



2026:AHC-LKO:22614

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

**CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. - 18
of 2025**

Xxx Complainat In Case Crime No. 213/2021 P.S.

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko.

.....Opposite
Party(s)

Counsel for Applicant(s) : Brij Bhushan Singh, Himanshu Pathak,
Pranjal Apurva, Sandeep Kumar Mishra
Counsel for Opposite Party(s) : G.A., Purusottam Awasthi

Court No. - 7

HON'BLE SAURABH LAVANIA, J.

1. Counter affidavit filed today is taken on record.
2. Heard learned counsel for applicant, learned A.G.A. for the State as well as learned counsel for the accused and perused the record.
3. This application has been filed with a prayer to cancel the bail granted to the opposite party No.2/Prabhat Gupta by this Court vide order dated 06.08.2022 passed in Criminal Misc. Bail Application No.14553 of 2021. The order dated 06.08.2022 is extracted herein under :-

"Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

The present bail application has been filed on behalf of the applicant in Case Crime No. 213 of 2021, under Sections- 376, 506 IPC, Police Station- Ajgain, District- Unnao with a prayer to enlarge him on bail.

While pressing the application for bail, learned counsel for the applicant submitted that the applicant is languishing in jail since 05.11.2021 and possibility of conclusion of trial in near future is extremely bleak.

It is further stated that the victim is major and the allegations levelled in FIR are completely false and concocted. He submitted that as per Hindu Law, which is applicable upon informant/victim and her husband namely Deepak Verma, there should be a proper decree of divorce. However, a perusal of contents of FIR would show that for dissolution of marriage, there is no decree or judgment, as such, it cannot be said that the marriage between the victim and Deepak Verma was dissolved. He submitted that as per allegations

levelled in FIR, physical relations were established between the applicant and informant/victim, due to which, she got pregnant. However, a perusal of documents annexed as Annexure No. 6 to the bail application would show that the victim, for the purposes of delivery of a child, was admitted in a Government Hospital namely Umashanker Dixit Mahila Chikitsalaya, Unnao and she remain there w.e.f. 21.09.2021 to 23.09.2021. These documents further indicate the name of husband of victim namely Deepak Verma, meaning thereby that dissolution of marriage never took place between informant/victim and her husband Deepak Verma. As such, the story of prosecution appears to be false and concocted and with oblique motive, present FIR has been lodged against the applicant. He submitted that as per admitted facts, the victim was serving in Nagar Palika, Unnao as Computer Operator on contract basis and there the applicant was also contractor at relevant time.

It is further stated that if the case of prosecution is taken on its face value even then the offence under Section 376 IPC would not be attracted against the applicant. In this regard, reliance has been placed on a judgment of Apex Court dated 27.07.2022 passed in Criminal Appeal No. 442 of 2022 (Mandar Deepak Pawar v. the State of Maharashtra and another) as also on another judgment of Apex Court dated 20.05.2013 passed in Criminal Appeal No. 2322 of 2010 (Deepak Gulati v. State of Haryana). In these circumstances, the prayer is allow bail application and release the applicant on bail.

It is also submitted that there is no apprehension that after being released on bail, the applicant may flee from the course of law or may otherwise misuse the liberty of bail and he will cooperate in trial.

Learned AGA opposed the prayer for bail, however, could not dispute the above contentions made by the learned counsel for the accused-applicant.

Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by learned counsel for the parties and keeping in mind the period of incarceration as also taking note of aforesaid judgments on the issue and without expressing any opinion on the merits of the case, I find it to be a fit case for granting bail.

Let the applicant- Prabhat Gupta be released on bail in aforesaid Case Crime, on his furnishing personal bond to the satisfaction of the court concerned forthwith. Applicant is also directed to furnish two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case."

4. The case of the prosecution, as appears from record, in nutshell is to the effect that the opposite party No.2/Prabhat Gupta, established physical relations with the applicant, aged about 36 years, on the false pretext of solemnizing the marriage.

5. Learned counsel for the applicant refers the facts/grounds, as indicated in this application to cancel the bail granted to opposite party No. 2 vide order dated 06.08.2022, quoted above. Learned counsel of the applicant stated that it is a fit case for cancellation of bail.

6. The facts/grounds referred in this application are extracted hereinunder:-

"6. That the accused has violated the conditions mentioned by the Hon'ble Court under ground (i) that he was tampering with the prosecution evidence by intimidating/pressurizing the applicant to withdraw the case against him and was threatening to kill her and her son which is again violating the sub clause (iii) that he will not indulge in any crime and on the basis of violating the norms his bail should be cancelled.

7. That it is also relevant to mention here that the counsel of the opposite party didn't disclose the complete fact before the court as same was not reflected in the bail order.

8. That it is relevant to mention here that after releasing from jail accused persons started threatening to the applicant.

9. That the accused called applicant from different phone numbers using abusive language, and openly threatening to kill the applicant.

10. That the accused stopped the applicant on the way to duty in Unnao municipality by other people to withdraw the case or else she would be killed. The applicant was very scared and frightened and on 11.08.2023, gave application to the many higher officials in which Police station in charge in which the accused was given warning not to talk or threaten the applicant but the accused did not adhere to the order.-Annexure-03.

11. That the incident of 20.08.2024 around 5 to 6 PM accused (Prabhat gupta) came to block 109/3 Kashi ram colony and started threatening the applicant to settle the case the

case or else she and her son will be killed. An application was given at the Kashi Ram police outpost on 22.08.2024 and also an application was given at the Kotwali police station Unnao on 24.08.2024 and still no action has been taken.

12. That the applicant has written various letters to Chairperson State women commission U.P., Chief Minister of U.P. And to Director General of Police Lucknow, U.P. but still no action has been taken against the accused. Annexure No.- 04 & 05.

13. That the applicant was on way to duty in unnao municipality, dated-16/09/2024 when the accused suddenly came from backside in his car and the applicant was on her vehicle (scooty) and the accused hit the vehicle of applicant very hard from backside so that she suffer huge injuries and gets the accused intention was to kill her but she got saved and suffered huge leg fracture because of the accident. That the medical report of the applicant is being annexed here in Annexure no.06 & Photo of the applicant in hospital is annexed in annexure no.07.

14. That the applicant is very scared and is mentally disturbed that something bad might happen to the applicant and her son.

15. That it is relevant to mention here that opposite party made every effort to cause harm to the applicant which is against the conditions which the court mentioned during granting bail to the accused.

16. That it is also relevant to mention here that opposite party warned to applicant for dire consequences and made pressure for not contesting the case otherwise she might lose her life and her son will also be killed."

7. The prayer is to allow the application and cancel bail granted to the opposite party No. 2 vide order dated 06.08.2022, quoted above.

8. The prayer sought in the instant application has been opposed.

9. Considered the aforesaid and also the observations made by the Hon'ble Apex Court on the issue with regard to cancellation of bail, which includes the following judgment:-

9.1 On the issue of cancellation of bail, the Hon'ble Apex Court in the case of ***Himanshu Sharma vs. State of Madhya Pradesh, 2024 SCC OnLine SC 187***, observed as under:-

"11. While cancelling the bail granted to the appellants, the learned Single Judge referred to this Court's judgment in the case of Abdul Basit (supra). However, we are compelled to note that the ratio of the above judgment favours the case of the appellants. That apart, the judgment deals with the powers of the High Court to review its own order within the limited scope of Section 362 CrPC. Relevant observations from the above judgment are

reproduced below:

"14. 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) 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) attempts 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 illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a 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 grounds indeed. (Raghubir Singh v. State of Bihar [(1986) 4 SCC 481])

15. The scope of this power to the High Court under Section 439(2) has been considered by this Court in Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118]

16. In Gurcharan Singh case [(1978) 1 SCC 118] 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 "the 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 the High Court or Court of Session regarding bail. This was also the position under Section 498 CrPC 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 439(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-à-vis the High Court." (emphasis supplied)

17. In this context, it is profitable to render reliance upon the decision of this Court in *Puran v. Rambilas* [(2001) 6 SCC 338]. In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In *Narendra K. Amin v. State of Gujarat* [(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 [(2001) 6 SCC 338] 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.

18. Reverberating the aforesaid principle, this Court in the recent decision in *Ranjit Singh v. State of M.P.* [(2013) 16 SCC 797] has observed that:

"19. 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."

19. 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.

20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court."

10. Upon due consideration of the aforesaid, this Court finds no force in the instant application. It is for the following reason(s) :

(i) The applicant is not bonafide litigant as the applicant has not come with clean hands before this Court and has also tried to mislead this Court, which is evident from the following facts:

(a) According to para 13 of the affidavit filed in support of instant application the applicant has indicated the date of incident as 16.09.2024 and in the FIR (Annexure No.CA-3) with regard to this incident lodged on 12.02.2025, after huge delay, the applicant indicated the date of incident as 15.09.2024. Thus, it appears that allegations in para 13 and FIR are concocted and have been leveled with oblique motive including to create a ground to get the bail cancelled.

(b) The applicant in the application has not mentioned her correct particulars

as she has not indicated the name of her father namely Bachai.

(c) The applicant has not established the fact that her marriage with Deepak Verma @ Rakesh Kumar S/o Asharfi Lal has been dissolved.

(ii) The allegations related to threatening by the opposite party No. 2 are bald and vague.

11. For the foregoing reasons, the instant application is **dismissed**. Cost made easy.

March 31, 2026

ML/-

(Saurabh Lavania,J.)