
(2000) 01 AHC CK 0179

Allahabad High Court

Case No: Criminal Miscellaneous Bail (Cancellation) Application No. 20975 of 1999

Vishnu Dutt Nagar

APPELLANT

Vs

Ashwini alias Babbu

RESPONDENT

Date of Decision: Jan. 11, 2000

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 504, 506

Citation: (2000) 1 ALT(Cri) 15 : (2000) CriLJ 2241

Hon'ble Judges: U.S. Tripathi, J

Bench: Single Bench

Advocate: Raghuraj Kishore, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

U.S. Tripathi, J.

This is an application for cancellation of bail order dated 25-10-1999 granting bail to opposite party Ahswini alias Babbu, S/o Parmeshwari Dayal, R/o Tara Gali, Garh, P.S. Garh Mukteshwar, distt. Ghaziabad in case crime No. 80 of 1998 Sections 302504506, I.P.C. P.S. Garh Mukteshwar, Ghazibad, on the ground that the first bail application No. 16572 of 1998 moved on behalf of opposite party was rejected by Hon"ble J.C. Gupta, J. on merit, vide order dated 17-12-1998 after hearing both the counsel. Thereafter, second bail application No. 6230 of 1999 was moved on behalf of opposite party," which was pending. During pendency of second bail application No. 6230 of 1999 another bail application No. 16953 of 1999 was moved showing it to be first bail application. In the said bail application, F.I.R. which was filed was forged and in the above forged F.I.R. it was mentioned that opposite party exhorted, whereas in the original F.I.R. the opposite party was assigned role of firing. That the bail order was obtained by practising fraud on the Court and should be recalled.

2. Heard Sri Raghuraj Kishore, learned counsel for the applicant and perused the files of first bail application No. 16572 of 1998, second bail application No. 6230 of 1999 and bail application No. 16953 of 1999. Since every material is available on record and matter relates to fraud committed on Court, sending notice to opposite party before cancelling the bail is dispensed with.

3. The first bail application No. 16572 of 1998 was heard and disposed of by Hon"ble J.C. Gupta, J. In the typed copy of F.I.R. Annexed in the said bail application as Annexure 1 contains following allegations :-

^^brus esa gh v"ouh us vius gkFk esa fy, gq, reUps ls Naxk yky ds ;g dgus ij fd lkys dks xksyh ekj nks ge ns[k ysaxs] xksiky dks xksyh ekj nh A**

It was also found that it was applicant Ashwini alias Babbu (opposite party of this application), who alone fired upon the deceased. In view of the above facts and circumstances of the case the bail application of Ashwini alias Babbu was rejected at that stage, vide order dated 17-12-1998. However, it was also observed in the said order that applicant may apply afresh after investigation by C.B.C.I.D. is over.

4. Thereafter, second bail application No. 6230 of 1999 was moved on behalf of Ashwini alias Babbu through Sri K.K. Srivastava, Advocate . The above application was ordered to be put up before Hon"ble J.C. Gupta along with the name of Sri Raghuraj Kishore, learned counsel for the complainant in the next cause list, vide order dated 6-5-1999. The photo copy of F.I.R. annexed in the said second bail application as Annexure 1 also contained the same allegation that on the instigation of Chhanga Lal Ashwini fired on Gopal, deceased. The above second bail application has yet not been disposed of. On 15-10-1999 the bail application No. 16953 of 1999 dated 21-8-1999 was moved mentioning that it was first bail application. It was clearly deposed in paragraph 11 of affidavit in support of said application that the bail application on behalf of the applicant had been rejected by the learned Sessions Judge. Thereafter, this is the first bail application on behalf of the applicant. The typed copy of F.I.R. annexed as Annexure 1 in the application shows the following allegation regarding Ashwini:-

brus esa gh v"ouh us yydkjk fd lkys dks xksyh ekj nks ge ns[k ysaxs fd Naxkey us xksiky dks xksyh ekj nh A**

Thus, the role assigned to Ashwini, opposite party of this application, in the F.I.R. was only that of exhortation. Considering the above role, (as contained in the typed copy of F.I.R. annexed as Annexure 1 with the application) I allowed the bail application, vide order dated 25-10-1999.

5. Though the notice of above bail application was given to State Counsel on 21-8-1999, but the fact that first bail application was rejected and above bail application was wrongly shown as first bail application was not pointed out.

6. I have also perused the photo state copy of original chick, F.I.R. supplied by the learned counsel for the applicant. In the above F.I.R. the role of firing on Gopal deceased has specifically been assigned to Ashwini alias Babbu opposite party.
7. From the above facts it is cristal clear that bail application No. 16593 of 1999 was wrongly shown as first bail application and allegation in the F.I.R. were completely changed and the order dated 25-10-1999 was obtained from me on practising fraud on the Court and forgery in the typed copy of F.I.R. Since the order dated 25-10-1999 was obtained on fraud practising upon the Court, that order should not stand even for a moment. The application is, accordingly, allowed and the order dated 25-10-1999 is recalled. The bail allowed to opposite party Ashwini alias Babbu, S/o Parmeshwari Dayal, R/o Tara Gali, Garh, P.S. Garh Mukteshwar, District Ghaziabad in case crime No. 80 of 1998 under Sections 302, 504, 506, I.P.C. P.S. Garh Mukteshwar, Ghaziabad is cancelled. The Chief Judicial Magistrate, Ghaziabad is directed to ensure the immediate arrest of said accused Ashwini by issuing non-bailable warrant and all other steps provided under law and submit compliance report to this Court within 15 days.
8. Let a copy of this order be sent to Chief Judicial Magistrate/Sessions Judge, Ghaziabad immediately.
9. Issue notices aslo to Shri Anil Kumar, Advocate, who had moved the above bail application as well as to Ram Sajiwan, S/o Ram Gopal, R/o Dadri, P.S. Dadri, district Ghazibad, who had sworn and verified affidavit in the said case, as the pairokar of the accused Ashwini alias Babbu, to show cause why suitable action should not be taken against them.
10. The record of bail application No. 16953 of 1999 be kept in sealed cover in the safe custody of Section Officer.