

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2909/2011**

Date of Decision : 27.03.2012

PARAMVIR RANA Petitioner
Through: Mr. K. T.S. Tulsi, Sr. Adv. With
Mr. P.C. Dhingra, Adv.

versus

STATE & ORS. Respondents
Through: Ms. Jasbir Kaur, APP
Mr. Shishir Mathur, Adv. for R-2
along with respondent no. 2
in person.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (oral)

1. This is a petition filed by the complainant Paramvir Rana for setting aside the order dated 18.7.2011 by virtue of which bail was granted to accused Paresh Grewal (respondent no.2) by the learned Additional Sessions Judge, Saket in respect of an offence under Section 364A/386/120B/34 IPC registered vide FIR no.47/2011 of P.S. Dhaula Kuan.

2. Before coming to the contentions urged by Mr.Tulsi, learned senior counsel for seeking cancellation of the bail of respondent, it will be worthwhile to give brief facts of the case.
3. The complainant, Paramvir Rana and the respondent no.2 are ostensibly students of two separate Colleges in South Delhi Campus of Delhi University. On 05.3.2011, Paramvir Rana lodged a report with the local police of Dhaula Kuan that on 01.3.2011 at about 10.00 am, he was abducted at the gunpoint in his Swift car bearing registration number DL9C6945 from the gate of Ram Lal Anand College by four unknown persons who took him to Sonapat, Panipat and other secret place in Haryana. They demanded ransom from his father on his mobile no.9810017260 from the victim's mobile No.9999707034 and illegally restrained him for more than 12 hours under the fear of death. He was physically assaulted during his detention and he was set free only after a sum of Rs.35 lacs was extracted from his father.

4. On 5.3.2011, the accused Sandeep Chikara was arrested which unfolded the mystery of abduction and it lead to arrest of number of accused persons (8 in all). During the course of investigation and on the basis of a disclosure statement of one of the accused persons respondent no. 2 was also arrested on 28.4.2011. He was granted bail by the impugned order by the learned Sessions Judge by observing that the only evidence against the respondent no. 2 is a disclosure statement of co-accused as per the charge sheet. It was also observed by the learned Judge that the other piece of evidence pointed out by the IO was a missed call made by the respondent no. 2 on 26.02.2011 to the complainant whereupon the latter had returned the call.
5. The learned counsel for the petitioner has pointed out that both the victim and the respondent no. 2/accused belong to the same village Bijwasan and the accused had helped one Rajesh Kumar @ Bharti in getting accommodation on rent in the same village. It may be

pertinent here to mention that Rajesh Kumar @ Bharti is a person having involvement in as many as 18 cases for serious offences in areas around Delhi. The learned Sessions Judge did not attach any importance to the submissions of the learned counsel for the complainant and observed that there was no sufficient evidence to connect the accused with Rajesh Kumar @ Bharti and the only evidence brought on record is the disclosure statement and the phone call made much prior to the date of abduction and he granted bail to the respondent no. 2.

6. Mr. Tulsi, the learned Sr. Adv. has challenged the impugned order passed by the learned Additional Sessions Judge on the ground that the same is totally arbitrary, unreasonable and capricious in as much as the bail has been granted to the respondent no.2/accused despite the fact that there was ample evidence which was neither placed in full measure before the learned Trial Court nor appreciated. The second limb of the submission

made by the learned senior counsel is that after the grant of bail, the respondent no.2/accused either himself or through his other family members had administered threats to the father of the petitioner that in case they testified against him, they will be visited with dire consequences. Mr. Tulsi, the learned senior counsel has contended that all the other remaining accused persons are in custody and the respondent no.2/accused being on bail is creating a threat to the holding of a fair trial, and therefore, is misusing his liberty. Therefore, his bail may be cancelled. Mr. Tulsi, has referred to number of authorities in this regard for cancellation of his bail order both with regard to the merits of the order as well as on account of misuse of that liberty. These are **Suresh Kumar Somabhai Rana Vs. Ashok Kumar Harkalal Mittal** (2009) 14 SCC 292, **Subodh Kumar Yadav Vs. State of Bihar & Anr.** (2009) 14 SCC 638, **Panchanan Mishra Vs. Digambar Mishra & Ors.** 2005 SCC (Cri) 660, **Puran Vs. Rambilas & Anr.** AIR 2001 SC 2023 and

Raj Kumar Sharma & Ors. Vs. State (Delhi Administration) AIR 1978 SC 179.

7. So far as the State is concerned, it was directed to clarify its stand as to whether it wants the bail of the respondent no. 2 to be cancelled or is it supporting the impugned order.
8. In this regard, an affidavit of Ms. Chhaya Sharma, DCP (South) has been filed wherein she has stated that they are supporting the petition filed by the complainant/petitioner seeking cancellation of bail of respondent no. 2 as he is involved in a heinous crime under Section 364A IPC i.e. kidnapping for ransom which carries a punishment of death or life imprisonment. It is further stated that a supplementary charge sheet has been filed on 12.12.2011, wherein it has been pointed out that the respondent no. 2 is a member of dreaded criminal gang and does not deserve any kind of sympathy. The cancellation of bail of the respondent no. 2 granted by the impugned order dated 18.07.2011 was

contested. It was stated that cancellation of a bail order on the ground of being arbitrary is something different than the cancellation of the bail on account of misuse of liberty. It was stated that there have to be very cogent and overwhelming circumstances for seeking cancellation of the bail and the purpose of the grant of bail is only to ensure the presence of the respondent no.2/accused to face the trial.

9. It has been denied that in the instant case the Court has wrongly granted the bail to him. It has been stated that he was in custody for three months before bail was granted to him and for this purpose this fact was also stated that the respondent no. 2 is a student and his career would have been ruined in case the bail had not been granted by the Court to him. So far as the complaint purported to have been made by the father of the petitioner on 26.08.2011 against the respondent no. 2 is concerned, it has been stated that this is a false complaint. It was stated that the complaint lacks

credibility. The FIR is stated to have been registered by the father of the petitioner falsely. It was also denied by the respondent no. 2 that there was any call record details available with the prosecution which would prove the linkages between the respondent no. 2 and the co-accused persons. It has also been stated that the supplementary charge sheet does not make a mention of evidence which has been gathered by the prosecution agency in this regard. Therefore, it has been contended that the bail granted to the respondent no. 2 is perfectly supported by the cogent reasons.

10. I have considered the submissions and have gone through the record.
11. Before dealing with the submission of the learned counsel, it would be worthwhile to deal with the judgments which have been relied upon by Mr. Tulsi, the learned senior counsel for the petitioner in support of his case to show the scope of judicial review to which a bail order can be cancelled by the High Court, which has been

granted by the Courts below.

12. In **Suresh Kumar Somabhai Rana's case (supra)**, the accused was involved in a case under Section 302 IPC read with Section 149 IPC and the Sessions Court had passed a detailed and reasoned order refusing to grant a bail to the accused persons. The High Court of Gujarat, without recording any reasons had set aside the well reasoned order passed by the learned Trial Court and granted the bail. The matter was taken to the Supreme Court by the complainant and it was observed:

"In our view, such an order would be against the established principles of law and also against the interest of justice, which has serious impact on the society. In such cases, if the accused are let loose before the trial, they would have an opportunity to tamper with the evidence by their muscle/money power. It is equally true that personal liberty of the citizens should not be interfered with without following the procedure of law but in cases like this, if such persons are released by mere asking, it would affect the administration of criminal justice."

13. In **Subodh Kumar Yadav's case (supra)** the Magistrate had granted the bail to the accused for an offence under

Section 498A IPC on the same day without hearing the complainant. The learned Sessions Judge made disparaging remarks and compelled the Court to draw an adverse inference holding that the Magistrate had passed order for consideration other than judicial facts of the said case. It was observed by the Supreme Court as under:

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

14. In **Panchanan Mishra's case (supra)** was a case not dealing with before the exercise of power of grant of bail but with a cancellation of bail under Section 437(5) read with section 439(2) Cr.P.C. It was observed that the purpose of cancellation of a bail is to protect the fair trial

and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime. It was observed by the Supreme Court as under:

“We have given our careful consideration on the rival submissions made by the counsel appearing on either side. The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person released on bail in serious criminal cases where the punishment is quite stringent and deterrent the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses threatening the family members of the deceased victim and also create problems of law and order situation.

15. In **Puran’s case (Supra)**, the Apex Court had observed that one of the ground for cancellation of bail would be where ignoring material and evidence on record a

perverse order granting bail is passed in a heinous crime of the nature like bride burning and that too without giving any reasons. Such an order would be against principle of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It was also observed that it must be remembered that such offences are on the rise and have a very serious impact on the society, and therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected. This was a case where accused was granted in a case under Section 498A/304B IPC.

“One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has mis-conducted himself or because of some new facts requiring such cancellation.”

16. In **Raj Kumar Sharma’s case (Supra)**, it has been stated that the overriding considerations in granting bail which are common both in the case of Section 437(1) and Section 439(1), are the nature and gravity of the offence; the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offences; history of the case as well as of its investigation and other relevant grounds which in view of so many variable factors, cannot be exhaustively set out. The two paramount considerations, viz likelihood of the accused fleeing from justice and his position to tamper with prosecution evidence relate to ensuring a fair trial of the case in court of justice. It is essential that due and

proper weight should be bestowed on these two factors apart from others.

17. A perusal of the aforesaid authorities clearly shows that the bail can be cancelled, if it is shown to be perverse and arbitrary or where the order has been passed with considerations which are not germane to the passing of the order or where factors which ought to have been taken into consideration have not been taken into consideration, in such contingency a the bail can be cancelled. Secondly, the bail can be cancelled in a case where a person who is enlarged on bail misuses his liberty by threatening the witnesses or tamper with the evidence.
18. In the instant case, I feel that the impugned order dated 18.07.2011 is an arbitrary and perverse order in as much as the investigating officer did not place the complete evidence before the learned Magistrate and further whatever evidence was placed before him, the learned Sessions Judge has failed to appreciate the same. The

learned Sessions Judge ought to have taken a note of the fact that the respondent no. 2 was named in the disclosure statement, and thereafter, this led to his arrest. There were linkages between the kidnapping of the petitioner and the respondent no. 2 in as much as some telephones which were in the name of the respondent no. 2 or the other accused persons, he had been talking to the other five co-accused persons or some of them for an undoubtedly long period and these have been, prima facie, established by the learned counsel for the petitioner during his arguments. The IO did not place this complete information in this regard before the Court, which granted the bail, and therefore, the Court failed to correctly appreciate the involvement of the respondent no. 2 in the instant case.

19. The second contention on the basis of which the learned Sessions Judge's order was challenged for the grant of bail to the respondent no. 2 was that he was very close to one of the co-accused Rajesh Kumar @ Bharti and he had

arranged an accommodation for Bharti in Bijwasan Village, Delhi. This was, prima facie, established by the statement of the land-lord of the house of Bharti to the effect that the respondent no. 2 had arranged the house for Bharti and it was he who was frequently meeting Bharti at the said address. These facts were not placed before the learned Magistrate for his alleged involvement with the dreaded criminally active gang who were indulging in kidnapping for ransom. The prosecution before this Court has presented the previous antecedents of all the co-accused persons except the present respondent no. 2 who seems to be a freshly recruited person in the gang who was doing basic groundwork to find out the potential target who would be kidnapped by this gang or by him and handed over to the co-accused persons for the purpose of demand of ransom. This can be gauged from the fact that Jitender Dixit is involved in three FIRs of serious offences of kidnapping for ransom, robbery and offences under Section 302 IPC, Sandeep

Chhikara is involved in two cases, Sumit is involved in seven cases, Anil Pehalwan is involved in four cases, Manoj is involved in fourteen cases, Rajesh Kumar @ Bharti is involved in eighteen cases, Arun Kumar @ Kala is involved in nine cases. All the co-accused persons are in custody except the respondent no. 2 who, in my opinion, from the evidence, prima facie presented before this Court shows was a fresh recruit whose activities being without any ostensible previous involvement would have gone undetected. The offences against co-accused persons were registered either in Sonapat, Gurgaon and Panipat or any other district of Haryana shows that the dreaded gang was active in Gurgaon and in and around Delhi. This was their area of operation. So far as the respondent no. 2 is concerned, it is not in dispute that he is a young person and studying in South Delhi Campus of University of Delhi. He is stated to be 21 years of age and living in Bijwasan village, Delhi. Similarly, the victim is also of young age studying in different college of South

Campus, Delhi University and living in Bijwasan Village. The facts brought on record clearly show that the respondent no. 2 was newly recruited member of the gang of the kidnappers and seem to be doing basic ground work to find out the potential targets which would be kidnapped by this gang or by him and handed over to this gang for the purpose of demand of ransom. In the instant case, the petitioner/complainant has stated that although a demand of Rs.3 crore initially was made, which was ended up at Rs. 35 lakhs. I, therefore, feel that in the order, these facts have not been taken into consideration by the learned Sessions Judge.

20. The IO has also not played a fair role for the reasons beyond the comprehension of this Court. It is not clear whether he was investigating or helping the accused persons. The order which was passed by the learned Sessions Judge could not be said to be a valid order based on proper appreciation of facts showing the prima facie involvement of the respondent no. 2. The offence

under Section 364A IPC is a serious offence in as much as the conviction of a person for the said offence may entail punishment of life imprisonment, if not death, which it carries. Obviously, this sentence shows the gravity of the offence is very serious in the instant case.

21. I would have been loath to cancel the bail merely on the basis of the non presentation of facts before the learned Sessions Judge or on the basis of order being perverse, but the very fact that the father of the victim has also been threatened by the respondent no. 2 and he has lodged a police report clearly makes the Court to believe reasonably that continued liberty of the respondent no. 2 has been misused and is bound to be misused so as to deter the petitioner and his other family members to testify against the respondent no. 2 as well as the co-accused persons who are presently in custody. In this regard, an observation passed by the Apex Court in case title **Suresh Kumar Somabhai Rana's case (supra)** is squarely on the same footing that the Court would have

curtailed the liberty of a person when it is becoming a threat for holding a fair trial. Almost all the judgments which have been cited by the learned senior counsel for the petitioner clearly make out a strong prima facie case for the consideration of the bail of the respondent no.2.

22. In addition to this, there have been linkages established by the prosecution during the course of arguments by referring various telephone numbers belonging to the co-accused persons on whom purportedly the respondent no. 2 was talking.
23. Thus, in totality of circumstances, I am of the considered opinion that there was considerable merit in the plea of the petitioner that the impugned order dated 18.07.2011 granting the bail to the respondent no. 2 is arbitrary and perverse in as much as the complete material has neither been placed before the learned Sessions Judge nor the gravity of the offence which the respondent no. 2 caused has been appreciated by the learned Sessions Judge. The learned Sessions Judge has not taken into account

the criminal background of the other five co-accused persons with whom the respondent no. 2 had come to associate himself with the kidnapping of the present petitioner for ransom. In addition to this, the respondent no. 2 has misused his liberty, and therefore, is not entitled to remain on bail. Accordingly, I set aside the order dated 18.07.2011 granting the bail to the respondent no. 2 and direct the respondent no. 2 to surrender within two days in the Court of the learned ACMM, Dwarka Courts, Delhi.

24. Expression of an opinion hereinabove shall not be treated as an expression on the merits of the case.

V.K. SHALI, J

March 27, 2012
KP