

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C.No.2072/2008**

% **Date of decision : 11.08.2008**

Satish @ Pandit

..... Petitioner

Through: Mr. Bishvajeet Swain, Advocate.

Versus

State & Another

..... Respondents

Through : Mr.R.N.Vats, APP for State along  
with Inspector Krishna Murari.

**CORAM :-**

\* **HON'BLE MR. JUSTICE ANIL KUMAR**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | NO  |
| 3. | Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

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+ **CrI.M.A. No.7729/2008 in CrI.M.C. No.2072/2008**

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Allowed subject to all just exceptions. Application is disposed of.

**CrI.M.C. No.2072/2008**

The petitioner has impugned the order dated 20<sup>th</sup> June, 2008, whereby the bail granted to him, vide order dated 12<sup>th</sup> June, 2008, was cancelled on the ground that the petitioner had not disclosed the fact that the bail applications of co-accused, Shyam, was dismissed by the Session Court and that another of his bail application was pending in

the High Court and thus the petitioner had obtained bail by suppressing material facts. The cancellation of bail was also justified on the ground that the role assigned to co-accused was similar to that of the petitioner and therefore continuation of bail to the petitioner shall result in conflicting findings in the matter. The bail was cancelled in order to have parity with the accused and to avoid alleged conflicting findings in the matter.

The Sessions Court while granting bail to the petitioner, vide order dated 12<sup>th</sup> June, 2008, had considered the role of the petitioner that he along with co-accused took the prosecutrix to Palwal, Haryana and thereafter co-accused Mukul Bhadana took her to Kolkata and raped her, though the petitioner had returned back from Palwal. At the time the bail was granted the petitioner was in custody for about three months.

The petitioner has challenged the cancellation of the bail on the ground that he cannot be held guilty of suppression of material facts regarding the rejection of the bail applications of the co-accused Shyam as he was not aware of it, not being a party to bail applications of the co-accused, and it was the duty of the prosecution and the complainant to bring it to the notice of the Court. Though the learned Magistrate, while cancelling the bail, admitted that there was lapse on the part of the investigating agency in not informing the Court the fact that the other co-accused Shyam's bail application was dismissed, still the petitioner has been made liable.

The learned counsel for the petitioner has emphatically contended that he was not a party to the bail applications filed by the co-accused Shyam and so he could not have the knowledge about the rejection of the bail application of the co-accused. It is also contended that rejection of the bail application of the co-accused Shyam could not preclude the Court from granting bail to the petitioner and in the circumstances it is contended that there could not be parity between the two cases nor can the bail granted to the petitioner be cancelled on the ground of parity.

It is also contended that while granting bail under Section 439 circumstances other than the merits of the case are also to be considered, which can be different for different co-accused, and in the circumstances, merely on account of parity the bail could neither be granted nor be declined. The petitioner is stated to be a young man of 24 years and is married and has one minor child.

The learned counsel for the petitioner has relied on *Kashmira Singh v.Duman Singh*, (1996) 4 SCC 693; *Nityanand Rai v.State of Bihar & Anr*, (2005) 4 SCC 178; *Bhagirathsinh, s/o.Mahipat Singh Judeja v.State of Gujarat*, (1984) 1 SCC 284; *State of .U.P v.Amarmani Tripathi*, (2005) 8 SCC 21; *Dolat Ram and Ors v.State of Haryana*, (1995) 1 SCC 349; *Nanha v.State of U.P*, 1993 CrI.L.J.938 (DB); *Shobha Ram v. State of U.P*, 1992 CrI.L.J.1371 to contend that after bail has been granted to the petitioner, the Court could not cancel the bail on the ground of parity or on the alleged concealment of fact regarding dismissal of the bail applications of other co-accused.

Per contra the learned counsel for the respondent has very vociferously contended that the petitioner ought not to have been granted bail by order dated 12<sup>th</sup> June, 2008, as the offence alleged to have been committed by the petitioner is heinous and serious and the statement of the prosecutrix made under Section 164 of the Criminal Procedure Code and her suicide on the next day were sufficient for the Court to have declined bail and consequently the Sessions Court was justified in cancelling the bail of the petitioner, by order dated 20<sup>th</sup> June, 2008.

From the perusal of the order dated 20<sup>th</sup> June, 2008, whereby the bail granted to the petitioner was cancelled, it is apparent that the bail has not been cancelled on the ground that the facts pertaining to merits of the case were considered and the facts on the merit of the case are such as would have disentitled the petitioner for bail. While granting bail by order dated 12<sup>th</sup> June, 2008 the trial Court had considered the role of the petitioner, which was stated to be that he took the prosecutrix to Palwal and from there co-accused Mukul Bhadana took her to Kolkata while the petitioner with other co-accused Shyam came back to Delhi from Palwal. It is also apparent that order dated 12<sup>th</sup> June, 2008 was not challenged by the complainant or the State in any appropriate proceedings. The learned counsel for the complainant has also contended that though the matter was argued on merits while considering the application for bail, his contentions were not considered by the trial Court. However, from the order it is apparent that matter

was not argued on merits by the complainant nor has the order dated 12<sup>th</sup> June, 2008 granting bail been challenged by the complainant on the ground that the complainant's arguments on merits were not considered. Even in the reply filed to this petition it has not been alleged that the complainant had argued the matter on merits but those contentions have not been considered by the Court. The respondent has relied on Dinesh M.N (S.P) v. State of Gujarat, (2008) 5 SCC 66 to contend that the application of the petitioner for grant of bail was liable to be rejected on merits also.

In Dinesh's case (supra) relied on by the respondent No.2 it was held that while cancelling bail the Court can consider whether irrelevant materials were taken into consideration or not by the Court granting the bail. In the said case while applying for the bail the accused had taken a plea that the person killed was hardened criminal which was not a factor which could be taken into account for granting bail. In these circumstances it was held that while granting bail if irrelevant materials have been taken into consideration, which made order of bail vulnerable, then the effect of such irrelevant materials, can be considered. It was further held that in order to cancel bail, the irrelevant material which was taken into consideration should be of substantial nature and not of trivial nature. The ratio of the case is not applicable to the present facts and circumstances. The Sessions Court has cancelled bail only on the ground of parity holding that the continuation of bail would be conflicting with the order passed in the

case of the other accused Shyam whose bail applications were dismissed earlier by the Sessions Court. It will be pertinent to note that the co-accused Shyam, whose bail applications had been dismissed by the Sessions Court, has been granted bail by the High Court in bail application No.1238/2008. Consequently, the order cancelling the bail of the petitioner on ground of parity and to avoid conflicting order in the matter will not be sustainable.

In Kashmira Singh (Supra) relied on by the petitioner this Court had held that if the accused had not mentioned about the rejection of a bail of the co-accused, the prosecution or the complainant could have disclosed the same and the omission on the part of the prosecution/complainant could not be the ground to come to the conclusion that the relevant material has been suppressed by another accused. In any case there is no positive evidence to attribute knowledge of the dismissal of the bail applications of Shyam to the petitioner, so as to make an inference about the suppression of material facts.

In Bhagirathsinh (Supra) the Apex Court had held that cancellation of bail should not be by way of punishment even if prima facie case against the accused is established. Very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail. It was held that even where prima facie case is established, the approach of the Court in the matter of bail should not be that the accused should be detained by way of punishment, but

whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with the evidence. The Apex Court had held that while examining the order directing cancellation of bail the High Court should not interfere with the discretionary power of the Sessions Court.

Relying on the case of Amarmani Tripathi (Supra) the learned counsel for the petitioner has contended that in an application for cancellation, conduct subsequent to release on bail and supervening circumstances alone are relevant. It was contended that though in an appeal against the grant of bail, all aspects that were relevant under Section 439 read with Section 437 may be relevant, the same cannot be taken into consideration for cancellation of bail. It was further held that even in appeal against the grant of bail where the accused has been at large for a considerable time, the post bail conduct and supervening circumstances will also have to be taken note off and they are not the only factors to be considered as in the case of the application for cancellation of bail. In the present case no appeal was filed by the respondent No.2 against grant of bail to the petitioner and from the order dated 20<sup>th</sup> June, 2008, cancelling the bail of the petitioner, it is apparent that the factors that were relevant under Section 439 read with Section 437 were not taken into consideration, as the bail has been cancelled only on the ground of parity and suppression of material fact regarding declining the bail by the Sessions Court in the case of co-accused Shyam. Though the learned counsel for respondent No.2

contended that grounds on merits were raised, but since the order dated 12th June, 2008 does not deal with the said grounds and since the order dated 12<sup>th</sup> June, 2008 has not been challenged by the respondent No.2 on the ground that the grounds as agitated by him were not dealt with or taken into consideration, it is not possible to believe respondent No.2 in the present facts and circumstances. The inevitable inference in the circumstances is that the bail has been cancelled only on the ground of parity with the co-accused Shyam whose bail applications were earlier rejected by the Sessions Court and the suppression of this fact by the petitioner. As has been mentioned earlier even the co-accused Shyam has since been granted bail by this Court. In the circumstances, the cancellation of the bail of the petitioner will not be sustainable.

In another case Dolat Ram and Ors (Supra) relied on by the petitioner, this Court had held that factors to be taken into consideration for rejection of bail in non-bailable offences and for cancellation of bail already granted are different and the two cases should be dealt with on different basis. The Division Bench of Allahabad High Court in Nanha (Supra) had held in paragraph 60 that prior rejection of the bail application of one of the accused cannot preclude the Court from granting bail to another accused whose case had not been considered at the earlier occasion. In the circumstances, it was held by the Division Bench that it is not necessary for the accused to disclose in his application that the bail of other accused has already

been refused. In the present case, consequently, the petitioner was not liable to disclose that the bail applications of the co-accused Shyam had been rejected by the other Courts. It is equally true in the circumstances that merely on account of rejection of the bail application of co-accused Shyam, the bail to the petitioner could not be denied by the trial Court which in fact was granted to the petitioner by order dated 12<sup>th</sup> June, 2008.

In Shobha Ram (Supra) another case relied on by the petitioner, it was held that there could not be parity in rejection of bail application because of the reason that when the bail application of one co-accused is rejected on merits, the other co-accused is not a party to that bail application and such another accused will have no opportunity to make his submissions before the Court. Rejecting bail to an accused only on the ground that the bail application of other accused has been dismissed will be denial of principle of natural justice,

Consequently, the inevitable inference is that the Sessions Court could not cancel the bail of the petitioner on the ground of parity or on the ground that the petitioner had not disclosed about the cancellation of the bail applications of other co-accused Shyam in the present facts and circumstances. In any case, the other co-accused Shyam has since been granted bail by this Court in bail application No.1238/2008.

In the circumstances, for the aforesaid reasons, the order of the learned trial Court dated 20<sup>th</sup> June, 2008 cancelling the bail of the petitioner is not sustainable and is, therefore, set aside. Consequently

the petitioner is granted bail on his furnishing a personal bond of Rs.40,000/- with one surety of like amount to the satisfaction of the trial Court. The petitioner shall not influence any of the witnesses in any manner. The petition is allowed in terms hereof.

Dasti under the signatures of Court master.

**August 11<sup>th</sup>, 2008.**  
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**ANIL KUMAR, J.**