

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

RESERVED ON : 8th AUGUST, 2016
DECIDED ON : 2nd SEPTEMBER, 2016

+ **CRL.M.C. 4998/2015**

DAVINDER SINGH DAWER

..... Petitioner

Through : Mr.Ashok Arora, Advocate with
Mr.Ajay Sharma & Ms.Shikha Sapra,
Advocates.

VERSUS

THE STATE & ANR.

..... Respondents

Through : Mr.Kamal Kr.Ghei, APP.
Mr.C.L.Gupta, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present petition under Section 439(2) Cr.P.C. has been preferred by the victim – Davinder Singh Dawer for cancellation of bail granted to respondent No.2 vide order dated 25.05.2006. The petition is contested by the respondent No.2 (hereinafter referred as ‘accused’).

2. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the accused is facing trial in case FIR No.513/2005 registered under Sections 307/120B/353/186 IPC and Section 25 Arms Act at PS Pahar Ganj. By an order dated 25.05.2006, the accused was granted regular bail by this Court in Bail Application No. 871/2006. The accused was directed not to leave India without prior permission of the concerned Trial Court; he shall not attempt to tamper with the evidence or influence any of the witnesses directly or indirectly. Undisputedly, the prosecution has examined all its witnesses. At one stage,

the Trial Court had dispensed with the recording of the statement under Section 313 Cr.P.C. qua the accused. However, in Crl.Rev.P. 576/2009 filed by the victim, this Court by an order dated 19.09.2014 directed the Trial Court to record statement of the accused under Section 313 Cr.P.C. SLP (Crl.) No.8534/2014 preferred by the accused against the said order was finally dismissed by an order dated 24.09.2015 (Annexure P-5). In response filed by the accused to the instant petition, it is informed that 313 statement of the accused has since been recorded. On 02.05.2016, the petitioner has moved the Trial Court for re-examination of co-accused Arshad Khan.

3. Learned counsel for the petitioner urged that way back in 2005 the accused had sent threatening message to the complainant on his mobile. SMS received on 04.07.2005 at 08.00 p.m. read as “*Marne Par Hamein Janat Mile Na Mile, Ye Hava Ye Fiza Mile Na Mile, SMS Karne Me Kasar Mat Kariye Mere Dost Maloom Nahin Upar Ja Kar Mobile Mile Na Mile*”. A complaint dated 07.07.2005 was lodged at PS Pahar Ganj. Learned counsel further urged that the accused along with his associates made a false complaint on 18.06.2015 through SMS from Mobile No. +91-9599022393 and also from +91-9855756987 to the custom officials at Air Cargo Complex, New Delhi that the petitioner was exporting narcotics through the export shipment under the AWB No.250-1260-0641. In view of the false complaint, customs officials stopped the export consignment on 18.06.2015 at midnight despite its previous clearance. Subsequently, this complaint was found false; no narcotics / contraband was found in the said shipment. On verification, it transpired that the said SMS was sent by one Mr.Sareen, a close friend of the accused. Apparently, the accused had attempted to falsely implicate the petitioner / victim in a false case in an attempt to

harass, intimidate and pressurize him. It violated the terms and conditions of the bail order dated 25.05.2006.

4. Learned counsel further urged that the accused had also made a false complaint to the Chief Minister of Delhi and various other Government agencies in respect of alleged unauthorized construction on 24.06.2015. He also filed a Writ Petition (Civil) No.6931/2015 before this Court against North Delhi Municipal Corporation and others, wherein Himanshu Dawer, petitioner's nephew was arrayed as respondent No.3. The said writ petition was filed in respect of the alleged unauthorized construction being carried out in property bearing No.2325-26, Chuna Mandi, Tilak Gali, Pahar Ganj, New Delhi by Himanshu Dawer. Counsel submitted that it was the accused who had made the complaint in respect of the alleged unauthorised construction with North Delhi Municipal Corporation consequent to which the said Corporation booked the said property and issued Show Cause Notice and Demolition Order. The said order was challenged before the Appellate Tribunal MCD (ATMCD) by filing an appeal under Section 343(2) of the Delhi Municipal Corporation Act, 1957. Specific observation was made in Writ Petition that this Court would not permit abuse of process to settle private scores. It was urged that the accused is abusing the process of administration of justice and is intimidating, pressurizing and brow-beating the petitioner and his family members. In view of all these facts and circumstances, the bail granted to the accused requires to be cancelled / withdrawn. Reliance has been placed on '*Gulabrao Baburao Deokar vs. State of Maharashtra & Ors.*', CrI.A.2113/2013; '*Abdul Basit @ Raju & Ors. Etc. vs. Md.Abdul Kadir Chaudhary & Anr.*', Special Leave Petitions (CrI.) Nos.6855-6857/2013; '*Mehboob Dawood Shaikh vs. State of*

Maharashtra', Appeal (Crl.) 64/2004; '*Prakash Kadam & etc. vs. Ramprasad Vishwanath Gupta & Anr.*', Crl.A.Nos.1174-1178/2011; '*Puran, Shekhar & Anr. Vs. Rambilas & Anr., State of Maharashtra & Anr.*', Appeal (Crl.) 599/2001, and '*Surjeet Kaur & Anr. Vs. State*', Crl.M.A.Nos.5018/2013, 2446-47/2014 in Bail Appln. 64/2013.

5. Learned counsel for the respondent No.2 vehemently urged that the petition is misconceived and has been filed to delay the disposal of the case. At no stage, the accused misused the liberty in any manner whatsoever. The prosecution evidence is already over. No sufficient ground exists for cancellation of bail.

6. It is well settled that cogent and overwhelming circumstances are necessary for an order of cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or abuse of the concession granted to the accused. Valuable right of liberty of individual and the interest of society in general has to be balanced.

7. In the instant case, there is no averment in the petition if any time, the liberty granted to the petitioner way back by an order dated 25.05.2006 was ever misused in any manner. All the witnesses have been examined by the prosecution long back and statement of the accused has since been recorded. There are no allegations if any time the accused interfered in the investigation or threatened the prosecution witnesses. After a long gap of nine years, the victim has preferred to file the instant petition for cancellation of bail without cogent and convincing grounds. SMS referred to by the learned counsel allegedly sent in 2005 cannot be taken into consideration at this juncture due to subsequent grant of bail. Merely

because a complaint was lodged to custom officials at the Air Cargo Complex in June, 2015 leading to the stopping of export consignment, it cannot be inferred if any attempt was made by the accused to interfere in the administration of justice. Admittedly, the said complaint was found to have been lodged by one Mr.Sareen whose complete identity has not been disclosed. No proceedings whatsoever were initiated by the petitioner against the sender of the said SMS. The concerned custom authorities also did not initiate any action for the alleged false information.

8. Lodging of the complaint regarding unauthorized construction to the concerned authorities has no nexus with the trial of this case. Having recourse to the legal remedies by filing Writ Petition (Civil) No.6931/2015 before this Court against North Delhi Municipal Corporation and others wherein petitioner's nephew was arrayed as respondent No.3 cannot be taken as interference in the administration of justice. The accused was within his right to file an application under Order I Rule 10 before MCD to be impleaded as a party in the appeal filed against the demolition order by the petitioner's nephew.

9. It is relevant to note that the State has not come forwarded to claim violation of terms and conditions of the bail order.

10. The petition does not disclose any sufficient ground whatsoever for cancellation of bail granted on merits to the accused.

11. The petition lacks merits and is dismissed.

(S.P.GARG)
JUDGE

SEPTEMBER 02, 2016 / tr