

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

RESERVED ON : April 04, 2013

DECIDED ON : May 17, 2013

+ **CRL.M.C. 820/2013 & CrI.M.A.No.2671/2013 (Stay)**

GOVIND NARAIN JOHARI Petitioner

+ **CRL.M.C. 821/2013 & CrI.M.A.No.2673/2013 (Stay)**

GOVIND NARAIN JOHARI Petitioner

+ **CRL.M.C. 822/2013 & CrI.M.A.No.2675/2013 (Stay)**

GOVIND NARAIN JOHARI Petitioner

+ **CRL.M.C. 823/2013 & CrI.M.A.No.2677/2013 (Stay)**

GOVIND NARAIN JOHARI Petitioner

versus

STATE & ANR.

..... Respondents

Appearance : Mr.Arun Bhardwaj, Sr.Advocate with
Mr.Aman Vachher, Mr.Bhupesh
Narula and Mr.Abhishek Chauhan,
Advocates in all the petitions.

Ms.Fizani Husain, APP for the State.

Mr.S.K.Sethi, Sr.Advocate with
Mr.Harsh Jaidka and Mr.Manoj
Kumar, Advocates for respondent
No.2 in all the petitions.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The petitioner-Govind Narain Joshi has preferred petition under Section 482 Cr.P.C. for setting aside the order dated 15.02.2013 of Learned Addl.Sessions Judge whereby bail granted to him was cancelled.

2. Learned Senior counsel counsel for the petitioner urged that the impugned order cannot be sustained as there was no material to cancel the bail granted by the learned ACMM vide order dated 27.06.2012. The complainant lodged false complaints to harass him after an inordinate delay of four years. She never lodged any complainant with him regarding quality of the articles supplied to her. He was arrested in FIR No.218/2011 and was granted interim bail at first instance. Subsequently, the bail was confirmed. The complainant with malafide intention lodged another FIR No.278/2011 on similar facts. Jewellery worth ₹11 crores is still in her possession. Neither did she make the payment of the jewellery purchased for the last more than one year nor did she return it.

3. Learned Senior counsel for the complainant and learned Additional Public Prosecutor supported the order and urged that there are serious allegations against the petitioner whereby he cheated the innocent

complainant of crores of rupees. The Investigating Officer in FIR No.278/2011 did not get an opportunity to seek custodial interrogation of the accused to find out as to from where the foreign material filled in gems and stones was procured. At the time of grant of interim bail under Sections 465/467/471 IPC were not incorporated. The petitioner is a habitual offender and is involved in several cases detailed in the application. They further urged that the Investigating Officer had obtained valuation report from government approved valuers and the value of the jewellery sold to the complainant was ascertained ₹12-13 lakhs. It is further contended that the petition under Section 482 Cr.P.C. is not maintainable to impugn the order dated 15.02.2013. Reliance has been placed upon by the complainant on *Gajanand Aggarwal Vs.State of Orrisa* (SC 2006 Cr.L.J.4618); *Brij Nandan Jaiswal Vs.Munna* (SC 2009 Cr.L.J.833), *Puran Vs. Ram Bilas* (SC 2001 Cr.L.J.2566); *Noor Islam Rana Vs.State* (DHC, 2012 (2) JCC 1461), and *Nazma Vs.Javed* (2013 (1) SCC (Cri)508). Learned counsel for the petitioner relied on *Dolat Ram & Ors. Vs.State of Haryana* {(1995) 1 SCC 349}; *Manjit Prakash and Ors. Vs.Shobha Devi and Anr.* {(2009) 13 SCC 785}.

4. I have considered the submissions of the parties and have examined the record. FIR No. 218/2011, was lodged by the complainant-
CrI.M.C.Nos.820-823/2013

Mrs.Kiran Nadar on 14.09.2011 under Section 420 IPC. It was mentioned therein that she was dealing with the petitioner since 1999 by purchasing precious Stones, Diamonds, Ruby etc. She started purchasing antique jewellery from him. During December, 1999 to October, 2004, she purchased a lot of jewellery. The petitioner used to bring jewellery himself at her house. She and her husband-Shiv Nadar found the jewellery attractive and purchased it. The petitioner assured that the jewellery sold was embedded with original stones and gems of best quality. She further stated that 'recently' she came to know that the petitioner used to deal in fake jewellery also. She got necklaces checked from gem testing laboratory and found that there was filling material inside the Stones to enhance clarity. She was sold 'Composite' Ruby and not 'natural' Ruby which was of very inferior quality and was of no value. She claimed that she was cheated of ₹1,08,31,225/-.

5. On 13th October, 2011 the petitioner was arrested from Jaipur, Rajasthan. The Trial Court granted three days police custody. On 17.10.2011 after the remand period was over, the petitioner was produced and was admitted to interim bail for a period of one month. The interim bail was extended again till 31.11.2011. On 15.11.2011 FIR No.278/2011 was lodged by the complainant in the same police station on somewhat

similar allegations. It is stated that Crl.M.C.no.3934/2011 is pending for quashing of the said FIR. On 30.11.2011, the petitioner surrendered before the Trial Court after expiry of interim bail. Again he was admitted to interim bail for one day. The said bail was extended thereafter from time to time. On 27.06.2012 the learned Additional Chief Metropolitan Magistrate, Saket, admitted the petitioner to bail in FIR No.218/2011 and 278/2011. Complainant and State filed applications for cancellation of bail under Section 439 (2) Cr.P.C. and vide order dated 15.02.2013 the bail was cancelled.

6. Learned Additional Sessions Judge cancelled the bail on merits observing that learned ACMM without considering the pros and cons of the matter, mechanically granted the bail. There were serious allegations of cheating and forgery against the petitioner. The investigation was at its initial stage. The valuation report from different government approved jeweller showed a vast difference in prices given by the jeweller and the prices charged by the petitioner from the complainant. The invoices bills raised by the petitioner contained forged TIN number. There were several cases of cheating and forgery in Jaipur, Gwalior and Delhi against the petitioner and his antecedents were not clean.

7. I have examined the order of learned ACMM whereby the interim bail was confirmed on 27.06.2012. The Trial Court after considering the rival contentions of the parties minutely admitted the petitioner to bail. While admitting the petitioner to interim bail vide order dated 17.10.2011, the learned ACMM took into consideration the expert opinion placed by the Investigating Officer on record which showed that the stones used in the jewellery were not composite stones of low value and were original treated stones which were normally used in jewellery. The Complainant/State did not challenge the said order. Vide order dated 18.11.2011 the interim bail was extended till 21.11.2011. On 21.11.2011 counsel for the complainant informed about registration of another FIR No.278/2011 at police station NFC. The interim bail was extended for next ten days and the case was fixed for 01.12.2011. On 30.11.2011 in FIR No.278/2011 the petitioner surrendered before the court and was granted one day interim bail and the matter was directed to be listed along with FIR No.218/2011. On 01.12.2011 the petitioner gave a proposal to buy back all the jewellery after deducting taxes paid to the government. Counsel for the complainant sought time to seek instructions from the complainant. The petitioner further submitted that the jewellery worth ₹11-12 crores was lying with the complainant for approval which might

be returned to him so that he may use it to returning the money to the complainant. On joint request, the matter was adjourned for 09.12.2011 and the interim bail was extended. On 21.12.2011, since there was no written proposal given on behalf of the complainant despite repeated opportunities, the court observed that settlement talk had failed and the matter was fixed for 07.01.2012 for arguments on bail applications in both the FIRs. On 13.04.2012 the applications for cancellation of bails were moved.

8. Apparently, the complainant had business/personal transactions with the petitioner since 1999 and had purchased jewellery worth crore of rupees. For the first time, she lodged FIR with the police station NFC, Delhi on 14.09.2011. She never lodged any complaint prior to that with the petitioner having any grievance about the fake/inferior/poor quality of the gems/stones. Without having any correspondence and giving an opportunity to the petitioner to explain the nature of the jewellery sold to her since long, the complainant initiated criminal proceedings. The petitioner was arrested and remained in custody during police remand. Thereafter, he was granted interim bail from time to time which was never challenged by the Complainant/State.

During this period there were talks for settlement which could not

however, materialized. It has come on record that ₹7 cores were deposited by the petitioner in CITY Bank vide RTGS on 17.08.2011 in favour of the complainant. There is nothing on record to show that the Complainant returned the jewellery for which payment of ₹7 cores was made to her by the petitioner. The complainant did not explain the inordinate delay of four years in lodging report after the last purchase of jewellery was made in 2007. The petitioner has given detailed reply regarding various cases registered against him. The cases mostly are with the close relations of the petitioner. In para No.(3) he has also given status of those cases which have either been cancelled or closure reports have been filed. The petitioner has claimed that the jewellery worth ₹11 cores is still lying with the complainant which has not yet been returned and she has not made any payment for the articles purchased by her.

9. The learned ACMM, in my considered view, has taken all relevant considerations in mind while granting bail to the accused. The findings of the learned Additional Sessions Judge that the order of the Trial Court was mechanical in nature cannot be sustained. Under Section 482 Cr.P.C, this Court has ample powers to set aside the order to secure ends of justice. The power of cancellation of bail must be exercised with care and circumspection. Very cogent and overwhelming circumstances

are necessary for an order seeking cancellation of bail. Where there is no variation of the terms of the order granting bail, cancellation is not justified. It should not be done in routine manner as it jeopardizes the personal liberty of the person. While considering an application for cancellation of bail the court ordinarily looks for some supervening circumstances which would reflect that the liberty granted to the accused was misused but none exists in the present case.

10. In the light of the above discussion order dated 15.02.2013, cancelling bail of the petitioner, is set aside. The petitioner shall remain on bail as per the order of the learned ACMM.

11. The petitions and all pending applications stand disposed of accordingly.

(S.P.GARG)
JUDGE

May 17, 2013

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