

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

Reserved on: 21st August, 2014
Date of Decision: 22nd September, 2014

+ CRL. M.C. 1228/2014

YOGESH MALIK Petitioner
Through: Mr. Mohit Mathur, Advocate.

versus

STATE & ANR. Respondents
Through: Mr. Navin Sharma, APP for the State.
Mr. Maninder Singh, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By filing present petition under Section 482 read with Section 439(2) of Code of Criminal Procedure, 1973 (hereinafter after referred to as 'Cr.P.C.') the petitioner has assailed the order dated 20.02.2014 passed by learned Additional Sessions Judge, Patiala House Courts, New Delhi in case FIR No.126/2013 under Sections 120B/406/420/467/468/471 IPC registered at P.S. Connaught Place, New Delhi whereby respondent No.2 was granted anticipatory bail.

2. The contextual matrix of the case as borne out from the FIR are that the complainant, Mr. Yogesh Malik lodged complaint that he

along with his wife, Ms. Ritu Malik came in touch with Mr. Varun Dutta, Mr. Sanjeev Dutta (petitioner) and Ms. Jyoti Dutta through a property dealer in respect of farm house located at Dera Mandi, Tehsil Hauz Khas, New Delhi. Mr. Varun Dutta, co-accused claimed that he had the agreement to purchase dated 20.12.2011 with Mandi Valley Infra Pvt. Ltd. for the land measuring 12 bighas, 12 biswas bearing Mushtill No.26, Khasra No. 5(4-12), 6 (4-16), 15/1 (3-4) situated in the revenue estate of village Dera Mandi. He persuaded the complainant to enter into an agreement for purchase of the said land. Accordingly, the Memorandum of Understanding dated 06.03.2012 was executed which was duly signed by Mr. Varun Dutta and the complainant paid a sum of Rs.20,00,000/- (Rupees Twenty lakhs) by cheque and Rs.5,00,000/- (Rupees Five lakhs) was paid in cash as token money for purchasing the said land. Mr. Varun Dutta assured that the said land was measuring 2.5 acres and he will satisfy the complainant regarding the measurement of the said land. However, he delayed and tried to avoid the measurements of the land even after these repetitive assurances. The complainant got the said land measured on their own and found that it was only 1.3 acres.

3. The complainant also alleged that he had already paid a sum of Rs. 50,00,000/- to Mr. Varun Dutta who in connivance with his father Mr. Sanjeev Dutta (petitioner) and mother were trying to sell a 1.3 acres land claiming it to be a 2.5 acres property. It is also alleged by the complainant that when they asked accused persons regarding measurement Mr. Varun Dutta assured that the complainant should not worry about the said transaction regarding Dera Mandi as

they had various properties to sell, vis-à-vis 3 acres at Triveni Farms in Jaunapur; 2.75 acres Plaza Farms in Sultanpur; approximately 150 sq. yds. Commercial office building in Basant Lok Market, Vasant Vihar, New Delhi; 400 sq. yds. property in Paschim Vihar, Delhi; and 500 sq. yds. in Greater Kailash property. Mr. Varun Dutta, his father and mother had claimed that all the said properties were their personal assets and are belonging to their family and they offered that these properties can be offered for sale instead of the property at Dera Mandi. They further claimed that they require more money for their mega township project in 500 acres, which they claimed was coming up in Sohna, Gurgaon. The accused persons assured the complainant that the amount paid by the complainant will be adjusted in any of the said properties.

4. The complainant has also alleged that the accused persons persuaded them to visit the farm house. On the said visit, Mr. Varun Dutta and Smt. Sunita Gupta who is owner of Plaza Farm House were present and Smt. Sunita Gupta confirmed that she had sold the said Farm House to Mr. Varun Dutta. During the month of April, 2012, when the complainant wanted to see the original documents of Plaza Farm House, Mr. Varun arranged a meeting at coffee shop in Shangrila Hotel, Delhi. The meeting was attended by Smt. Sunita Gupta as well as her husband and they were carrying the original documents of said Farm House. Mr. Varun Dutta handed over the copy of agreement of purchase, which was executed by Smt. Sunita Gupta. On the basis of various meetings with Sunita Gupta and Varun Dutta the complainant and his wife decided to sign the MOU dated 27.05.2012 and paid an

amount of Rs.1 crore by cheque besides the other payments duly made by them. Thereafter, on insistence on behalf of the accused and his family, the complainant ultimately made a further payment of Rs.1 crore through cheque No.116859 issued in the name of Smt. Sunita Gupta after taking necessary precaution of noting on the back of the cheque which read as “Part Payment towards sale of property known as Plaza Farm (Gadaipur) in the name of Mrs. Sunita Gupta wife of Shree Sunil Gupta”. However, after execution of this cheque dated 17.10.2012, drawn on Axis Bank, the accused started delaying meetings for the final payment. On being suspicious, the complainant made the necessary enquiries with Mrs. Sunita Gupta who told them that she never entered into an agreement with the any of the accused and that she has never signed and executed the agreement dated 24.01.2012. They further got to know that cheque No.116859, of Rs.1 crore, dated 17.10.2012, drawn on Axis Bank, got encashed through Oriental bank of Commerce Branch, Rajouri/Kirti Nagar, New Delhi. On further enquiries it was revealed that a fake account in the name of Smt. Sunita Gupta was opened in OBC on 19.10.2012 vide account no. 00222191006795 and the money was withdrawn from the said account for settlement of disputes of Varun Dutta. For this Plaza Farm house and all other claims of the accused and his family including payments towards Dera Mandi property, payments towards the flat of one Aaron Sidhu and the payments for being appointed as a director of a newly incorporated company. In totality the complainant had made a total payment of Rs.5.35 crores i.e. Rs.4.10 crores by way of various cheques dated 07.03.2012, 13.4.2012, 10.5.2012, 29.5.2012, 29.5.2012,

27.6.2012, 1.8.2012, 4.8.2012, 6.8.2012, 8.10.2012, 18.10.2012 and 31.1.2013 and Rs.1.25 crores by way of cash on different dates i.e. Rs.5 lakh on 7.3.2012, Rs.25 lakh on 13.4.2012, Rs.75 lakh on 27.6.2012, Rs.10 lakh on 08.10.2012 and Rs.10 lakh on 31.1.2013.

5. Learned counsel for the petitioner urged that respondent No.2 moved an application for anticipatory bail, which was allowed by learned Additional Sessions Judge vide impugned order dated 20.02.2014 without any cogent reason and relevant materials indicating *prima facie* involvement of respondent No.2 were not taken into consideration. He pointed out that a bare perusal of receipt dated 31.01.2013 issued by respondent No.2 reflects that she had received a sum of Rs.10 lakhs on behalf of her son Varun Dutta. The respondent No.2 is a co-conspirator directly involved in conspiracy and cheating against the petitioner. Also learned Additional Sessions Judge did not impose any condition while granting anticipatory bail to respondent No.2.

6. Mr. Mohit Mathur, learned counsel appearing on behalf of petitioner further submitted that the application for anticipatory bail filed on behalf of respondent No.2 was not maintainable since the application and even the Vakalatnama was not signed by the petitioner but was signed by '*Pairokar*' of respondent No.2.

7. Learned counsel for the petitioner also submitted that while passing the impugned order, learned Additional Sessions Judge did not consider the reasonable apprehension that respondent No.2 is in the habit of fleeing from justice and tampering with the evidence and is

also involved in system fraud.

8. Mr. Mohit Mathur, learned counsel for the petitioner has relied upon case laws such as '**Vivek Pathak vs. State**', Bail Application No.176/2007 decided on 02.02.2007; '**State vs. Anil Sharma**', decided on 03.09.1997; '**Atanu Ghosh vs. State**', 91 (2001) DLT 104; '**Deepa Tracy vs. State**', 2003 (2) JCC 625; '**Vijay Khanna vs. NCT of Delhi**', 104 (2003) DLT; '**Dhiraj Gupta vs. State**', 147 (2008) DLT 174; '**Parvesh Kumar vs. State**', 2012 (4) JCC 2371; '**State vs. Sumit Suri**', 2012 (4) JCC 2281; '**Panchanan Mishra vs. Digambar Mishra**', (2005) 3 SCC 143; '**Devinder Pal Singh vs. State**', Crl. M.C. No.2430/2013 decided on 09.10.2013; '**V. P. Shrivastava vs. State of M.P.**', 2000 Crl. L.J. 2681; '**Bonneswar Dutta & Ors.**', 1998 Crl. L.J. 1383; Office order bearing No.311/E-V/Estt./DHC dated 24.02.2007 and circular dated 26.10.2009 issued by this Court.

9. Learned counsel for respondent No.2 contended that the application is not maintainable as provisions of Section 439(2) read with Section 482 of Cr.P.C. are not applicable in the facts and circumstances of the case. He further states that the case in hand does not fall within the parameters and ambit of the said provisions. The filing of an application for anticipatory bail through a '*Pairokar*' cannot be taken as ground for cancellation of anticipatory bail.

10. Learned counsel for respondent No.2 has pointed out that at the time of moving an application for anticipatory bail before learned Sessions Judge, Delhi, respondent No.2 was abroad and LOC was opened against her. Therefore, an application for anticipatory bail was

filed through '*Pairokar*' and request for cancellation of LOC was made so that respondent No.2 can come back to India and join the investigation. After considering the matter, learned Additional Sessions Judge, Delhi suspended the LOC issued against her till 20.02.2014 and directed the investigating officer to intimate the authorities concerned to cancel the LOC. The respondent No.2 moved an application for interim bail and vide order dated 15.02.2014 passed by learned Additional Sessions Judge, Delhi, she was directed to appear at the time of hearing of application for bail. The respondent No.2 challenged the said order by filing Criminal M.C. No.819/2014, which was disposed of by this Court vide order dated 19.02.2014 and it was observed that the trial court will decide the application for anticipatory bail without insisting on personal appearance of the petitioner. Learned counsel for respondent No.2 submits that since the respondent No.2 was not in India and there was an apprehension of her arrest, therefore, respondent No.2 assigned a '*Pairokar*' to move an application for anticipatory bail.

11. Learned APP for the State submitted that the allegations against the petitioner is that a sum of Rs.10,00,000/- (Rupees Ten lakhs) were credited in the account of the petitioner. The co-accused Varun Dutta, who is son of the petitioner alongwith the petitioner and Sanjeev Dutta husband of the petitioner have cheated the complainants.

12. As per status report filed on behalf of State, on 22.02.2014, respondent No.2, Jyoti Dutta came to the office of Crime Branch and deposited her passport with the investigating officer and started

weeping instead of replying the queries made to her.

13. I have carefully considered the submissions made by learned counsel for the petitioner, learned APP for the State and learned counsel for respondent No.2.

14. In '**Gurcharan Singh vs. State (Delhi Administration)**', 1978 (1) SCC 118, it was observed that two paramount consideration while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and is tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case.

15. In **Kalyan Chandra Sarkar's** case (*supra*), it was held:-

"8. Mr K.T.S. Tulsi, learned Senior Counsel appearing for the first respondent contended that the observation of this Court in its judgment dated 25-7-2001 [*Rajesh Ranjan v. State of Bihar*, (2000) 9 SCC 222] that while granting bail under Section 439 of the Code the High Court is also bound by the conditions mentioned in Section 437(1)(i) of the Code is per incuriam being contrary to the wording of the section itself. He submitted that the observations of this Court in the said judgment that the conditions found in Section 437(1)(i) are sine qua non for granting bail under Section 439 is arrived at by this Court on a wrong reading of that section. He further submitted that the power of the Sessions Court and the High Court to grant bail under Section 439 is independent of the power of the Magistrate under Section 437 of the Code. Learned counsel also pointed out that Section 437 imposes a jurisdictional embargo on grant of bail by courts other than the courts mentioned in Section 439 of the Code in non-bailable offences, and such a restriction is

deliberately omitted in Section 439 of the Code when it comes to the power of the High Court or the Court of Session to grant bail even in non-bailable offences. In this regard, he placed reliance on a judgment of the High Court of Madhya Pradesh delivered by Faizanuddin, J., as His Lordship then was, in *Badri Prasad Puran Badhai v. Bala Prasad Mool Chand Sahu* [1985 MPLJ 258] .”

16. It is a settled law that bail granted can be cancelled on the ground which has arisen after the bail was granted. It is generally presumed that at the time of hearing of the bail application, the prosecution has raised all possible grounds which could go against the accused in the matter of bail and, therefore, when once bail has been granted to the accused, the prosecution cannot have the bail cancelled on some circumstances which may have existed before the grant of bail.

17. The ground of cancellation of bail and grounds of rejection of bail are two different circumstances and hence the approach of the Court should also be different. At the time of hearing the bail application, the Court looks at the possibilities of the violation of bail conditions and the Court has to be more open and flexible, whereas while hearing the cancellation application, the Court has to be more rigid and it has to examine not only the possibility of violations but whether the actual violation has taken place or not. The Court should be more rigid here and actual proof of violation is required.

18. In **Ram Charan's** case (*supra*) relied upon by counsel for the respondent, it was held:

“4. It is not a case of the State before this Court nor was it before the High Court that the appellant abused, in any manner, the order suspending his sentence pending appeal and directing his release on bail. It is well settled that different considerations have to be weighed while considering an application for grant of bail and while considering an application for cancelling the bail already granted. It is apparent from the impugned order cancelling bail that the bail was cancelled on reappreciation of the facts of the case. In the order dated 11-1-2002, sentence was directed to be suspended noticing the submission of the counsel for the appellant that the overt act attributed to him in evidence before the Court was wholly contradictory to what was stated by the witnesses in their statements before the police. In the impugned order, the High Court has noticed on a perusal of evidence that the deceased had died of several cutting and stab wounds and the appellant is attributed to have given knife-blows to the deceased and it is in this context, the impugned order mentions that the order for bail passed on 11-1-2002 was based on some misapprehension of factual position.

5. The order of bail can be cancelled on existence of cogent and overwhelming circumstances but not on reappreciation of evidence as was done by the High Court. No supervening circumstances have been brought to our notice which may warrant the recalling of the order dated 11-1-2002. The principles that have to be kept in view for recalling the order of bail are set out in *Dolat Ram v. State of Haryana* [(1995) 1 SCC 349 : 1995 SCC (Cri) 237].”

19. In **Dolat Ram's** case (*supra*), it was held:-

“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 for 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

20. In the case in hand, there is no allegation that the respondent No.2 misused the liberty of bail. No incriminating evidence has been brought by the petitioner which could form an adverse opinion regarding the conduct of respondent No.2 after the grant of bail. At the time of dealing with the question of cancellation of bail, the only issue which is germane is whether the accused has misused the conditions of bail or tampered with the evidence or not. Where there is no violation

of terms of order granting bail, cancellation is not justified.

21. The submissions of learned counsel for the petitioner that the application for anticipatory bail was not signed by the petitioner and the same was signed by '*Pairokar*' is not sufficient to cancel the bail already granted to respondent No.2.

22. For the aforesaid reasons, this Court is of the opinion that under the facts and circumstances of the present case, no substantial rationale lies to cancel the anticipatory bail granted to respondent No.2 by learned Additional Sessions Judge, New Delhi vide order dated 20.02.2014. Accordingly, the petition fails, deserves to be dismissed and the same is hereby dismissed.

Crl. M.A. No.4144/2014

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

SEPTEMBER 22nd, 2014
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