

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

Reserved on: 22nd May, 2014

% **Date of Decision: 26th May, 2014**

+ **CRL.M.C. 1542/2014**

ANKIT SHARMA Petitioner
Through: Mr. D.R. Jain & Mr. Neeraj Jain,
Advs.

versus

STATE OF NCT OF DELHI & ANOTHER Respondents
Through: Mr. Siddharth Luthra, ASG with
Mr. Pramod Kumar Dubey, Adv.
for the State
I.O. Insp. Dinesh Kumar.
Mr. Joy Basu, Sr. Adv. with
Mr. Kapil Sankhla & Mr. D.S.
Kohli, Advs. for R-2

+ **CRL.M.C. 1766/2014**

STATE OF NCT OF DELHI Petitioner
Through: Mr. Siddharth Luthra, ASG with
Mr. Pramod Kumar Dubey, Adv.
for the State
I.O. Insp. Dinesh Kumar.

versus

GOPAL GOYAL KANDA Respondent
Through: Mr. Joy Basu, Sr. Adv. with
Mr. Kapil Sankhla & Mr. D.S.
Kohli, Advs.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. The petitioner Ankit Sharma has filed petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') for cancellation of bail granted to Gopal Goyal Kanda in case FIR No.178/2012 registered at PS Bharat Nagar, Delhi by learned Additional Sessions Judge (North West), Rohini Courts, Delhi vide order dated 04.03.2014.

2. State of NCT of Delhi has filed petition under Section 482 C.P.C. bearing CrI.M.C. No.1766/2014 for quashing of order dated 04.03.2014 passed by learned Additional Sessions Judge (North West), Rohini Courts, Delhi whereby bail was granted to the respondent.

3. Since both the petitions have arisen out of FIR No.178/2012 registered at PS Bharat Nagar and are against common order dated 04.03.2014 passed by learned Additional Sessions Judge (North West), Rohini Courts, Delhi, therefore, both the petitions are disposed of by this common order.

4. Shorn off unnecessary details, the facts of the case are that the deceased (name of victim is being withheld hereinafter keeping in light the provisions of Section 228A IPC) allegedly committed suicide on the intervening night of 4-5th August, 2012 at her residence House No.4-C, Block No.1, Pocket-B, Ashok Vihar, Phase-III, Delhi. The deceased left two suicide notes purported to be dated 04.05.2012 and 04.08.2012 wherein, she held respondent No.2 and co-accused

responsible for compelling her to end her life. On 05.08.2012, Smt.Anuradha Sharma, mother of the deceased lodged FIR No.178/2012 under Sections 306/34 IPC. The respondent, Gopal Goyal Kanda was arrested on 07.08.2012 and co-accused Aruna Chadha was arrested on 08.08.2012. On completion of investigation, charge-sheet for the offence under Sections 306/506/201/120B/466/467/468/469/471/34 IPC and Section 66A of IT Act was filed. Thereafter supplementary charge-sheet was filed against Chanshivroop Singh. The respondent moved an application for anticipatory bail bearing Bail Appl. No.5677/12 which was dismissed by learned Additional Sessions Judge-II, Outer District, Rohini Courts, Delhi vide order dated 09.08.2012. The respondent moved another application seeking anticipatory bail bearing Bail Appl. No.1188/2012 before this Court which was dismissed by this Court vide order dated 17.08.2012.

5. The learned Additional District and Sessions Judge, N/W District, Rohini, Delhi passed an order for framing of charge for the offences under Sections 109/466/471/468/469/306/376/377 read with Section 120B IPC and Section 66 of IT Act read with Section 120B IPC against both the accused vide order dated 10.05.2013. The co-accused Aruna Chadha challenged order dated 10.05.2013 and filed Crl.Rev.P. No.305/13 before this Court. Vide order dated 25.07.2013, this Court partly allowed the revision petition to the extent that the framing of charge for the offence punishable under Section 376/109 and Section 377/109 IPC was set aside.

6. The co-accused, Aruna Chadha moved an application seeking clarification of order dated 25.07.2013 passed by this Court in CrI.M.A. No.14966/2013 and 14965/2013 and in CrI.Rev.P. No.305/2013. The said applications were disposed of by this Court vide order dated 22.11.2013 and it was observed that the charges for the offence under Sections 376/377 IPC are set aside qua both the accused persons.

7. Vide impugned order dated 04.03.2014, passed by learned Additional Sessions Judge (North West), Rohini Courts, Delhi, the respondent was admitted to regular bail. On 04.03.2014, an application was filed by State on behalf of brother of victim for institution of an inquiry against Dr.Anuj Mittal. It was submitted on behalf of respondent that bail application may be decided on its own merits. The Trial Court observed that the report on the said application, filed by brother of victim be taken up on 15.03.2014 since the issue in the said application was regarding the treatment for the health of wife of the accused.

8. Learned ASG contended that the respondent moved an application for bail bearing Bail Appl. No.7037/2012 which was dismissed by Shri S.K. Sarvaria, District and Sessions Judge/Incharge N/W, Rohini Courts, Delhi vide order dated 20.09.2012. He further submits that the petitioner moved an application under Section 439 read with Section 482 Cr.P.C. bearing Bail Appl. No.1565/2012 which was dismissed by this Court vide order dated 19.11.2012. He also submits that the respondent preferred a petition for Special Leave to

Appeal (Crl.) No.10133/2012 against order dated 19.11.2012 before Hon'ble Supreme Court of India. Vide order dated 22.03.2013, Special Leave Petition was dismissed by Hon'ble Supreme Court of India. He pertinently submits that the respondent was admitted to interim bail till 04.10.2013 by Additional Sessions Judge/Spl. FTC (N/W District), Rohini Courts, Delhi vide order dated 04.09.2013. Thereafter, the request of respondent for extension of interim bail which was granted vide order dated 04.09.2013, was dismissed by Additional Sessions Judge, N/W District, Delhi vide order dated 03.10.2013. He further submits that the respondent moved an application under Section 439 Cr.P.C. which was dismissed by learned Additional Sessions Judge, Rohini, Delhi vide order dated 14.10.2013. He urged that the application for anticipatory bail filed on behalf of the respondent was dismissed by learned Additional Sessions Judge, Rohini, Delhi on 04.03.2014. There is no change of circumstances for grant of bail to the respondent.

9. Learned ASG for the State also submitted that evidence was started in May 2013 and the respondent is trying to delay the trial. He has also pointed out that co-accused Chanshivroop Singh was declared proclaimed offender. Mr.Luthra, learned ASG for the State further submitted that the respondent moved an application for bail with uncleaned hands. The respondent had filed medical record i.e. OPD slips regarding ill health of the wife of respondent/accused namely, Smt.Saraswati Devi. As per purported medical record of the wife of respondent, she was allotted OPD slip bearing No.356250/2012 for her

visits dated 07.09.2012, 21.09.2012, 19.10.2012, 21.11.2012, 19.12.2012, 23.01.2013, 20.02.2013, 22.03.2013, 17.04.2013, 22.05.2013, 26.06.2013, 24.07.2013, 16.08.2013 and another OPD slips bearing No.301884/2013 for visits dated 23.08.2012, 07.09.2013, 21.09.2013, 19.10.2013, 04.11.2013 and 31.12.2013 issued by Deen Dayal Upadhyay Hospital. However, on verification from the hospital, it was revealed that OPD slip bearing No.356250/2012 was issued in the name of one Meera Devi and not in the name of the wife of respondent/accused. On inquiry, it was revealed that no record existed for OPD slip bearing No.301884/2013. According to learned ASG for the State, the very genuineness of the claims of sickness of the wife of respondent is questionable. He also pointed out that there is no reference of any test being conducted as per medical records relied upon by the respondent and the diagnosis made by the doctor. The treatment continued for about 1 ½ years but the doctor never advised her for any test for recording of blood pressure or conduction of ECG, X-ray, Echo, USG, CT scan or MRI. The respondent had produced false medical record with a view to facilitate his release on bail. The ATO, PS Bharat Nagar issued a notice under Section 91 Cr.P.C. for conducting inquiry regarding the treatment of the wife of the respondent. It is also submitted that on 04.03.2014, an application moved by the State before learned Additional Sessions Judge for institution was filed for inquiry against Dr. Anuj Mittal in order to verify the correctness of medical record which was placed by the accused in support of his application for bail, but the said request was declined by the trial Court and the respondent was admitted to bail.

10. Learned ASG for the State urged that the material collected during investigation shows that respondent played an important part in the commission of crime. The respondent avoided his arrest when the FIR was registered. The respondent destroyed vital pieces of material evidence including two mobile phones which was earlier used by him. The respondent is a powerful and influential person as he is a member of Legislative Assembly and is a man of means and substance. There is likelihood that the respondent may tamper with the evidence.

11. Learned ASG for the State has relied upon judgment in **Kishore Samrite vs. State of U.P. & Ors.**, (2013) 2 SCC 398 and **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.**, (2004) 7 SCC 528.

12. Learned counsel for the petitioner, Ankit Sharma, submitted that earlier application seeking bail filed by the respondent was dismissed by learned Additional Sessions Judge, Rohini, Delhi. The application for anticipatory bail as well as regular bail filed by the respondent was dismissed by this Court as there was no change in circumstances and there was no fresh ground for grant of bail. He has also pointed out that the request of brother of the deceased for sending the medical papers of wife of the respondent for verification was declined by the Trial Court and the respondent was admitted to bail without waiting for the verification report of the medical documents of the respondent.

13. Learned counsel for the petitioner has relied upon judgments in **State of Maharashtra vs. Captain Buddhikota Subha Rao**, AIR 1989 SC 2292, **Kishore Samrite vs. State of U.P. & Ors.**, (2013) 2 SCC 398, **State through CBI vs. Amarmani Tripathi**, VII(2005) SLT 160, **Prahlad Singh Bhati vs. NCT of Delhi & Anr.**, AIR 2001 SC

1444, Gurcharan Singh & Ors. vs. State (Delhi Administration), AIR 1978 SC 179, A.V. Papayya Sastry vs. Govt. of A.P. & Ors., (2007) 4 SCC 221 and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr., (2004) 7 SCC 528.

14. Per contra, learned Senior Counsel for the respondent/accused urged that the accused surrendered on 17.08.2012 and the respondent remained in judicial custody except the period of interim bail, for a period of one month granted by Trial Court vide order dated 04.09.2013. The respondent had not misused the liberty of interim bail and had surrendered after expiry of the period of interim bail.

15. Learned Senior Counsel for the respondent also urged that the petitioner filed a Petition for Special Leave to Appeal (Crl.) No.10133/2012 which was dismissed by Hon'ble Supreme Court of India and the respondent was permitted to move an application for bail before the Court in seisin of the trial. The charges were framed by learned trial Court on 10.05.2013. Thereafter, co-accused filed revision petition against the order on charge i.e. Crl. Rev.P. No.305.2013. Vide order dated 25.07.2013, the offences under Sections 376/109 and Section 377/109 were set aside by this Court. Vide order dated 22.11.2013 on an application filed by co-accused Aruna Chadha, this Court clarifies that the charges for the offence under Section 376/109 and 377/109 IPC were set aside qua both the accused persons. Thereafter amended charge was framed by the Trial Court.

16. Learned Senior Counsel for the respondent further submitted that the application is based on conjectures. There is no allegation of

violation of any of the conditions imposed by the Trial Court. He also submitted that the delay in trial is not attributable to the respondent. He also submitted an application under Section 309 Cr.P.C. was filed on behalf of the State. He has referred to order dated 03.12.2012 passed by learned ACMM/NW, Rohini, Delhi wherein it was observed that there is not even a single adjournment caused on the part of the Court, even the efforts were made to proceed in the matter almost on day to day basis. It was also observed that a perusal of record reveals that not on a single day of hearing the counsels for the accused were unavailable. Counsel for the accused were available on each and every date of hearing since the filing of charge-sheet. It was also observed that on few days of hearing, learned Special Public Prosecutor for the State was not present and on some dates, the Investigating Officer was absent. According to him, the delay is on the part of the prosecuting agency. He also pointed out that there are strictures passed by Additional Chief Metropolitan Magistrate, Rohini, Delhi as well as by Shri M.C. Gupta, learned Additional Sessions Judge, Rohini, Delhi.

17. Learned counsel for the respondent has relied upon judgments in **Sanjay Chandra vs. Central Bureau of Investigation**, (2012) 1 SCC 40, **H.B. Chaturvedi vs. CBI**, 2010 (171) DLT 223, **Avtar Singh vs. State of Punjab**, (2010) 15 SCC 529, **Laloo Prasad alias Laloo Prasad Yadav vs. State of Jharkhand**, (2002) 9 SCC 372, **Deepak Shubhashchandra Mehta vs. CBI & Anr.**, (2012) 4 SCC 134, **Dolat Ram & Ors. vs. State of Haryana**, (1995) 1 SCC 349, **Ramcharan vs. State of M.P.**, (2004) 13 SCC 617, **Nityanand Rai vs. State of Bihar & Anr.**, (2005) 5 SCC 178, **Hazari Lal Das vs. State of West Bengal**

& Anr.,(2009) 10 SCC 652, Jai Kumar vs. Balhari & Anr., II(2011) SLT 302, Rahmita vs. State & Ors., I(2012) VIII AD (Delhi)376, Govind Narain Johari vs. State & Anr., 2013 V AD (Delhi)179 and Suresh Kalmadi vs. CBI, 2012 (187) DLT 575

18. I have bestowed my thoughtful consideration to the submissions made by learned ASG for the State, counsel for the petitioner Ankit Sharma and senior counsel for the respondent.

19. In **Sanjay Chandra's** case (*supra*) in para 19 of the judgment it was observed that earlier application filed on behalf of the accused before framing of charges was dismissed by the Supreme Court of India. After framing of charges and commencement of trial, the application cannot be compared with the earlier order and it cannot be said that there are no change of circumstances. At this juncture, it is relevant to reproduce the observations in the said judgment:-

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is

the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. XXXXXXXX

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

26. XXXXX

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

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40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

41. This Court in *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] observed that two paramount considerations, 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 his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or

arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.

20. 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].”

21. 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].”

22. 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.”

23. 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.

24. 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.

25. It is pertinent to mention here that while dismissing Special Leave to Appeal (Crl.) No.10133/2012, Hon'ble Supreme Court of India has observed that the petitioner if so advised may file an application for bail before the Court in seisin of the trial. In case such an application is filed, the Court in seisin of the trial shall consider and dispose of the same on its own merit.

26. In the instant case, the earlier application for bail filed by the petitioner was dismissed before framing of the charges. After framing of amended charges on 06.12.2013 and commencement of trial, this was first application under Section 439 Cr.P.C. filed by respondent/accused. In view of law laid down in **Sanjay Chandra's** case (*supra*), the application for bail cannot be compared with the earlier orders and cannot be said that there are no change of circumstances.

27. As regards, medical certificate submitted by the respondent, it may be mentioned that the respondent was not admitted to bail on medical grounds of the wife of respondent. He was admitted to bail by

the trial Court after considering the facts and circumstances of the case. There is no allegation that respondent has violated the conditions of bail granted to the respondent. Moreover, the State has filed an additional affidavit dated 29.04.2014 of DCP, North West District, Delhi Police. Along with the additional affidavit, copy of enquiry report conducted by the Enquiry Committee comprising of Dr.P.K. Pathak, HOD (Medicine), Dr.A.K. Garg, CMO (SAG) Medicine and Dr.Rati Makkar, HOD Skin Deptt. was filed. The Enquiry Committee opined that treatment records provided and the statement of Dr.Anuj Mittal was reviewed by the committee which is of the opinion that the treatment provided by Dr.Anuj Mittal was adequate and justified. Mismatch in the number and name in the first OPD registration slip can be due to some unexplained technical flaw in the registration process.

28. No doubt, the offence with which respondent/accused is charged is serious in nature, but every accused is presumed innocent until proven guilty beyond reasonable doubt and every accused person has the right to enjoy the bail granted to him unless there is evidence to show the abuse of this right given to him. It is re-emphasized by this Court that at the time of dealing with the question of cancellation of bail of an accused, the only issue which is germane is whether the accused has misused the conditions of bail or tampered with the investigation or the evidence or not.

29. In the instant case, no incriminating evidence has been brought by the petitioner which could create an adverse opinion regarding the conduct of respondent after the grant of bail.

30. The power of cancellation of bail must be exercised with care and circumspection of cogent and overwhelming circumstances which are necessary for an order seeking cancellation of bail. Where there is no violation of the terms of order granting bail, cancellation is not justified. The bail already granted should not be cancelled in a routine manner as it jeopardize personal liberty of the person. The petitioner, Anikit Sharma, has not been able to show any supervening circumstance which would reflect that the liberty granted to the respondent was misused.

31. In the light of aforesaid discussion, the petition filed by petitioner Ankit Sharma as well as petition filed by the State are dismissed.

Crl.M.A. No. 7398/2014 in CRL.M.C. 1766/2014

32. This is an application filed by the respondent herein for issuance of appropriate direction restraining dissemination of any information in relation to case FIR No.178/2012 under Sections 306/506/201/120B read with Section 34 IPC and Section 66 of the I.T. Act registered at P.S. Bharat Nagar, Delhi till conclusion of the trial.

33. Learned counsel for respondent/applicant submitted that charges for the offences under Section 376/109 IPC and 377/109 IPC were dropped by this Court in Crl.Rev.P.No.305/2013 vide order dated 25.7.2013. Thereafter the application for clarification was filed and vide order dated 22.11.2013, it was observed that the order framing charges under Section 376/109 and 377/109 IPC were set aside qua both the accused persons. Thereafter, amended charges were framed by the trial court on 06.12.2013. Counsel for the petitioner/applicant also submitted that even after the charges under Sections 376/109 and

377/109 were set aside, it was published in India T.V. dated 05.05.2014 that the respondent/applicant was involved in sex scandal case. He has also pointed out that in the newspaper Punjab Kesari dated 03.05.2014 it was published that respondent/applicant was involved in a murder case.

34. Learned counsel for the applicant urged that because of rampant media report, imputing the applicant for the issues of murder and sex scandal the applicant is prejudiced which may result in denial of fair trial.

35. On the other hand, Mr. P.K. Dubey, learned APP for the State submitted that no statement was made by the State or investigating agency to the media which is likely to prejudice the interest of the applicant. No prejudice has been shown by the applicant and the application is not maintainable.

36. In **Naresh Shridhar Mirakjar & Ors. vs. State of Maharashtra and Anr.** *AIR 1967 SC 1*. it was held:

“29. We have referred to these decisions by way of illustration to emphasise the point that it would be unreasonable to hold that a court must hear every case in public even though it is satisfied that the ends of justice themselves would be defeated by such public trial. The overriding consideration which must determine the conduct of proceedings before a court is fair administration of justice. Indeed, the principle that all cases must be tried in public is really and ultimately based on the view that it is such public trial of cases that assists the fair and impartial administration of justice. The administration of justice is thus the primary object of the work done in courts; and so, if there is a conflict between the claims of

administration of justice itself and those of public trial, public trial must yield to administration of justice. In none of the cases to which we have referred was it expressly held that the court does not possess inherent jurisdiction to hold a trial in camera if it is satisfied that the ends of justice required the adoption of such a course.

30. If the High Court thus had inherent power to hold the trial of a case in camera, provided, of course, it was satisfied that the ends of justice required such a course to be adopted, it would not be difficult to accept the argument urged by the learned Attorney-General that the power to hold a trial in camera must include the power to hold a part of the trial in camera, or to prohibit excessive publication of a part of the proceedings at such trial. What would meet the ends of justice will always depend upon the facts of each case and the requirements of justice. In a certain case, the Court may feel that the trial may continue to be a public trial, but that the evidence of a particular witness need not receive excessive publicity, because fear of such excessive publicity may prevent the witness from speaking the truth. That being so, we are unable to hold that the High Court did not possess inherent jurisdiction to pass the impugned order. We have already indicated that the impugned order, in our opinion, prevented the publication of Mr Goda's evidence during the course of the trial and not thereafter.”

37. In the case of **Surya Prakash Khatri vs. Madhu Trehan** 2001(92) DLT 665 Full Bench of this Court in para 23 of the judgment has held as under:

“23. It is thus needless to emphasise that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set up there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatma Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among the people certain desirable sentiments; and the third is to fearlessly express popular defects. It therefore turns out that the press should have the right to present anything which it thinks fit for publication. But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled license. If it were wholly free even from

reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organized society, the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by Court of law. (See. In re Harijai Singh and another, AIR 1997 SC 73). The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reasons that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations" If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline. It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression."

38. The Hon'ble Supreme Court of India in a recent case namely **Sahara India Real Estate Corporation Limited and Others vs. Securities and Exchange Board of India & Anr.** (2012) 10 SCC 603 has laid down the principles governing passing of the prior restrained order against the publication in some exceptional cases and discussed in detail the exceptions involved. In the said case the Supreme Court has observed that the prior restraint of publication is not constitutionally impermissible. In the said judgment it was observed:

“To see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court/High Court to prohibit temporarily, statements being made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High Court or even in the subordinate Courts. In view of the judgment of this Court in A.K. Gopalan v. Noordeen [(1969) 2 SCC 734], such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair trial of a suspect or accused under Article 21 from the time when the criminal proceedings in a subordinate Court are imminent or where suspect is arrested.”

“Presumption of innocence is held to be a human right. [See : Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294]. If in a given case the appropriate Court finds infringement of such presumption by excessive prejudicial publicity by the newspapers (in general), then under inherent powers, the Courts of Record suo motu or on being

approached or on report being filed before it by subordinate Court can under its inherent powers under Article 129 or Article 215 pass orders of postponement of publication for a limited period if the applicant is able to demonstrate substantial risk of prejudice to the pending trial and provided he is able to displace the presumption of open Justice and to that extent the burden will be on the applicant who seeks such postponement of offending publication.”

39. In the present case the applicant/accused apprehends prejudice and fair deposition of the witnesses in view of the newspaper reports. Though, neither the accused can demonstrate the actual prejudice nor this Court can ascertain the same at this stage. Since the charges under Section 376/377 IPC read with Section 109 IPC against the petitioner and co-accused have been set aside by this Court in CrI.Rev.P. 305/2013 vide order dated 25.7.2013 and 22.11.2013, the Media is restrained from reporting the matter relating to these offences.

40. With the aforesaid observations, the application stands disposed of.

(VED PRAKASH VAISH)
JUDGE

MAY 26th, 2014
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