

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

+ **CRL.M.C. 1861/2009**

DIRECTORATE OF REVENUE INTELLIGENCE

..... Petitioner

Through: Mr. Satish Aggarwala with
Ms. Hrishika Pandit.

versus

HARSH VASANT & ANR.

..... Respondents

Through: Mr. Arun Bhardwaj, Sr.Adv.
with Mr. Ramakant Gaur for the
Respondent No.1.

Mr. Navneet Panwar for R-2.

Mr. R.N. Vats, Addl PP for the State.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

: **V.K. JAIN, J. (oral)**

1. This is a petition u/s 482 r/w 439 (2) of the Code of Criminal Procedure, challenging the order dated 11.06.09 whereby bail was granted to the respondents by A.C.M.M., New Delhi. The respondents were arrested on 4th June, 2009 under Section 132 and 135 of Customs Act in connection with smuggling of 5010 bottles of foreign liquor and were granted

bail subject to respondent No. 1 depositing Rs. 25 lakhs with Commissioner of Customs, within a week of his release on bail.

2. It is alleged in the petition that the order granting bail is bad in law as well as on facts as the case involved evasion of customs duty amounting to more than Rs.1 crore and the Learned ACMM did not deal with all the submissions and did not consider the judgment relied upon by its counsel despite noticing them. It has been stated that bail ought not to have been granted to the respondents in view of seriousness of the offence, pendency of investigation and the conduct of the respondents.

3. In **Dolat Ram and Others vs. State of Haryana** (1995) 1 SCC 349, while considering an appeal against the order of the High Court cancelling anticipatory bail granted to the appellants, the Hon'ble Supreme Court *inter alia* noted as under:-

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking the grounds of cancellation of bail, broadly (illustrative and not exhaustive) are: interference or

attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

4. In **State of U.P. vs. Amarmani Tripathi** (2005) 8 SCC 21, which was an appeal against the order of the High Court granting bail to the respondent, the Hon’ble Supreme Court *inter alia* held as under:

“17. The decisions in Dolat Ram and Bhattacharjee cases relate to applications for cancellation of bail and not appeals against orders granting bail. In an application for cancellation, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. We, however, agree that while considering and deciding appeals against 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 of. But they are not the only factors to be considered as in the case of applications for cancellation of bail.

21. Therefore, the general rule that this Court will not ordinarily interfere in matters relating to bail, is subject to exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court (See Pawan v. Ram Prakash Pandey; Ram Pratap Yadav v. Mitra Sen Yadav and Kalyan Chandra Sarkar v. Rajesh Ranjan.)”

5. In **Rizwan Akbar Hussain Syeed vs. Mehmood Hussain and Another** (2007) 10 SCC 368, while considering an appeal against the order of the High Court cancelling the bail granted to the appellant, the Hon’ble Supreme Court *inter alia* observed as under:-

“7.....Cancellation of bail should not be done in a routine manner. Where it appears to the superior Court that the Court granting bail acted on irrelevant materials or there was non-application of mind or where Court does not take note of any statutory bar to grant of bail, order for cancellation of bail can be made. These circumstances are illustrative and not exhaustive.....”

6. **Subodh Kr. Yadav vs. State of Bihar & Another** 2009 (3) JCC 2362, the Hon’ble Supreme Court was considering

an appeal against the order of the High Court cancelling the bail granted to the appellant. During the course of arguments, it was contended before the Hon'ble Supreme Court that cancellation of bail can be only with reference to conduct subsequent to release on bail and the supervening circumstances and an application for cancellation of bail will not be maintainable with reference to what transpired prior to the grant of bail. Repelling the contention, the Hon'ble Supreme Court *inter alia* held as under:-

“9.....In fact it is now well settled that if a superior court finds that the court granting bail had acted on irrelevant material or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as for example failure to hear the public prosecutor/complainant where required, an order for cancellation of bail can in fact be made. (See Gajanand Agarwal v. State of Orissa 2006 (3) JCC 1823 : [2006 (9) SCALE 378] and Rizwan Akbar Hussain Syeed v. Mehmood Hussain [2007 (10) SCC 368]).

10. Further, while cancelling bail, the superior Court would be justified in considering the question whether irrelevant material were taken into consideration by the court granting bail.”

7. The proposition of law which emerges from the above referred judgments is that if an order granting bail is challenged on merits and it is claimed that in the facts and circumstances of the case, the bail ought not to have been granted, it is permissible for the superior Court to consider not only the post bail conduct and supervening circumstances, but also the facts and circumstances which prevailed at the time of granting bail and which ought to have been taken into consideration by the Court, which granted bail. Irrespective of whether the prosecution seeks cancellation of bail or challenges the order whereby bail is granted, the net effect, in the event of such a petition being allowed, would be the same. Hence, post-bail conduct is not irrelevant even while considering a petition seeking setting aside of bail order, though such a conduct alone would not be the determinative factor. A bail would normally be cancelled if the accused tries to interfere with the course of justice by influencing the witnesses or he evades the process of the Court by remaining absent during investigation or otherwise tries to abuse the concession of bail granted to him. But, even if no such post-bail conduct on the part of accused is alleged, it is still permissible for a superior Court, while

considering a petition challenging grant of bail, to examine whether the Court, which granted bail, took into consideration the material, which was not relevant or germane or it granted bail without due application of mind to the facts and circumstances of the case, whether the bail was granted in disregard of a statutory provision or by totally misapplying the settled principles governing grant of bail or whether there was any other gross procedural illegality or impropriety committed in granting bail.

8. But, an order granting bail cannot be disturbed except for compelling reasons and the superior Court ought to interfere only in a case where gross injustice has been done on account of grant of bail. The superior Court will not be justified in setting aside an order of bail merely because had it been the Court concerned, it would not have granted bail in the case before it. The petitioner seeking cancellation of bail or setting aside of an order granting bail must make out a strong case and must show that the order granting bail was manifestly illegal, unjust or improper.

9. The order granting bail cannot be set aside merely because some judgments referred by the learned counsel for the

petitioner were not discussed in the course of the order, whereby the bail was granted though there can be no denial that the Court before which the judgments are referred ought to duly consider them before it passes the order. This is not an act attributable to the accused and it is always open to the aggrieved party to bring such judgments to the knowledge of the superior Court in appropriate proceedings.

10. In the present case, there is no allegation that the respondent has tried to misuse the liberty of bail granted to him. There is no allegation that he did not attend the Court or even the office of Directorate of Revenue Intelligence. There is no allegation of his trying to influence any witness or interfering with the course of investigation. Though the case of the petitioner is that the respondents tried to evade customs duty of more than Rs. 1 crore, the case of the respondents is that the applicable customs duty, taking the price of liquor into consideration, will not be more than Rs.25 lakhs, the amount already ordered to be deposited by them with Commissioner of customs. Moreover, the learned counsel for the respondents, on instructions, state that the respondent No. 1 in order to show his bona fides and without prejudice to his rights and contentions is

willing to deposit another sum of Rs. 15 lakhs with Directorate of Revenue Intelligence within four weeks from today.

11. In view of the above discussion, subject to the respondent complying with the undertaking given by his counsel, there is no compelling ground for setting aside the order dated 11.06.09 whereby the bail was granted to the petitioner. The petition is therefore dismissed. It is made clear that none of the observations made by the learned A.C.M.M. in the impugned order shall affect the decision of the case on merits either during trial or in adjudication proceedings.

12. The petitioner shall be at liberty to accept the amount deposited/tendered by the respondents pursuant to the order of the Learned ACMM, as also the amount which is to be deposited in terms of the undertaking given to this Court.

V.K.JAIN, J

NOVEMBER 16, 2009

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