

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

Judgment reserved on: December 14, 2010
Judgment delivered on: December 16, 2010

+ **Crl.M.C. No. 3372/2009**

PRAMILA DHAWAN

....PETITIONER

Through: Mr. Arvind Minocha, Advocate with Mr.
Madhav Khurana, Advocate.

Versus

STATE & ANR.

....RESPONDENTS

Through: Ms. Fizani Husain, APP.

Mr. K.K. Sud, Sr. Advocate with Mr. Abhik
Kumar, Mr. Siddhartha Shankar & Mr.
Rajesh Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. Vide this petition, petitioner is seeking cancellation of bail granted to the respondent No. 2 vide order dated 18th March, 2009, which reads thus:

“The learned counsel for the petitioner as well as the counsel for the complainant state that the parties have entered into a Deed of Settlement dated 16th March, 2009 whereby a schedule for payment of a sum of Rs.32 lakhs to the complainant and a sum of Rs.29 lakhs to the son-in-law of the complainant Mr. Hemant Minocha has been laid down. In this view of the matter, the counsel for the complainant states that he has no objection if the interim orders granting bail to the petitioner are made absolute. He, however, prays that liberty may be afforded to the complainant to apply for cancellation of bail in case there is any default in the payment schedule agreed to between the parties.

In view of the aforesaid, interim orders dated 7th November, 2008 granting bail to the petitioner are made absolute, subject to the same terms and conditions and on the same bail bond and surety bond. Liberty is, however, given to the complainant to move for cancellation of bail in case of default in the payment schedule. It is clarified that the petitioner will be at liberty to move an appropriate application before the concerned Court for desealing/defreezing of the bank accounts in terms of the paragraphs 5 and 6 of the Deed of Settlement”.

2. Learned counsel for the petitioner submits that from the above referred order, it is apparent that the learned Single Judge granted bail to the respondent No. 2 only on the basis of settlement and not on merits of the case. The Court, while granting bail, also made it clear that in the event of respondent No. 2 defaulting in making payment as per payment schedule agreed by the parties, the petitioner shall be at liberty to apply for cancellation of bail. Learned counsel for the petitioner has taken me through various orders passed by this court in the present petition and submitted

that even during the pendency of this petition, the respondent was given ample opportunity to pay the amount of arrears accumulated due to the default committed by him but respondent No. 2 has failed to make the payments and till date, he has paid only a sum of ₹ 11.5 Lakhs to the petitioner and her son-in-law, which is much less than the amount due as per the schedule of payment and respondent No. 2 has also failed to transfer the shares in the name of the son-in-law of the petitioner, which he had agreed to transfer as per the terms of settlement which formed basis of the bail order. Learned counsel submitted that since respondent No. 2 obtained bail by misrepresenting to the court that he would make payment as per the terms of settlement and after reaping benefit of bail, has failed to make payments as per the payment schedule, his bail is liable to be cancelled.

3. Learned counsel for the respondent No. 2, on the other hand, has submitted that it is settled law that once an accused is granted bail in a criminal matter, the power of cancellation of his bail is to be exercised with due care and caution and ordinarily, the bail once granted should not be cancelled unless there are strong grounds to believe that the accused has abused the benefit of his release on bail by interfering in the administration of justice in any manner. In support of this contention, he has relied upon the judgments of Supreme Court in the matters of **Dolat Ram and Ors. Vs. State of**

Haryana (1995) 1 SCC 349 and **Delhi Admn. Vs. Sanjay Gandhi**, 1978 CriLJ 950.

4. In the above referred two cases, Supreme Court held that once an accused is released on bail, his bail ordinarily should not be cancelled unless there are strong reasons to believe that the accused, after his release on bail, has interfered or attempted to interfere with the course of justice or has evaded or attempted to evade the course of justice or abused the concession of bail granted to him in any manner whatsoever. There can be no dispute with the aforesaid proposition of law, provided the accused is granted bail on merits. In the present case, the bail was not granted to the respondent No. 2 on merits. Actually, learned Single Judge was persuaded to grant bail to respondent No. 2 on the basis of settlement arrived at between him and petitioner. This is apparent from the fact that the learned Single Judge clarified in the bail order that if respondent No. 2 fails to adhere to the payment schedule agreed upon by the parties, the petitioner shall be at liberty to seek cancellation of bail.

5. Next contention of learned counsel for the respondent No. 2 is that since the bail order in this case was passed by Ms. Reva Khetrpal, J., the petition for cancellation of bail of respondent No. 2 should also be heard by her to avoid conflicting views. In support of

this contention, he has relied upon the judgment of the Supreme Court in the matter of **Harjeet Singh Vs. State of Punjab & Anr.**, (2002) 1 SCC 649. In the said judgment, Supreme Court, inter alia, observed thus:

“It was not open to the other Judge of the High Court to sit in appeal against the order passed by another coordinate Bench of the same Court. If the accused had obtained the bail order by misrepresentation or by suppression of facts, it was open for the State Government either to approach the appropriate higher forum or to place the matter before the same Judge.

The long-standing convention and judicial discipline require that subsequent application for grant or rejection of bail should be placed before the same Judge who had passed earlier orders. Placing of such matter before the same Judge has its roots in principle as it prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not. Said practice also prevents the filing of subsequent applications without any new factor having been cropped up. Disposal of successive bail applications on the same subject by different Judges, if permitted, would lead to conflicting orders”.

6. In my opinion, aforesaid judgment is not applicable to the facts of this case. In the matter before Supreme Court, the bail was granted to the accused of that case on merits by learned Single Judge of the High Court. Subsequently, on the application of the prosecution seeking cancellation of bail, another Judge of the same High Court cancelled the bail on merits. This led to aforesaid

observations of the Supreme Court raising the issue of judicial discipline and long-standing convention. In the instant case, bail was granted to the respondent No. 2 on the basis of settlement and not on merits and since respondent No. 2 has failed to comply with the terms of settlement, the petitioner is well within her right to seek cancellation of bail, particularly when this right was given to the petitioner in the order of learned Single Judge itself.

7. On perusal of the bail order dated 18th March, 2009, it is apparent that respondent No. 2 was granted bail only on the ground of settlement arrived at between him and the petitioner and since respondent No. 2 has failed to comply with the terms of settlement on the strength of which he obtained bail, his bail is liable to be cancelled. I accordingly allow the petition and cancel the bail granted to respondent No. 2 vide order dated 18th March, 2009. Respondent No. 2, however is given liberty to file a regular bail application, if he so desires within two weeks. Till then, he may not be arrested.

8. Petition stands disposed of.

(AJIT BHARIHOKE)
JUDGE

DECEMBER 16, 2010

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