

A.F.R.

Reserved on 13.3.2023

Delivered on 20.3.2023

Case :- CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. - 36 of 2023

Applicant :- Isha Agrawal

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

Counsel for Applicant :- Veerendra Singh, Prateek Kumar Srivastava, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

Heard Smt. Isha Agrawal, applicant in person; Sri Manu Sharma, learned counsel for opposite party no.2; learned AGA for the State and perused the material placed on record.

This bail cancellation application has been filed by the applicant praying for cancellation of bail granted to the accused-opposite party no.2, Abhay Pratap, in Case Crime No. 577 of 2022, under Sections 186, 228, 352, 353, 354, 354-D, 506, 509 IPC and Section 67 I.T Act, Police Station Kotwali, District- Maharajganj by the court of Sessions Judge, Maharajganj, in Bail Application No.1927 of 2022, Abhay Pratap Vs. State of U.P. on 17.12.2022 wrongly relying upon the judgement of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022.***

The applicant is posted as Metropolitan Magistrate, Kanpur Nagar at present. At the time of the incident in question, she was posted as Civil Judge (Junior Division)/Judicial Magistrate in District Court Maharajganj. While she was performing her judicial duty, the opposite party no.2, Abhay Pratap, who is also a practicing Advocate in the same court, started sending obnoxious messages and casting certain remarks through messages on facebook account of the applicant. On noticing the messages of opposite party no.2, the applicant blocked the opposite party no.2 from sending messages. Thereafter opposite party no.2 got the official mobile number of the applicant and started sending messages on the same. He used to come to her court without any work and gazed her continuously. When the limit to tolerance was crossed by the opposite party no.2, applicant lodged the FIR against him at the police station Kotwali Maharajganj, on 11.11.2022 and also sent a representation to this Court through District Judge, Maharajganj, on 11.11.2022. Opposite party no.2 was never connected to the applicant on facebook or through any media

platform nor his friend request was ever accepted by the applicant. Opposite party no.2 started sending messages to the applicant w.e.f. 29.9.2021 and thereafter he sent various messages to her, which were never replied by the applicant. On 17.7.2022 at about 1:58 a.m. he sent message, “*I love you Isha*”, then again he sent “*Is janam me nahi to agle janam me tujhe pane ki koshish prayas karta rahunga aur ho sake to sato janam*”. Being fed up with the conduct of the opposite party no.2, applicant blocked the opposite party no.2 on facebook account on 17.7.2022. On her CUG mobile number, he sent the message on 8.11.2022 at 4:31 a.m., “*Good Morning*” and then “*I love you Baby*”. The opposite party no.2 was arrested on 23.11.2022 and the learned Sessions Judge granted him bail on 17.12.2022 relying upon the case ***Satendra Kumar Antil (Supra)***.

The applicant has appeared in person in Court and submitted that she is a Judicial Officer and was posted as Civil Judge (Junior Division), in District Court, Maharajganj, when the opposite party no.2 indulged in the undesirable and objectionable behaviour against her. She was not in a position to concentrate on her work and was apprehensive towards her security. She was distracted from discharge of her judicial duties freely and was in constant fear of maligning of her reputation by the opposite party no.2. Her marriage was settled and these messages could have destroyed her marital life in future and may have affected her prospective marital life. The opposite party no.2 is setting up dangerous trend and should be dealt with severely and bail granted to him should be cancelled. She has further submitted that the reliance of learned Sessions Judge on the judgment of ***Satendra Kumar Antil (supra)*** in the bail order is not correct since the charge-sheet was not filed against the opposite party no.2, when he was granted bail on 17.12.2022. Learned Sessions Judge has stated that charge-sheet against the opposite party no.2 is ready. It was not filed till then. All the offences against the opposite party no.2 are not bailable in nature. She has submitted that the findings of the learned Sessions Judge that the charge-sheet against the opposite party no.2 is ready is incorrect. By means of rejoinder affidavit dated 15.2.2023 applicant has brought on record the questionnaire issued by the court of Judicial Magistrate, Maharajganj, which shows that charge-sheet was not filed in the Case Crime No.577 of 2022 till 17.12.2022 nor cognizance was taken thereon till that date. She has submitted that the benefit of the judgment of ***Satendra Kumar Antil (supra)*** of the Apex Court has wrongly been extended to the

applicant since he was arrested prior to the submission of the charge-sheet by the Investigating Officer.

Learned counsel for opposite party no.2 has submitted that opposite party no.2 is seeking unconditional apology from the applicant since he has highest regard for the law of the land and every member of the judicial fraternity. He has stated that he may be pardoned for any act which has hurt the position, respect, feelings or emotions of the applicant. He has undertaken not to repeat the misdeeds committed by him earlier. He has further submitted that all the offences alleged are punishable upto seven years and he has not violated any condition of bail granted to him.

Learned AGA has submitted that from the mobile phone of the opposite party no.2 recovered by the Investigating Officer, it was found that the aforesaid phone was used in the commission of the alleged crime against the applicant by the opposite party no.2.

After hearing the rival contentions, this Court finds that the learned Sessions Judge has neither considered the correct, legal and factual position of the case while granting bail to the opposite party no.2 nor has applied mind to the future repercussions of granting bail to an accused involved in committing such offences against a female Presiding Officer of a Court of Law. of It is clear from the record that the charge-sheet was not submitted against the opposite party no.2, when he was granted bail by the learned Sessions Judge, Maharajganj, relying upon the judgment of Apex Court in the case of **Satendra Kumar Antil (supra)**. The investigation was in progress when the opposite party no.2 was put behind bars on 23.11.2022 and sent to jail. It may be true that all the offence against opposite party no.2 are punishable with terms of imprisonment below 7 years, but all offences are not bailable. At least two of the alleged offences punishable under Sections 353 and 354 IPC are non bailable. It is not a case where bail should have been granted on a matter of right. Normally lenient view in matters of bail pending trial are taken where offences are punishable with terms below 7 years. The facts of this case are different from ordinary course. There is a case where a Judicial Officer/ Presiding Officer of a court of law, has been harassed on the basis of gender. Onerous conduct on the part of opposite party no.2, who is no other than very responsible officer of the court, was expected. The impact of the conduct attributed to opposite party no.2 is such that it will have deleterious effect on

the functioning of the judicial system at the grass root of level. It ought to have considered by the Sessions Judge in that context. This has not been done. This Court is of the view that given aforesaid circumstances and the fact that Investigation was under progress, grant of bail to opposite party no.2 cannot be countenanced. Hence bail granted by the court below to opposite party no.2 is hereby cancelled. The opposite party no.2 is directed to surrender forthwith before the court concerned.

The trial court is directed to conclude the trial against opposite party no.2, within six months.

Before parting with this case, this Court finds that the conduct of the opposite party no.2, namely, Abhay Pratap, was not only criminal in nature and unbecoming of an Officer of the court, but he also committed criminal contempt of court since his act amounted to interference with course of justice and obstruction in the administration of justice.

“Criminal contempt” means the publication (whether by words, spoken or written or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which: 1. scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or 2. prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or 3. interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. Section 2(c) of the Act emphasizes to the interference with the courts of justice or obstruction of the administration of justice or scandalizing or lowering the authority of the court. Section 10 deals with power of High Court to punish contempts of subordinate courts. Section 12 deals with the punishment for the contempt of court. Section 14(2) permits a person charged with the contempt to have charge against him tried by some Judge other than the judge or judges in whose presence or hearing the offence is alleged to have been committed and the court is of opinion that it is practicable to do so. Section 15 of the Act empowers the court to take suo moto action for cognizance of Criminal Contempt.

Conduct of opposite party no.2 against the applicant amounted to creation of fear in the minds of the female Presiding Officers of District Court faced with the acts of sexual harassment. No Presiding Officer of a court can be expected to discharge her official duties of administration of justice freely

and fairly with a balanced and composed state of mind, if such acts or the mere apprehension thereof are there. The apprehension of harassment through spoken words and written words and stalking in court will always loom large over her psyche. In a situation where Presiding Officer of the court is herself not secure, it cannot be expected that she would be able to protect the litigants, who appear before her for protection of their modesty from unwarranted incursions and outrage by accused, like opposite party no.2. This Court has come across another such case of another district, wherein a future date has been fixed and it appears that this malice is spreading fast in the district courts. The case which came before this Court earlier also involved a lawyer of District Court committing such offences against a female Presiding Officer. In such a situation, this Court is of the firm view that before this meance spreads further the accused, like the opposite party no.2, ought to be dealt with iron hands through initiation of proceedings for criminal contempt. Policy of Zero Tolerance in such matters has become imperative.

Accordingly, the Registry of this Court is directed place this case before the appropriate Bench, within two weeks for taking suo moto cognizance of the criminal contempt committed by the opposite party no.2., Abhay Pratap.

Order Date :- 20.3.2023

Ruchi Agrahari