

**Court No. - 87**

Case :- CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. - 302 of 2020

Applicant :- State of U.P.

Opposite Party :- Fasahat Ali Khan @ Shanu

Counsel for Applicant :- G.A.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Ratnendu Kumar Singh, learned AGA for applicant-State. However, no one has put in appearance on behalf of the accused-respondent even on revised call.
2. The present application under Section 439(2) Cr.P.C. have been filed seeking cancellation of the order dated 29.7.2020 passed by the Special Judge (MP/MLA)/Additional Sessions Judge, Court No.10, Rampur in Bail Application No.255 of 2020 filed in FIR No.535 of 2019, under Sections 452, 427, 504, 323, 506, 395, 448, 120-B and 412 IPC, Police Station Kotwali, District Rampur, whereby the learned trial court has admitted the accused-respondent on bail.
3. As per the FIR, the complainant has been living in the Orphanage (Yateemkhana) at Sarai Gate, Rampur with his family. The house was allotted to him and he is having receipts of rent being paid by him. On 15.10.2016 at around 5.20 PM, the then Circle Officer (City) Ale Hasan, Fasahat Shanu, Islam (Contractor), SOG Constable Dharmendra, Virendra Goel and 15-20 other persons came to his house and threatened him to vacate his house. They were saying that Azam Khan would construct a school at Yateemkhana and the land of Yateemkhana was required for construction of the school.
4. When the complainant objected and refused to vacate the premises, he was assaulted and given threats of his life. The accused did not stop, but they forcibly threw out the family members from the house and demolished his house by running Bulldozer. It was further said that the accused had looted Rs.20,000/-, which was kept in the house.

5. During the course of investigation, some looted articles were recovered from the possession of the accused-respondent and he had confessed the crime during the course of investigation. The accused-respondent had long criminal history of 21 cases, which are as under:-

"1. Case Crime No.528 of 2019, under Sections 452, 389, 427, 448, 395, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

2. Case Crime No.529 of 2019, under Sections 452, 354A, 395, 389, 448, 427, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

3. Case Crime No.530 of 2019, under Sections 427, 504, 323, 395, 304 and 448 IPC, Police Station Kotwali, District Rampur;

4. Case Crime No.531 of 2019, under Sections 452, 427, 448, 395, 506, 504 IPC, Police Station Kotwali, District Rampur;

5. Case Crime No.533 of 2019, under Sections 452, 323, 427, 448, 395, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

6. Case Crime No.534 of 2019, under Sections 452, 389, 427, 448, 395, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

7. Case Crime No.535 of 2019, under Sections 452, 323, 427, 448, 395, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

8. Case Crime No.536 of 2019, under Sections 452, 389, 427, 448, 395, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

9. Case Crime No.537 of 2019, under Sections 452, 323, 427, 448, 395, 389, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

10. Case Crime No.538 of 2019, under Sections 452, 427, 448, 395, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

11. Case Crime No.439 of 2019, under Sections 452, 323, 427, 448, 395, and 120-B IPC, Police Station Kotwali, District Rampur;

12. Case Crime No.556 of 2019, under Sections 452, 389, 427, 448, 395, 506, 504 and 120-B IPC, Police Station Kotwali, District Rampur;

13. Case Crime No.533 of 2019, under Sections 452, 447, 323, 427, 448, 392, 504 IPC, Police Station Kotwali, District Rampur;

14. Case Crime No.513 of 2019, under Sections 452, 427, 447, 392 506, 504 IPC,

Police Station Kotwali, District Rampur;

15. Case Crime No.629 of 2019, under Sections 447, 452, 323, 504, 354, 506, 392 IPC, Police Station Kotwali, District Rampur;

16. Case Crime No.538 of 2019, under Sections 447, 452, 323, 504, 506, 392 IPC, Police Station Kotwali, District Rampur;

17. Case Crime No.536 of 2019, under Sections 447, 452, 427, 504, 506, 392 IPC, Police Station Kotwali, District Rampur;

18. Case Crime No.216 of 2019, under Sections 147, 188, 341 IPC, Police Station Kotwali, District Rampur;

19. Case Crime No.132 of 2019, under Section 188 IPC and Section 6 United provinces Power Ac, Police Station Ganj, District Rampur;

20. Case Crime No.478 of 2019, under Sections 504 and 506 IPC and Section 67 Information Technology Act, Police Station Gaanj, District Rampur; and

21. Case Crime No.95 of 2014, under Sections 147, 148, 149, 307, 427, 366 and 188 IPC, Police Station Ganj, District Rampur;

6. Learned trial court has not considered the grievous nature of the offence nor it has considered the long criminal history of the accused-respondent while enlarging him on bail.

7. The accused-respondent and other co-accused named in the FIR under the intoxication of power had demolished the small residential premises of the complainant in a manner unknown to law. Charge sheet has already been filed against the accused-respondent and other co-accused.

8. While considering the bail application, nature of offence, material and evidence on record and the criminal history/antecedents of the accused are to be considered. The impugned order granting bail to the accused-respondent would disclose that the learned trial court has not considered any of the relevant factors while enlarging the accused-respondent on bail.

9. In view thereof, the order dated 29.7.2020 passed by the Special Judge (MP/MLA)/Additional Sessions Judge, Court No.10, Rampur in Bail Application

No.254 of 2020 filed in FIR No.539 of 2019, under Sections 452, 427, 504, 323, 395, 448, 120-B and 412 IPC, Police Station Kotwali, District Rampur, is hereby set aside. The accused-respondent Fasahat Ali Khan may be arrested.

10. However, if the accused-respondent moves a fresh bail application, his bail application shall be considered and decided in accordance with law after considering the relevant factors. Any observation of this Court while cancelling the bail of the accused-respondent, which was granted by the learned trial court vide order dated 29.7.2020, shall not have any bearing for fresh consideration of the bail application of the accused-respondent, after he surrenders or arrested.

11. Subject to above noted terms, the application stands ***allowed***.

Order Date :- 16.2.2023

Rao/-