versus
C.B.I./S.C.B. Lko. & Ors. **...Opposite Parties**