

Court No. - 71

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

Applicant :- Farook

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

Counsel for Applicant :- Akash Dwivedi, Rajiv Lochan Shukla, Sanjay Shukla

Counsel for Opposite Party :- Ambikesh Kumar Sharma, G.A., Shashi Kant Shukla

Hon'ble Mayank Kumar Jain, J.

1. Heard Sri Rajeev Lochan Shukla, learned Counsel for the applicant/informant, Sri Shashikant Shukla, learned Counsel for the opposite party No.2/accused and learned A.G.A. for the State.

2. The applicant Farook has filed the present Criminal Misc. Bail Cancellation Application seeking cancellation of bail granted to opposite party no.2 namely Zakir Ali @ Hazi Zakir (hereinafter referred to as the opposite party) vide order dated 21.09.2022 passed by learned Special Judge, SC/ST Act, Moradabad in Second Bail Application No.3413 of 2022 arising out of Case Crime No. 1166 of 2020, under Sections 420, 406, 504, 506 of IPC relating to Police Station Civil Line, District Moradabad.

3. It would be pertinent to summarise the case of the prosecution, unfolded in the First Information Report. The applicant Farook (hereinafter referred to as the informant) lodged a First Information Report against the opposite party and one Vimal with the following averments that:

3.1 The opposite party entered into an agreement with the informant for sale of three flats/houses ad-measuring 52-59 square meter situated at

Sonakpur, Tehsil and District Moradabad @ Rs.8 lakhs per flat. Rs.4,40,000/- were transferred through RTGS to the bank account of the opposite party on 03.10.2019. Two cheques amounting to Rs.4,50,000 was given later which were duly encashed. Cash was also paid to the opposite party on different dates. In all, Rs.31,50,000/- was paid by the informant to the opposite party.

3.2 The informant repeatedly requested the opposite party to execute a sale deed. Based on the directions of the opposite party, he prepared three sale deeds. The opposite party signed and affixed his thumb impression only on one sale deed and said that remaining sale deeds would be signed at the registry office. The informant waited at the registry office but the opposite party did not turn up.

3.3 Thereafter, the informant made regular requests with the opposite party to execute the sale deeds. The opposite party executed a document promising to return the entire amount of Rs. 31,50,000/- to the informant by 27.03.2020 but he failed to return the money.

3.4 The opposite party gave two cheques of Rs.15,00,000/- and 16,50,000/- respectively. These cheques were presented before the bank for payment but were dishonoured due to insufficient funds in the account of the opposite party. When the informant informed the opposite party about this, he promised to execute sale deed in his favour in the near future.

3.5 Upon inspection of relevant records in the registry office in relation to the disputed property, the informant came to know that the opposite party had already executed a registered agreement for sale on 07.11.2019 in favour of Amar Pal and Prem Pal, the real brothers of co-accused, Vimal, much before the transaction with the informant. When the informant confronted the opposite party and asked to return his money, he hurled abuses and threatened to life. Kamal Ahmad and Farjand were the witnesses before whom the money was paid to the opposite party. The

opposite party and co-accused Vimal duped the informant for a huge amount of Rs.31,50,000/-.

4. Sri Rajeev Lochan Shukla, learned Counsel appearing on behalf of the informant submitted that even after receiving Rs.31,50,000/- from the informant, the opposite party neither executed a sale deed of the flats nor returned the money to the informant. The opposite party committed fraud and cheated the informant.

5. He submitted that to evade his arrest and to avoid his appearance in the trial and with malafide intentions, the opposite party filed Criminal Misc. Writ Petition No. 11964/2020. False information was given to this Court that parties were at advanced stage of arriving at a compromise. Based on this information, the matter was adjourned. Since negotiations for arriving at compromise never took place, the said petition was dismissed on 25.11.2020. Thereafter, he filed a Criminal Misc. Anticipatory Bail Application No.11760/2021 (Hazi Zakir Vs.State of U.P.). An undertaking was given on behalf of the opposite party that he would fulfill his part of the contract provided the payment was made. On such undertaking, the opposite party was granted interim protection by this Court. Finally, the anticipatory bail application was dismissed for want of prosecution. While on one hand he misled the Court, on the other hand, he violated the undertaking given before this Court.

6. He further submitted that the opposite party then moved a second anticipatory bail application before the District Judge, Moradabad which was rejected vide order dated 28.03.2022. The opposite party preferred another Anticipatory Bail Application No.3956/2022 (Hazi Zakir @ Zakir Ali Vs. State) before this Court. During the pendency of aforesaid application, he filed an Application u/s 482 Cr.P.C. No.17053/2022 (Zakir Vs. State of U.P. and Another) for quashing the proceedings. This Court disposed off the said application and granted liberty to the opposite party to surrender before the trial Court within a period of two weeks. The trial

Court was directed to decide his bail application in view of the law laid down in the case of *Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825*. He misused the liberty and did not surrender before the trial Court within the stipulated time.

7. He further contended that concealing all the aforesaid chain of litigation and the orders passed thereof, the opposite party moved second bail application before the District Judge, Moradabad. The opposite party obtained bail, concealing the material facts. The impugned order dated 21.09.2022, granting bail to the opposite party is challenged in the present application, seeking cancellation of bail to the opposite party.

8. It is further submitted that the learned Sessions Judge did not consider the criminal history of the opposite party in the correct perspective. Learned Sessions Judge erroneously passed the bail order without considering the material aspect of the matter. He completely lost sight of the facts that the opposite party had received Rs. 31,50,000 from the informant. The opposite party defrauded the informant and misrepresented that he had no criminal history to his credit. He repeatedly made false promises with the informant that he would execute the sale deeds in his favour, with malafide intentions and to not to return the hard-earned money of the informant. He intentionally gave two cheques to him knowing that sufficient funds were not available in his account to honour those cheques. The learned Court did not consider the conduct of the opposite party and ignored the documentary evidence about payment of Rs. 31,50,000 to him. The bail order has been passed in a casual manner. The learned Court did not even consider the factual matrix of the matter.

9. It is also submitted that the opposite party was granted bail on 21.09.2022. Thereafter on 13.04.2023, at around 2.00 PM, he visited the informant and threatened him and his father to life, if they did not withdraw the proceedings instituted by them against him. On 15.04.2023,

he again pressurised to withdraw the case. These incidents were captured in a CCTV footage. On 19.04.2023 at around 10.00 AM, he scolded the informant and said that if the case is not withdrawn, he would kill him. An FIR came to be registered against him as Case Crime Number 0387/2023 under Section 506 IPC at Police Station, Civil Lines Moradabad. The opposite party is making every effort to threaten and tamper the witnesses. Learned Counsel drew the attention of this Court to a letter sent by the Court concerned to the S.S.P., Moradabad to the effect that proper security be provided to the informant so that he may depose fearlessly before the trial Court.

10. It is also submitted by learned counsel for the informant that there is a history of Case Crime Number 252/2022, under Section 420, 406, 323, 307, 504, 506, 315 and 354 of IPC, Police Station Pakbada, District Moradabad. Charge sheet came to be filed against the opposite party after the investigation. In the present proceedings, before this Court, it is pleaded by the opposite party in his supplementary counter affidavit, that it is a matrimonial dispute. Perusal of the first information report of the said case discloses that one Mrs. Nazrana Khan is the informant of this case. The opposite party was chargesheeted under Section 406 of IPC. The facts of this case are based on the transaction of money. Thus, the opposite party filed wrong affidavit and committed cheating with this Court also.

11. It is further submitted that the opposite party has admitted that he received Rs.4,40,000 from the informant but he never offered to return that amount to the informant. He is keeping this amount with him without any authority. The opposite party never had any intention to sell flats to the informant. The opposite party violated the undertaking given before this Court and obtained interim protection on the basis of false statement.

12. Sri Rajeev Lochan Shukla, learned Counsel made a straightforward argument that documents are brought on record to demonstrate the

malpractices adopted by the opposite party to further deceive the informant by filing different proceedings before this Court with distinct names. It is argued that the opposite party has cleverly filed a Criminal Misc. Writ Petition No.11964/2020 as "**Zakir Ali**" as the petitioner. He filed a Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No.11760/2021 as applicant as "**Hazi Zakir**". Thereafter, he filed Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No.3956/2022 as '**Hazi Zakir @ Zakir Ali**'. Further, Application u/s 482 No.17053/2022 was filed as applicant '**Zakir**'. Instituting these proceedings before this Court with distinct names demonstrates the malafides of the opposite party and indicates that he wanted to obtain relief from this Court any how. He did it deliberately so that the informant would not know about these proceedings and could not contest them. It is not controverted by the opposite party in his pleadings.

13. To buttress his argument, learned Counsel Sri learned counsel relied on the following judgments:

- (i) **Abdul Basit Vs. Abdul Kadir Choudhary, 2015 SCC (Cri) 257**
- (ii) **Panchanan Mishra Vs. Digambar Mishra passed in Criminal Appeal Nos.107108 of 2005(arising out of Special Leave Petition (Crl.) Nos.33153316/2004)**

Learned counsel also relied on the following judgments of this Court:

- (i) **Parul Tyagi Vs. Guarav Tyagi, 2023 SCC OnLine All 2684**

14. Sri Rajeev Lochan Shukla, learned counsel referred the judgment of this Court passed in Smt. Pooja Pal Vs. State of U.P. in Criminal Misc. Bail Cancellation Application No.38904 of 2016 and submitted that the opposite party appears to be manifestation of the age old quote that 'too err is human to repent is divine but to persist is devilish.'

15. Sri Shukla concluded his arguments that the impugned order dated 21.09.2022, granting bail to the opposite party, is liable to be cancelled because of his misconduct, and concealment and misrepresentation of the

facts, before district Courts as well as before this Court. While enjoying the liberty of bail, he is threatening and tampering the witnesses. The opposite party has a criminal history of 11 cases that have not been properly considered by the learned Court granting him bail.

16. Sri Shashi Kant Shukla, learned Counsel for the opposite party, vehemently opposed the prayer for cancellation of bail application. It is submitted that the informant and the opposite parties are neighbours. Therefore, no question arises for the opposite party to create a dispute with the informant. Due to '*parti bandi*' of the village and at the instance of the persons having vested interest against the opposite party, false allegations have been made against him. Since the informant has already initiated criminal proceedings against the opposite party, therefore, he had no occasion to visit the house of the informant. The opposite party never threatened the applicant or his father. The first information report lodged by the informant under Section 506 IPC is based on concocted facts. It is also submitted that so far as the criminal history to the credit of the opposite party is concerned, most of the cases have been lodged against him after registering the present case. The criminal history is properly explained by the opposite party. Learned Court while granting bail to the opposite party has considered the criminal history to his credit. So far as the cases registered under the Negotiable Instrument Act are concerned, in some cases, the opposite party has been acquitted and some cases are still pending for consideration. The informant has paid Rs.4,40,000/- as advance to the opposite party through RTGS but the remaining amount as per agreement was not paid by him. The opposite party never denied to execute sale deeds in his favour.

17. It is submitted that so far as the receipt of Rs.31,50,000/- is concerned, it is a forged document prepared by the informant. Civil proceedings are also pending before the competent Court being the matter of civil nature. The opposite party is cooperating before the trial Court. He never misused the liberty of bail.

18. I have perused the record.

19. The Hon'ble Apex Court in ***Himanshu Sharma Vs. State of Madhya Pradesh passed in Criminal Appeal No(S). Nil of 2024 arising out of SLP (Cri.) No (s). 786 of 2024*** dealt with powers vested under Section 439(2) Cr.P.C. to cancel the bail of an accused. The Hon'ble Court observed that:

"12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud."

20. In ***Abdul Basit Vs. Abdul Kadir Choudhary, 2015 1 SCC (Cri) 257,*** the Hon'ble Apex Court further observed that:

"20. In Gurcharan Singh case (supra) this Court has succinctly explained the provision regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 (for short, "old Code") and elucidated the position of law vis-à-vis powers of the Courts granting and cancelling the bail. This Court observed as under:

"16. Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. This was also the position under Section 498, Cr.P.C. of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under Sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 489(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so, it must, however, be made clear that a Court of Session cannot cancel a

bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused, person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

21. *In this context, it is profitable to render reliance upon the decision of this Court in Puran v. Rambilas and Anr., (2001) 6 SCC 318. In the said case, this Court held that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from the cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In Dr. Narendra K. Amin v. State of Gujarat and Anr., (2008) 13 SCC 584, the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in Puran case (supra) has observed that when irrelevant materials have been taken into consideration by the Court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate Court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior Court and has left no room for a review by the same Court.*

22. *Reverberating the aforesaid principle, this Court in the recent decision in Ranjit Singh v. State of M.P. and Ors., 2013 (12) SCALE 190 has observed that:*

"20....There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior Court."

23. *Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts*

having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the Court superior to the Court which granted the bail and not by the same Court."

21. The informant is challenging the order dated 21.09.2022 passed by the learned Additional District Judge granting bail to the opposite party. After being released on bail the opposite party threatened the informant and his father to withdraw present proceedings otherwise they would be killed by him. Resultantly, an FIR under Section 506 IPC came to be registered against the opposite party. After the investigation, he was charge-sheeted.

22. The opposite party filed Criminal Miscellaneous Writ Petition No. 11964 of 2020 Zakir Ali vs State of U P and 2 others. Considering the arguments of the petitioner Counsel, the following order was passed on 10.11.2020 :-

"Learned Counsel for the petitioner states that parties are at an advance stage of arriving at a compromise, and, therefore, the matter be adjourned.

As prayed by him, put up as fresh on 25.11.2020."

On 25.11.2020, in the aforesaid writ petition, following order was also passed:-

"Heard Sri Krishna Dutt Tiwari, learned Counsel for the petitioner, Shri Pawan Kumar Shukla & Shri Sanjay Shukla learned Counsel for the informant and the learned A.G.A.

This writ petition has been filed, seeking a writ of mandamus, directing the respondent concerned, not to arrest the petitioner, with a further prayer for quashing the impugned FIR dated 23.08.2020 registered as Case Crime No.1166 of 2020 under Sections 420, 406, 504 and 506 I.P.C., P.S. Civil Lines, district Moradabad.

Learned Counsel for the petitioner submits that FIR has been lodged on false / vexatious / mischievous allegations, no offences are made out, FIR be quashed.

Learned AGA has opposed the submission.

The correctness of the allegations would have to be tested on the basis of the materials collected during the course of investigation as by insertion of notification No.1058/79-V-1-19-1 (Ka)-20-2018 dated 6th June 2019, an alternate remedy is available to the

petitioner to seek for an anticipatory bail/bail as he may be advised.

The writ petition is dismissed.”

23. Perusal of the aforesaid order discloses that wrong information was given to this Court that the parties were at an advanced stage of a compromise. On the next date of the hearing, the Court was not informed about the outcome of the alleged compromise proceedings. It is also to be noted that on 25. 11. 2020, the opposite party argued the Writ Petition on its merits.

24. After disposal of the aforesaid proceedings, the opposite party filed Criminal Misc. Anticipatory Bail Application u/s 438 Cr.PC No. 11760 of 2021 Hazi Zakir vs State of U P. The opposite party gave an undertaking, which is noted in the order dated 18.06.2021. It reads thus:-

“Learned Counsel for the applicant on behalf of the applicant on taking instructions undertakes that the applicant shall fulfil his part of the contract provided the payment is made. Counsel for the first informant also was present when the undertaking was given.

Place this case on 6.7.2021 as fresh. In the meantime, the parties may try to conclude the matter amicably.

In the meantime, it is provided that no coercive measures shall be taken against the applicant in the aforesaid case provided: (a) the applicant has already not been arrested; and (b) the applicant continues to cooperate with the Investigating Officer by presenting himself before him as and when required for the purpose of investigation.”

25. It appears that on the basis of the undertaking given by the opposite party, an interim protection was granted to him by this Court. On the next date of hearing, none appeared for the opposite party and on 30.07.2021 & 14.12.2021 following orders were passed:-

30.07.2021

“In spite of repeated calls, no one is present on behalf of the applicant to extend the argument. Sri Hari Om Sharan Tiwari, learned Counsel for the informant is present.

Since no one is present on behalf of the applicant, therefore, interim order granted by coordinate Bench of this Court dated 18.06.2021 comes to an end.

Put up this case on 30th August, 2021 as fresh.”

14.12.2021

“1. Case called out in revised list. No one appears on behalf of applicant to press this application for anticipatory bail.

2. However, learned A.G.A. for State and Mr. Hari Om Sharn, learned Counsel representing first informant are present.

3. Record shows that applicant was not present on 03.07.2021 and 24.09.2021 when the matter was taken up.

4. In view of above, present application for anticipatory bail is dismissed for want of prosecution.”

26. Thereafter, the opposite party filed an Anticipatory Bail Application before learned Session Judge, Moradabad. It was dismissed on 28.03.2022.

27. Feeling aggrieved by the aforesaid order, the opposite party filed Criminal Misc. Anticipatory Bail Application u/s 438 Cr.PC No. 3956 of 2022 before this Court.

28. During the pendency of the aforesaid application, the opposite party filed another application under Section 482 No. 17053 of 2022, Zakir vs State of U P and another. This application was disposed off vide order dated 06.07.2022 of this Court with the following observation:-

“On due consideration to the submissions of learned Counsel for the parties’, it is provided that in case, the applicant appears before the trial Court within a period of two weeks from today and files bail application, the same shall be decided expeditiously in view of law laid down in the case of Satender Kumar Antil versus Central Bureau of Investigation and another (supra).

The application is disposed off accordingly.”

29. Pursuant to the aforesaid order of this Court, the opposite party did not surrender before the Court concerned. Process u/s 82 Cr.PC was issued by the Court to ensure his appearance. It appears that the opposite party moved second bail application before the court concerned after the expiry of the period of two weeks granted by this Court. The learned Special Judge (SC/ST Act), Moradabad, by the impugned order dated 21.09.2022, allowed the application with the following observation:-

"प्रस्तुत मामले में प्रार्थी/अभियुक्त व अन्य सह अभियुक्त विमल के विरुद्ध प्रथम सूचना रिपोर्ट दर्ज करायी गयी थी, किन्तु दोराने विवेचना कथित विमल के विरुद्ध कोई साक्ष्य न पाते हुये उसका नाम विवेचना से पृथक कर दिया गया है। प्रस्तुत मामले में आरोप पत्र न्यायालय में प्रस्तुत किया जा चुका है। मामले में अब कोई विवेचना शेष नहीं है। प्रार्थी/ अभियुक्त के विरुद्ध धारा 138 एन०आई० एक्ट से सम्बन्धित नौ प्रकरण तथा उक्त प्रकरण के अतिरिक्त एक अन्य आपराधिक प्रकरण पंजीकृत होने का आपराधिक इतिहास अभियोजन की ओर से प्रस्तुत किया गया है, किन्तु अभियोजन द्वारा किसी भी मामले में दोषसिद्ध होना नहीं बताया गया है। मामला मजिस्ट्रेट न्यायालय द्वारा विचारणीय है। प्रार्थी/ अभियुक्त दिनांक 21-7-2022 से न्यायिक अभिरक्षा में कारागार में निरुद्ध है। अतः अभियुक्त के कारागार में निरुद्ध होने तथा मामले के समस्त तथ्यों परिस्थितियों को दृष्टिगत रखते हुए केस के गुण-दोष पर कोई टिप्पणी किये बिना मेरा राय में आवेदक/अभियुक्त को निम्न शर्तों के अधीन जमानत पर छोड़े जाने का पर्याप्त आधार है।"

30. It is pertinent to mention here that it was averred by the opposite party in his bail application that he had no criminal history to his credit. Perusal of the record, it emerges that the opposite party had criminal history of as many as 11 cases to his credit. He misrepresented his criminal history in his bail application.

31. Another aspect about the conduct of the opposite party is brought to the notice of this Court by Sri Rajiv Lochan Shukla, learned Counsel for the informant that the opposite party filed a Criminal Misc. Writ Petition No.11964/2020 as "**Zakir Ali**" (as petitioner). He filed a Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No.11760/2021 as applicant as "**Hazi Zakir**", thereafter, he filed Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No.3956/2022 as '**Hazi Zakir @ Zakir Ali**'. another Application u/s 482 No.17053/2022 was filed by him as '**Zakir**'.(applicant)

32. Perusal of the relevant record of aforesaid proceedings indicates that the opposite party very cleverly filed several legal proceedings before this Court with distinct names to mislead not only the informant but also this Court. It seems that he did so for two reasons. Firstly, to anyhow obtain relief from this Court and secondly, to prevent the informant from contesting those proceedings. Such conduct of the opposite party demonstrates that he did not approach this Court with clean hands.

33. So far as the impugned order dated 22.09.2022 is concerned, it reflects that the criminal history of the opposite party was not duly considered by the learned Court. Besides, learned Court did not express any opinion that it has duly considered the merits of the case. Learned Court completely lost sight that the opposite party had duped the informant for Rs.31,50,000/-. The opposite party, even after receiving the aforesaid money, did not execute the sale deeds of flats in favour of the informant. The opposite party violated the undertaking given by him before this Court. He filed several petitions just to evade his arrest during the investigation and the trial. Despite his admission that he received Rs. 4,40,000/- from the informant, he never offered to return the said money to him. He continued to enjoy the fruits of this money and continues to do so till today. The intention of the opposite party was clearly apparent to not return the money to the informant.

34. Further, the opposite party referred to the criminal case registered against him as a matrimonial dispute. Perusal of the record goes to show that it was an incorrect pleading. It was a dispute based on a money transaction. A charge-sheet under Section 406 of IPC came to be filed against him. The opposite party filed an incorrect affidavit before this Court knowing that it was not a matrimonial dispute.

35. In view of the above, the entire conduct of the opposite party shows about his modus operandi to dupe innocent persons and to obtain the favourable orders from the Court concerned, either by hook or by crook.

36. On behalf of the informant, a document executed on a stamp of Rs.100/- is brought on record. It is submitted that this document is the receipt of Rs.31,50,000/- given by the opposite party. This document bears the signatures of the informant and the opposite party. The learned trial Court completely ignored this document and the fact that in this matter, the transaction of Rs.31,50,000/- was involved. It was a specific allegation of the informant that even after receiving Rs.31,50,000/- the

opposite party did not execute sale deed of flats in favour of the informant. He did not return the money to the informant. To commit a fraud, he gave two cheques of Rs.31,50,000/- to the informant which were dishonoured due to insufficiency of fund in the account of the opposite party. This conduct also indicates the intention of the opposite party that he never wanted to repay the amount of Rs.31,50,000/- to the informant.

37. Vide the impugned order, the opposite party was granted bail on 21.09.2022. An FIR relating to Crime No.387/2023 is brought on record. Perusal of this FIR goes to show that on 13.04.2023, at around 2.00 pm, the opposite party visited the house of the informant. He threatened the informant and his father with life and asked them to withdraw the present case. Further, on 15.04.2023 at around 8.30 hours he pressurised the informant for amicable settlement. The visit of the opposite party to the house of informant was captured in CCTV footage. After the investigation, a charge sheet came to be filed against the opposite party. This conduct shows that the opposite party has misused the liberty of the bail and he is repeatedly trying to tamper the witnesses so that they cannot depose before the Court against him.

38. It is also submitted on behalf of the informant that the opposite party has criminal history of 11 cases. Perusal of the impugned order dated 21.09.2022 goes to show the Court was informed that there was no criminal history to the credit of the opposite party. The learned trial Court while passing the impugned order, merely on the basis that although opposite party has criminal history to his credit but he was not convicted so far in any case, granted bail to the opposite party. The learned trial Court did not even consider the gravity of the offence.

39. So far as the argument advanced by the learned Counsel for the opposite party that opposite party had not misused the liberty of the bail is concerned, it is apparent that charge sheet under Section 506 of IPC came to be filed against him. He extended life threats to the informant and his

father. He mounted pressure upon them to arrive at an amicable solution in the matter. In his supplementary counter affidavit filed before this Court, the opposite party submitted that the Case Crime No.252/2022 under Sections 420, 406, 323, 307, 504, 307, 506, 315, 354 of IPC was a matrimonial dispute. Whereas perusal of the conclusion arrived by the Investigating Officer while submitting the charge sheet, does not seem to be correct. Therefore, it is apparent that the opposite party filed the affidavit with wrong facts before this Court also.

40. In view of above, I am of the considered view that the opposite party has misused the liberty of bail. He tampered with the evidence and harassed the witnesses by threatening the informant and his father. The conduct of the opposite party also shows that he filed several litigation one after another with distinct names to evade his arrest/presence before the Police/Court. Learned trial Court also sent a letter to S.S.P., Moradabad for providing adequate security to the informant so that he can fearlessly attend the Court to record his statement.

41. The learned trial Court while passing the impugned order did not consider the material aspect of the matter and ignored certain documents as well the criminal history of the opposite party. The learned trial Court passed the impugned bail order taking into consideration the incorrect facts of the case, therefore, the bail cancellation application deserves to be allowed.

42. Having considered the facts and circumstances of the case, the material available on record and the observations made above, the Court is of the opinion that the impugned bail order dated 21.09.2022 passed by learned Special Judge, SC/ST Act, Moradabad in the aforesaid case crime cannot be sustained. Accordingly, the bail cancellation application is allowed and the impugned bail order dated 21.09.2022 is hereby set aside. The bail granted to opposite party no.2-Zakir Ali @ Hazi Zakir in aforesaid case crime stands cancelled.

43. The opposite party Zakir Ali @ Hazi Zakir is hereby directed to surrender within 10 days before the Court concerned.

44. Any observation made above shall not be treated as any finding on the merit and shall not prejudice the trial.

45. Registrar (Compliance) is also directed to communicate this order to the Chief Judicial Magistrate, Moradabad for necessary compliance forthwith.

Order Date :- 26.9.2024

Mohit