

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **CRL.M.C. 2774/2013**

Decided on 19.07.2013

IN THE MATTER OF :

JAIVIR SHARMA

..... Petitioner

Through: Mr. K.B. Andley, Senior Advocate with
Mr. Jaivir Sharma, Advocate

versus

D.N. TANEJA AND ANR.

..... Respondents

Through: Mr. Naveen Sharma, Addl. PP for the
respondent No.2/State.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present petition has been filed by the petitioner under Section 439(2) read with Section 482 Cr.PC praying *inter alia* for cancellation of the bail granted to the respondent No.1 vide order dated 05.03.2013 passed by the learned ASJ in case FIR No.76/2012 under Sections 376/354/328/342/506/34 IPC registered at Police Station: Barakhamba Road. The petitioner also seeks quashing of the order dated 30.05.2013 passed by the learned ASJ, rejecting his application for cancellation of the respondent No.1's bail.

2. At the outset, Mr. Andley, Senior Advocate for the petitioner has been requested to address the Court on the *locus standi* of the petitioner to file the present petition when he is admittedly not related to the prosecutrix in any manner and nor has he been engaged by the prosecutrix as a counsel in the present FIR. Counsel for the petitioner responds by stating that the petitioner is a practicing advocate and he relies upon a judgment of the Supreme Court in the case of R. Rathinam vs. the State and Anr. reported as **AIR 2000 SC 1851** to contend that an application for cancellation of bail is maintainable by any member of the public and that the High Court can take *suo moto* notice of such a complaint and pass appropriate orders if it is satisfied on the merits of the case.

3. Learned counsel for the petitioner states that the impugned order dated 05.03.2013 granting anticipatory bail to the respondent No.1 deserves interference for the reason that when arguments were being addressed on the application filed by the respondent No.1 for grant of anticipatory bail, the court below was not properly assisted by the Investigating Officer and further, at that time, the trial court had not been apprised of the judgment of the High Court dated 18.02.2013 passed in CrI.MC 552/2013 filed by the respondent No.1 herein praying *inter alia* for setting aside of the order dated 17.12.2012 passed by the learned ASJ, who had upheld the order dated 17.11.2012 passed by the learned Metropolitan Magistrate summoning him

in the FIR, and for quashing of the aforesaid FIR. Lastly, learned counsel for the petitioner submits that the respondent No.1 is a very influential person and has high contacts and it is likely that he will tamper with the evidence and influence the prosecutrix to depose in his favour and therefore, the bail that has been granted to him, ought to be cancelled.

4. *Per contra*, learned Addl. PP opposes the present petition and states that the facts of the case do not deserve any interference in the impugned order dated 05.03.2013 granting anticipatory bail to the respondent No.1. He states that the FIR was lodged on 07.06.2012 at the instance of the prosecutrix, who had stated that the respondent No.1 had tried to molest her. However, in the course of the investigation, the prosecutrix had addressed a letter dated 26.07.2012 to the Investigating Officer that she did not want to pursue the aforesaid complaint and she had expressed regret for having levelled such allegations and wanted to close the matter. Learned Addl. PP submits that after the investigation, a closure report had been filed before the learned Metropolitan Magistrate. However, the learned Metropolitan Magistrate had perused the record and was of the opinion that there were sufficient allegations levelled in the FIR and in the statements recorded by the Investigating Officer for taking cognizance of the offence against the respondent No.1/accused and had directed that the accused be summoned. Further, the learned Metropolitan Magistrate had issued a notice

to the prosecutrix, who had appeared and had stated that she did not want to file any protest petition against the closure report.

5. Aggrieved by the aforesaid order of summoning passed by the learned Metropolitan Magistrate, the respondent No.1 had preferred a criminal revision petition before the learned ASJ, which was dismissed on 17.12.2012. The aforesaid order dated 17.12.2012 passed by the learned ASJ was assailed by the respondent No.1 before the High Court by filing a petition under Section 482 Cr.PC registered as Crl.M.C. 552/2013. The said petition was dismissed as being devoid of merits vide judgment dated 18.02.2013. While passing the aforesaid judgment, the Court had also made some observations with regard to the manner in which the investigation had been conducted in the present case. Aggrieved by the aforesaid adverse observations made by the High Court, respondent No.1 had preferred an appeal before the Supreme Court and though the order passed by the Supreme Court has not been placed on record, learned counsel for the petitioner informs the Court that the Supreme Court had directed that the observations made by the High Court in the order dated 18.02.2013 shall not be taken note of by the courts below at any stage of the proceedings. Learned Addl. PP states that after the aforesaid revision petition filed by the respondent No.1 was dismissed, the Investigating Officer had continued with

the investigation and the charge-sheet is likely to be filed in the very near future.

6. As regards the application filed by the respondent No.1 for grant of anticipatory bail in the FIR, records reveal that the same was considered by the learned ASJ on 05.03.2013 and after taking into consideration his advance age and his medical condition and further, having regard to the fact that when a notice had been issued to the complainant on the closure report, she had stated that she did not wish to file any protest petition in response to the cancellation report and additionally, during the investigation, the complainant had submitted an application to the SHO, Police Station: Barakhamba Road stating inter alia that she had regretted having made allegations of rape against the respondent No.1 and that she did not wish to persist with the allegations, the respondent No.1 was granted protection under Section 438 Cr.PC.

7. Learned Addl. PP informs the Court that ever since the passing of the aforesaid order, no report has been received with regard to any misuse or abuse of the indulgence granted to the respondent No.1. Further, there is no report that he has threatened the prosecutrix or any of the witnesses or has breached any of the conditions of the anticipatory bail. He also points out that the CD that the prosecutrix had furnished to the police had been

sent to the FSL for analysis and as per the analysis report, the said CD is not doctored, but on its examination, the same did not reveal any molestation or rape of the prosecutrix. The aforesaid fact was also taken note of by the learned ASJ, while allowing the application filed by the respondent No.1 for grant of anticipatory bail.

8. Aggrieved by the order dated 05.03.2013 granting anticipatory bail to the respondent No.1, the petitioner herein had filed an application before the learned ASJ for cancellation of bail. After hearing the petitioner, the learned ASJ had observed that the application filed by him was not maintainable as he is not related to the prosecutrix in any manner and merely because he is a member of the Bar does not entitle him to claim a *locus standi* to challenge the order granting anticipatory bail to the respondent No.1. Further, the facts in the case of R. Rathinam (supra) as relied upon by the petitioner were also taken note of and it was observed that the said judgment did not have any application to the facts of the present case. The contention of the counsel for the petitioner that material facts had been concealed at the time of arguing the bail application of the respondent No.1 on 05.03.2013, was also turned down by the learned ASJ, who had observed that the grounds considered while granting bail to the respondent No.1 could not be reviewed by him and further, the State had not challenged the grant of bail and

therefore, the allegations of the petitioner that the respondent No.1/accused is likely to abscond or influence the witnesses, was not borne out.

9. This Court has considered the submissions made by the counsels for the parties and has carefully examined the facts of the case in the light of the judgment dated 18.02.2013 passed in Crl.MC 552/2013, the order dated 05.03.2013 granting anticipatory bail to the respondent No.1 as also the order dated 30.05.2013 passed by the learned ASJ, rejecting the application filed by the petitioner for the cancellation of the bail granted to the respondent No.1 on 05.03.2013.

10. It may be observed at the outset that the petitioner herein has not been able to establish his *locus standi* to file the present petition. He is neither related to the prosecutrix, nor had he been engaged by her as a counsel in the case. In fact, he is a rank outsider. Merely because the petitioner is a practicing advocate can hardly be treated as a sufficient ground entitling him to file the present petition, when he has failed to demonstrate any extenuating circumstance to this Court for seeking interference in the order dated 5.3.2013. Reliance placed by learned counsel for the petitioner on the decision of the Supreme Court in the case of R. Rathinam (supra) cannot be of any assistance for the simple reason that even in the said case, the court had held that the powers conferred on

the High Court under Section 439 (2) of the Cr.PC can be invoked by the State or the Investigating Agency or the public prosecutor and the aggrieved party but for the Court to *suo moto* exercise such a power, the petitioner has to satisfy the court and make out a fit case for doing so. In the present case, the petitioner has not demonstrated any element of public interest for seeking revocation of the bail order.

11. In the case of R. Rathinam (supra), the Supreme Court had referred to the background in which the petitioners therein had approached it and had noted that a carnage had taken place in a village in Madurai District, resulting in the death of six persons belonging to a particular community. Aggrieved by the order of releasing some accused on bail, a group of seventy five advocates had challenged the correctness of the order for grant of bail, which had been turned down by the Madras High Court. It was in the aforesaid backdrop that the Supreme Court had opined that there was public interest involved and the constitutional rights of the parties needed to be settled. In the said context, it was observed that it is open to the High Court to cancel the bail order, if it feels the reasons stated in the petition are sufficient for doing so and therefore, such a petition ought not be rejected outright on the ground of maintainability. This is not so in the present case. There is no public interest involved for the petitioner to have filed the present petition for seeking the cancellation of the bail order passed in

favour of the respondent No.1. Further, no special circumstances have been indicated by the petitioner for this Court to *suo moto* exercise the powers vested in it under Section 439(2) of the Cr.PC for the cancellation of the bail order granted by the trial court in favour of the respondent No.1.

12. It is settled law that while examining an application for cancelation of bail, the Court is reviewing a decision that has already been made and it can, by and large, be permitted only if by reason of the supervening circumstances, it would no longer be conducive to a fair trial to allow the accused to retain his freedom during the trial (Ref: Delhi Administration vs. Sanjay Gandhi reported as **AIR 1978 SC 961**). Such a power is extraordinary in nature and must be exercised appropriately when by preponderance of probability, it is evident that the accused is interfering with the course of justice by either tampering with the evidence or threatening the witnesses. (Ref: Ram Govind Upadhyay vs. Sudharshan Singh reported as **AIR 2002 SC 1475**). Thus bail once granted cannot be cancelled mechanically [Ref: Dolat Ram and Ors. vs. State of Haryana reported as **(1995) 1 SCC 349**]. There must be a clear case of an abuse of the indulgence/privilege granted to the accused which has not been established by the petitioner in the present case.

13. Learned Addl. PP for the State has also submitted that the conduct of the respondent No.1 has not been in breach of the order of the anticipatory bail and nor has he extended any threats to any witness or tried to interfere in the investigation in any manner for the State to seek cancellation of his bail order.

14. The submission made by learned counsel for the petitioner that the report submitted by the Investigating Officer before the learned ASJ at the time of addressing arguments on the anticipatory bail application of the respondent No.1 did not make a mention of the quashing petition that had been filed by the respondent No.1 and was dismissed by the High Court on 18.02.2013, has been duly dealt with in the order dated 05.03.2013 passed by learned ASJ. In fact a copy of the status report submitted by the Investigating Officer at that time has been placed on record and a perusal thereof shows that a mention of the dismissal of the quashing petition filed by the respondent No.1 was made in the said report. For the counsel for the petitioner to urge that the said fact has been noted in long hand in the report as against the rest of the report which had been got typed out by the Investigating Officer, can hardly be treated as a sufficient ground for seeking cancellation of the bail order granted in favour of the respondent No.1.

15. It may be emphasized that the order of taking an accused back in custody has to be passed with great care and caution. It is an extraordinary power vested in the court and ought to be exercised in appropriate cases when it is quite apparent that the liberty granted to him has been abused. In the given facts and circumstances, the Court is not inclined to entertain the present petition, both, on the ground of lack of *locus standi* of the petitioner and on merits. The petitioner has miserably failed to demonstrate as to how the respondent No.1 has interfered in the investigation or tampered with any witness or hampered the course of justice.

16. At this stage, learned counsel for the petitioner states that the petitioner is actually aggrieved by the adverse remarks made by the learned ASJ against him while passing the impugned order.

17. It may be pointed out that before the learned counsel for the petitioner had started addressing arguments, the Court had clearly expressed its opinion that the present petition as filed by the petitioner is not maintainable and the learned counsel was requested to consult the petitioner before proceeding to argue the matter. Further, the case was passed over to enable the counsel to consult the petitioner, who was present in Court. On the second call, learned counsel had stated that he had instructions to argue the present petition. Now, after arguments have been

addressed at length and the above order dictated, the petitioner cannot be heard to state that he would be satisfied if the remarks made against him in the impugned order dated 30.05.2013, are expunged. The petitioner has invited a speaking order from the Court on the merits of the case and therefore the above order stands.

18. While concurring with the learned ASJ that the present petition is an abuse of the process of the court and deserves to be dismissed for want of *locus standi* and on merits, the petition is dismissed with costs of ₹10,000/- imposed on the petitioner. The said costs shall be deposited with the Delhi High Court Legal Services Committee within two week from today and proof of payment placed on record.

19. List before the Joint Registrar for compliance of the orders on 30th August, 2013.

JULY 19, 2013
rkb/mk

(HIMA KOHLI)
JUDGE