

Neutral Citation No. - 2025:AHC:58307

Court No. - 68

Case :- CRIMINAL MISC. BAIL CANCELLATION APPLICATION
No. - 6 of 2023

Applicant :- Ahswani Kumar Agarwal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Abhijeet Singh, Malay Prasad, Saloni Mathur,
Tanya Makker, Deepak Kumar Pandey, Nipun Singh, Sumit Suri

Counsel for Opposite Party :- G.A., Neeraj Kumar Sharma, Rajiv
Lochan Shukla, Shikhar Awasthi

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Nipun Singh, learned counsel for the applicant of the Bail Cancellation Application, learned A.G.A. as also Sri Rajiv Lochan Shukla, learned Senior Counsel assisted by Sri Shikhar Awasthi, learned counsel, who has put in appearance on behalf of the opposite party no.2- Rakesh Sharma s/o Chandrapal Sharma in opposition to the Bail Cancellation Application.

2. The instant Bail Cancellation Application at the instance of the applicant-Ashwani Kumar Agarwal has been filed seeking the cancellation of the bail of the opposite party No.2 namely Rakesh Sharma, who has been enlarged on bail by the Sessions Judge, Ghaziabad vide order dated 01.11.2022 passed in Bail Application No.7355 of 2022 arising out of Case Crime No.636 of 2021, under Sections 120B, 406, 420, 467, 468, 471, 506 I.P.C., Police Station Tronica City, District Ghaziabad.

3. Sri Nipun Singh, learned counsel for the applicant/ informant seeking cancellation of the bail granted to the opposite party no.2 submits that the applicant is a Chartered Accountant by profession and is in a professional relationship with the opposite party No.2. The opposite party

No.2 by assuring good returns induced the applicant in investing a sum of Rs.2,00,00,000/- in a sand mining project. The amount was transferred into the bank account of the opposite party No.2. The opposite party No.2 despite earning a profit of rupees ten crores did not give the applicant a single penny. The applicant lodged an FIR on 19.09.2021 against the opposite party No.2 and one Mumtaz Bhutto who was an accomplice of opposite party No.2. The FIR was registered as Case Crime No.636 of 2021, under Sections 420, 406, 506 I.P.C., P.S. Tronica City, Ghaziabad. The FIR was challenged before a Division Bench of this Court in Writ Petition No.9716 of 2021 (Rakesh Sharma Vs. State of U.P. and 3 others) which writ petition was disposed of in terms of a judgment dated 25.01.2021 rendered in Criminal Misc. Writ Petition No.17732 of 2021 (Vimal Kumar and 3 others vs. State of U.P. and 3 others) wherein following the judgment of the Apex Court in different cases guidelines had been framed relating to offences providing punishment of seven years or less. Thereafter the opposite party No.2 is alleged to have got executed a forged and fabricated agreement between himself and the applicant showing a sale transaction of an agricultural land to the tune of Rs.2,94,68,000/-. The FSL examination of the signature of the applicant on the said alleged document have been found to be forged. Based on the FSL report offences under Sections 467, 468, 471 and 120B IPC were added against the opposite party No.2. Thereafter the opposite party No.2 has been extending threat to the applicant which compelled the applicant to approach the Additional Director General of Police, Meerut Zone Meerut as also other authorities by moving representations. The opposite party No.2 thereafter applied for regular bail before the learned Sessions Judge, Ghaziabad which has been allowed by order dated 01.11.2022 cancellation of which has been sought by means of the present application.

4. Sri Nipun Singh, learned counsel for the applicant vehemently submits that the cancellation has been sought on the following grounds:-

- (1) The opposite party No.2 is a history sheeter, which is registered as history sheet no.44A in police records of District Bulandshahr and he is involved in more than 28 cases including heinous offences.
- (2) Proceeding under Goonda Act and U.P. Gangster Act have also been initiated against the opposite party No.2.
- (3) The opposite party No.2 i.e. Rakesh Sharma is a proclaimed offender.
- (4) The opposite party No.2, Rakesh Sharma is also involved in various murder cases, although in one or two cases he was acquitted by giving benefit of doubt. In a murder case at Greater Noida, in which he is single accused, the murder was committed in the year 2010 and charges were framed in 2012, yet even after 15 years, the trial proceeding has not been completed due to want of his cooperation in the trial. The witnesses are afraid of his criminal antecedents and are not coming forward to give evidence against him.
- (5) The bail has been granted by the court below on 01.11.2022 on a condition that he will settle the matter and will refund the money back within three months. The relevant portion of the conditional bail order is being reproduced here-in-below:-

"प्रथम सूचना रिपोर्ट के अनुसार प्रश्नगत प्रकरण वादी के लगभग दो करोड़ रुपये की धनराशि बालू खनन के पट्टे में इन्वेस्ट कराने के नाम पर हड़पने से सम्बंधित है। आवेदक / अभियुक्त की ओर से विद्वान अधिवक्ता द्वारा वादी के उनकी ओर एक करोड़ 75 लाख रुपये आने के तथ्य को स्वीकार किया है। यह भी तक किया गया कि उनके द्वारा 50 लाख रुपये की धनराशि वादी को दौरान अग्रिम जमानत दी जा चुकी है, किंतु तत्पश्चात् भी वादी पक्ष की ओर से कोई समझौता नहीं किया गया है। इस सम्बंध में वादी के अधिवक्ता की ओर से यह तर्क किया गया कि यदि अभियुक्त शेष स्वीकृत धनराशि भी वादी को देने के लिए तैयार रहें, तो वादी समझौता करने के लिए तैयार हैं। अभियोजन की ओर से आवेदक/अभियुक्त का आपराधिक इतिहास होना कहा है परन्तु किसी अपराध में दोषसिद्ध होना इस स्तर पर नहीं कहा गया है। उक्त मामले में आरोपपत्र दाखिल हो चुका है। अन्य कोई साक्ष्य संकलित किया जाना शेष नहीं है। आवेदक/अभियुक्त दिनांक 19-10-2022 से अभिरक्षा में है।

अतः उपरोक्त समस्त तथ्यों, परिस्थितियों एवं बिना गुणदोष पर कोई अभिमत व्यक्त किये आवेदक/अभियुक्त को जमानत पर अवमुक्त किये जाने का पर्याप्त आधार है। तदनुसार आवेदक/अभियुक्त का जमानत प्रार्थनापत्र स्वीकार होने योग्य है।

आदेश

आवेदक / अभियुक्त राकेश शर्मा का जमानत प्रार्थनापत्र तदनुसार स्वीकार किया जाता है। आवेदक/अभियुक्त को उसके द्वारा 1,00,000/- रुपये का व्यक्तिगत बंधपत्र एवं समान धनराशि के दो प्रतिभूगण सम्बंधित न्यायालय की संतुष्टि पर अखिल करने पर निम्न शर्तों के अधीन जमानत पर अवमुक्त किया जाए।

1. आवेदक / अभियुक्त विचारण में सहयोग करेगा तथा न्यायालय द्वारा नियत प्रत्येक तिथि पर स्वयं या अधिवक्ता के माध्यम से उपस्थित होगा।
2. आवेदक / अभियुक्त साक्षय के साथ छेड़छाड़ नहीं करेगा।
3. आवेदक/अभियुक्त साक्षी को प्रकोपित अथवा प्रलोभित नहीं करेगा।

यह भी स्पष्ट किया जाता है कि पक्षकार तीन माह के अंदर लम्बित विवाद के सम्बंध में न्यायालय के बाहर समझौता करने का प्रयास करेंगे।"

(6) The opposite party No.2 has intention to cheat the applicant from the very inception, which is clear from the prosecution case and after availing liberty of bail, he is not cooperating with the trial and has rather tried to intimidate the applicant by attempting an attempt to kill or to cause grave injuries, so that the applicant may not pursue his case. The applicant has lodged an FIR as case crime no. 409/2023, u/s 307 IPC at Police Station Kotwali Dehat, District Bulandshahr. The Investigating Agency has tried to arrest the opposite party No.2 but the opposite party No.2 is evading his arrest.

(7) The opposite party No.2, Rakesh Sharma has got an FIR lodged on 23.04.2022 u/s 376 IPC as case crime no. 229/2022 at P.S. Kotwali Dehat, District Bulandshahr with the help of one Roshan against the applicant only to settle the present criminal case, however, after due investigation, the Investigating Officer has filed closure report on 07.07.2022 and during investigation, the Investigating Officer has found that Roshan, Farman and accused Rakesh Sharma have colluded and lodged this false and fictitious FIR, so that the applicant may not pursue his case and may not demand his outstandings. The closure report was accepted by the order dated 28.01.2025 by the learned Chief Judicial Magistrate.

(8) A Demand of Rs. 50 lacs from the applicant was raised by the alleged victim of case crime no. 229 of 2022 through her relative Farman and the applicant was constrained to lodge an FIR of extortion against opposite party No.-2 Rakesh Sharma, Brij Nandan Sharma and Roshan on 05.11.2024 being case crime no. 719 of 2024, u/s 388, 389, 120B, 506 IPC, P.S. Kotwali Dehat, District Bulandshahr.

(9) After granting the liberty of bail, the opposite party no.2 is regularly misusing the said liberty, which is a clear violation of sections 437 of Cr.P.C.

(10) The Opposite party No.2, Rakesh Sharma has also been arrested in several other FIRs and is currently on bail in the said other FIRs.

(11) The opposite party No.2 has been absconding and his conduct does not entitle him to bail. Earlier arrest warrant was issued and also a reward of Rs. 20000/- was declared on the opposite party No.2.

(12) The opposite party No.2 has committed an Economic Offence and thus does not deserve to be granted bail.

(13) The opposite party No.2 has defrauded the applicant of crores of rupees and has further siphoned off the same.

(14) The offence of forgery is clearly made out against the opposite party No.2 and thus, he does not deserve to be enlarged on bail and bail granted is liable to be cancelled.

(15) The opposite party No.2 has prepared a false unregistered receipt/ agreement where in the signatures of the applicant have been forged and the same has been fortified by CFSL Report. Moreover, the opposite party No.2 has submitted the said forged document (unregistered notarized receipt/agreement) before the

various courts below as well as this Court and thus committed perjury as well.

(16) The opposite party no.2 is habitual offender and not come-up before this Hon'ble Court with clean hands. On several occasions, he has stated on oath before this Hon'ble Court that he has got no criminal history, which is also mentioned in Criminal Misc. Writ Petition No. 9716 of 2021, wherein he has concealed this material fact of his having a criminal history of 21 cases.

(17) The Court below while granting the bail to the opposite party No.2 has totally ignored the relevant factors which should be taken into account while granting bail, which is in contravention of the guidelines of the Hon'ble Supreme Court.

(18) There is imminent threat to life of the applicant and his family members as well as the society as the opposite party No.2 is a habitual offender as he is involved in serious offences like murders and attempt to murders.

(19) The applicant was cheated on many occasions, as the opp. party no.2 Rakesh Sharma under a plan entered into an agreement/MOU with the applicant on 01.12.2023 to settle the issue and an agreement/MOU for the total amount Rs. 4.90 crore was settled, out of which Rs. 75 lacs were paid in the year 2022 at the time of conditional bail application, which was accepted under the protest by the applicant at that point of time. Thereafter also the opposite party No.2, Rakesh Sharma has never intended to make any payment, which is also evident from the fact that on by 30.04.2024 remaining Rs. 4.15 crore were to be given back to the applicant. However, only Rs. 02 lacs was paid in the month of January, 2024.

(20) The opposite party No.2, Rakesh Sharma has misused the fake and forged unregistered notarized receipt/agreement dated 14.07.2020 in various Courts, which was examined in Forensic

Laboratory and clear report has come that above said agreement does not bear signature of Ashwani Agarwal, which is also a very grave offence committed by the Opp. Party no.2 Rakesh Sharma inasmuch as it amounts to tampering with the evidences.

5. Sri Nipun Singh elaborating the above grounds by placing relevant paras of the affidavit filed in support of the Bail Cancellation Application, Supplementary Affidavit, and Rejoinder Affidavit submits that the bail granted to the opposite party No.2 by order of the Sessions Judge, Ghaziabad dated 01.11.2022 in Case Crime No.636 of 2021 is liable to be cancelled.

6. Per contra Sri Rajiv Lochan Shukla, learned counsel assisted by Sri Shikhar Awasthi, learned counsel for the opposite party No.2 in opposition to the Bail Cancellation plea submits that-

(1) Applicant/informant Ashwani Kumar Agarwal has misused his power and position in lodging the instant criminal case, he has falsely and illegally managed to show a criminal history of the opposite party No. 2 which actually does not belong to him, as evident from the documentary evidence filed alongwith the counter affidavit.

(2) Police authorities in collusion with the informant/applicant/Ashwani Kumar Agarwal, blindly and baselessly relying upon the information given by the applicant through his letter/application dated 27.10.2021 presumed his criminal history to be of 17 cases and later 26 cases which is an incorrect fact.

(3) Criminal history of opposite party No. 2, Rakesh Sharma stated by informant is 17 cases, counter affidavit filed by State says it to be of 26 cases, in Gangsters act proceedings stated it to be of 12 cases, the current DCRB, CCTNS report, as filed by State in Anticipatory bail filed by Rakesh Sharma, shows it to be 13 cases, hence it is much contradictory, hence unreliable, being false.

(4) Even otherwise 4 of the cases among the criminal history are from the instant dispute, filed by Ashwani Kumar Agarwal.

(5) In 4 cases Opposite party No. 2, Rakesh Sharma was acquitted.

(6) Opposite party No. 2, Rakesh Sharma has never been convicted, admittedly (as stated in paragraph No. 10 of the counter affidavit filed by State) he never violated any conditions of bail nor he misused the liberty.

(7) The applicant under his mala-fide intent to extort money from the opposite party No. 2, has falsely implicated him in two more false criminal cases after the instant criminal case, in one of which, a final report was filed and both of them are under challenge before this Hon'ble Court.

(8) Opposite party No. 2 was granted bail by the learned court concerned upon proper consideration of facts and law.

(9) The opposite party No. 2, Rakesh Sharma was granted bail looking into the allegations that the dispute relates to business transactions and no criminality was actually attracted.

(10) The bail was granted upon consideration of fact that admittedly only Rs 1.75 crores were given to the opposite party No. 2, Rakesh Sharma by the informant and around 75 lacs were already returned.

(11) In every statement and at every stage the applicant has attempted to increase the disputed amount as a result informant Ashwani Kumar Agarwal has started from Rs. 2 crores and ended up to Rs. 5.5 crores, which proves the only intention is to harass and pressurize the opposite party No. 2, Rakesh Sharma so that more money can be extorted.

(12) Instant criminal case was challenged by the opposite party No.2 before this Hon'ble Court vide Criminal Misc. Application under section 482 CR.P.C. No. 14824, whereby the Hon'ble Court, while considering the case of opposite party No.2 for quashing of proceedings, was pleased to direct that no coercive action may be taken against the opposite party No. 2, Rakesh Sharma.

(13) Bail was granted upon proper consideration of criminal history of Opposite party No. 2, Rakesh Sharma.

(14) Opposite party No. 2, Rakesh Sharma is the actual victim of the mala-fide designs of the politically motivated/ applicant/ informant, Ashwani Kumar Agarwal.

(15) Allegations of transferring the alleged amount of Rs. 2 crores for the purpose of investment in the alleged business and sand mining is absolutely false and frivolous as the true story is that the

applicant transferred the subject amount as a consideration for purchasing land owned by the deponent and the instant story of business investment is a false concoction by the applicant and a malicious outcome of his professional skills through which the applicant has malafidely tried to rope in the opposite party No.2 falsely.

(16) A suit for specific performance has been filed by the opposite party No.2.

(17) Opposite party No. 2, Rakesh Sharma, being never involved in any business related to sand mining or excavation projects, as alleged, never offered or contacted the applicant to invest in any such business.

(18) Ashwani Kumar Agarwal has lodged 3 false criminal cases against opposite party No. 2. Rakesh Sharma.

(19) The first information reports in false cases lodged by Ashwani Kumar Agarwal are apparently false and bogus and don't constitute prima facie offence, a final report was also filed in one of the cases.

(20) Ashwani Kumar Agarwal, in one of the cases falsely alleged about a nexus between a victim of a case of 376 IPC i.e. Roshan and opposite party No. 2 Rakesh Sharma, which is false and no evidence in said case was found regarding any connection between Roshan and opposite party No. 2 Rakesh Sharma.

7. In the above backdrop, this Court proceeds to consider the Bail Cancellation Application.

8. The mechanism for cancellation of bail is provided in law in order to ensure that justice will be done to the Society by preventing the accused, who had been set at liberty by the bail order from tampering with the evidence. The cancellation of bail takes away the liberty granted by the Constitution and affirmed by an order of the Court, which granted bail. Cancellation of bail necessarily involves the review of a decision already made and this should be exercised very sparingly and with due caution. The High Court derives its powers to cancel a bail already granted from Section 439(2) Cr.P.C. It is now a settled preposition that cancellation of bail is an order which interfere with the liberty of the

individual and stands on a footing different from that of rejection of bail and hence the criteria applied for cancelling a bail is different. The cancellation of bail is not limited to supervening events or events which take place after the grant of bail. An order which is tarnished by patent illegality or perversity and which does not assign reasons for the order can definitely be set aside in a proceedings under 439(2) Cr.P.C. An order granting bail based on irrelevant material or an order which does not take into consideration relevant material can also be cancelled in exercise of powers u/s 439(2) Cr.P.C.

9. The Apex Court in **Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Another** reported in **2010 (4) SCC 496** in para nos. 9 and 10 observed as under:-

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that 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 the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (See: State of U.P. through CBI Vs. Amarmani Tripathi²; Prahlad Singh Bhati Vs. NCT, Delhi & Anr.³; Ram Govind Upadhyay Vs. Sudarshan Singh & Ors.⁴)

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor (supra), a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows:

"Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence."

(2005) 8 SCC 21 (2001) 4 SCC 280 (2002) 3 SCC 598 (See also: *State of Maharashtra Vs. Ritesh*⁵; *Panchanan Mishra Vs. Digambar Mishra & Ors.*⁶; *Vijay Kumar Vs. Narendra & Ors.*⁷; *Anwari Begum Vs. Sher Mohammad & Anr*⁸)"

10. In a more recent decision, the Apex Court in the case of **Deepak Yadav Vs. State of Uttar Pradesh and Another** reported in **2022 (8) SCC 559** in para nos. 33, 34, 35 and 36 observed as under:-

"33. 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 :-

33.1 Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2 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.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4 Where bail has been granted on untenable grounds.

33.5 Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6 Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which dis entitles him for bail and thus cannot be justified.

33.7 When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In *Neeru Yadav Vs. State of Uttar Pradesh And Another* 18, the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this 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"

" 35. This Court in Mahipal (Supra) 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."

34. A two-Judge Bench of this Court in Prakash Kadam And Others Vs. Ram Prasad Vishwanath Gupta And Another¹⁹ held that:-

"18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. if there are serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. 19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

8. Now analyzing the case at hand in the light of the decisions aforementioned as also from the materials brought on record the Court finds that the conduct of the opposite party No.2 has been far from overboard. The Court finds substance in the submissions of Sri Nipun Singh, learned counsel for the applicant taken note of in the proceedings paras. A perusal of the order dated 01.11.2022 granting bail to the opposite party No.2 is a result of total non application of mind and against the mandate of Section 437 Cr.P.C. as also the law laid down by the Apex Court from time to time. The Apex Court in the case of *Neeru Yadav Vs. State of U.P.* reported in **2014 (16) SCC 508** proceeded to set aside an order granting bail on the ground that the criminal antecedents had not been looked into or dealt with and failed to take note of the same leading to travesty of justice. The Apex Court in the case of *State of MP Vs. Pradeep Sharma* reported in **2014(2) SCC 171** was pleased to reject the bail application of the accused while stating that as the accused were

absconding and had not cooperated with the investigation. In the case at hand also the opposite party No.2 has been absconding and is not cooperating with the investigation. Earlier arrest warrant had been issued and a reward of Rs.20,000/- was declared on the opposite party No.2. The opposite party No.2 has committed an economic offence besides the offence of forgery and is not entitled to be released on bail. The Court below while granting the bail to the opposite party No.2 has totally ignored the FSL report regarding the fake, forged and fabricated agreement. The forgery of the agreement is apparent from the fact that the details mentioned therein are also contrary to record inasmuch as there are three other persons who own the land but the alleged forged agreement does not contain any details or signatures of the said other owners and nothing qua their ownership has been disclosed. During the investigation it has also been revealed that the land in question is not in possession of the opposite party No.2 but in possession of some other persons and is also disputed.

9. The Court Below while granting bail to the opposite party No.2 has failed to appreciate that the opposite party No.2 in a well planned manner duped the applicant herein of his hard earned money by making false representations. He committed forgery and even used the forged document in civil proceedings to lay claim and create a right in his favour by misleading the Court. The opposite party No.2 challenged the chargesheet filed in this FIR before this Court and used the fake and forged receipt as a proof and claimed that the civil suit was proceeding and he had nothing to do with the FIR. He conveniently concealed the FSL report and other facts to mislead the Court and obtained an order of no coercive action. As a consequence, though charge-sheet was filed in July, 2022 the charges are yet to be framed as the opposite party No. 2 has not been appearing in the proceedings.

10. This Court further finds that the opposite party No.2 foisted a fake rape case colluding with the alleged victim against the applicant herein to

create pressure for settlement and to withdraw the cases. A final closure report has been filed in favour of the applicant herein by the Police mentioning the case to be a fake one and that no such incident had taken place. The report categorically mentions that call records of the victim (girl) and the opposite party No.2 proved that the victim (girl) was in constant touch with the opposite party No.2 and co-accused Brijnandan Sharma. A revision petition was filed before the Additional Sessions Judge by the applicant herein and the above facts were confirmed in revision. The applicant herein got registered an FIR giving rise to Case Crime No. 719 of 2024 under Sections 388 and 389 I.P.C. against the opposite party No.2, Brijnandan Sharma and Roshan for falsely implicating the applicant herein in the fake rape case. The proceedings are pending before this Court in Writ Petition No.20335 of 2024 and the opposite party No.2 has been constantly seeking adjournments.

11. The records further reveal that extortion money of Rs.50 lacs has been demanded by the victim (girl) through her relative/ broker Farman to record the true statement under Section 161 and 164 Cr.P.C. On the phone it has been told by the said Farman that the opposite party No.2 had promised him that he will give him 50 lacs if they file the fake rape case implicating the applicant herein and now he is not giving the said amount, therefore, the same is being sought to be recovered from the applicant herein with the understanding that the correct statement would be got recorded and case withdrawn. The calls have been recorded and submitted with the Police for taking appropriate action against Roshan, Farman, Reshma, Rakesh Sharma and Brijnandan Sharma.

12. In view of the above and also taking note of the facts pleaded in the rejoinder affidavit that when the applicant herein went to the Bulandshahar Court for follow up and to appear before the Court on 21.07.2023 he was attacked by the opposite party No.2 alongwith his gang members, which was recorded on CCTV footage, giving rise to an FIR and Case Crime No.409 of 2023 under Sections 341, 307, 506 I.P.C.,

P.S. Kotwali Dehat, Bulandshahar, cases registered against the opposite party No.2 subsequent to his release on bail vide order dated 01.11.2022 the Court is of the opinion that it is a fit case for cancelling the bail granted to the opposite party No.2.

13. Accordingly, the instant Bail Cancellation Application stands **allowed**.

14. The bail granted by the learned Sessions judge, Ghaziabad vide order dated 01.11.2022 passed in Bail Application No.7355 of 2022 arising out of Case Crime No.636 of 2021 under Sections 120B, 406, 420, 467, 468, 471, 506 I.P.C., P.S. Tronica City, District Ghaziabad stands cancelled.

Order Date:- 10.03.2025
Radhika