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

% ***Date of decision: 28th August, 2025***

\+ **CRL.M.C. 94/2021 & CRL.M.A. 427/2021**

RACHNA
W/o Pawan
R/o A-13, New Govindpura,
Near Ram Mandir, Krishna Nagar,
Delhi-51.

.....Petitioner

Through: Mr. Avinash Lakhanpal, Advocate (through VC)

versus

1. **STATE (GOVT. NCT OF DELHI)**

2. **RAJ KUMAR**
S/o Late Shri Ganga Ram
R/o 13/74, Geeta Colony,
Delhi-31.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State
Mr. Vikas Padora, Mr. Dipanshu Chugh and Mr. Aakash Kumar, Advocates for R-2

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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T *(oral)*

1. Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed on behalf of the Petitioner, Smt. Rachna

seeking cancellation of Bail granted by Ld. ASJ *vide* Order dated 24.12.2020 in case FIR No.28/2019 under Section 420/406/467/468/471/34 Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) registered at Police Station Jagatpuri.

2. ***The brief facts*** of the case are that on 28.09.2012 Smt. Rachna, the Petitioner along with Smt. Kanchan Kakkar, purchased the property measuring about 200 sq. yds. with construction rights from Raj Kumar, Respondent No.2 and his brother Bhushan Kumar, on payment of valuable consideration, after which they both became the joint owners. The Sale Deed was registered on 28.09.2012.

3. The Complainant asserted that the Respondent No.2 had assured that the property is free from all encumbrances, mortgage, lean etc. The physical possession of the property was handed over on 28.09.2012 to the Petitioner and the co-owner, after which they had put their own locks upon the property.

4. In the middle of December, 2018, the Petitioner along with her mother-in-law visited the property and was surprised to see that some persons have trespassed into the property and raised unauthorized constructions and were actually occupying the constructed property. On enquiry, they came to know that they all had purchased their respective portions from the Respondent No.2 and his brother and that the Sale Deeds have been duly executed in their favour, which were shown by them to the Complainant. She then made enquiry at the office of Sub-Registrar which confirmed execution of three Sale Deeds dated 22.09.2015, 26.04.2016 and 17.06.2015 in the name of different persons.

5. It was asserted that the new buyers were aware of the Complainant

and Kanchan Kakkar being the owner of the property in question, despite which they have trespassed and unauthorizedly taken possession of the subject property. All the aforesaid persons were claimed to have acted in collusion to cheat the Complainant.

6. It was further claimed that the Respondent No.2 and his brother, had also taken loan from various Banks against the said property by preparing forged and fabricated title documents. It was alleged that ***Sub-Registrar-VIII*** was also involved in the forgeries and was aware that the property already stood transferred and is booked with the MCD.

7. The Complainant has further alleged that ***officials of MCD*** were also involved in the unauthorized construction which has been raised without Sanction plans etc.

8. The Complainant further claimed that in the last week of December, 2018, the alleged purchasers of the property had threatened to kill the complainant and her family members in case she again visited the property. The FIR No.28/2019 under Section 420/406/467/468/471/34 IPC P.S. Jagatpuri was accordingly, registered.

9. During the investigations, the Petitioner had produced the original Sale Deed dated 29.09.2012. The Notices were served upon Respondent No.2 and his brother and also the subsequent purchasers. The Anticipatory Bail was granted to all the subsequent purchasers.

10. The investigations were joined by Bhushan Kumar on 16.04.2019 who informed that the Respondent No.2 Raj Kumar was in Judicial Custody in one rape case. Bhushan Kumar had been granted Bail by this Court. All the accused persons joined investigations and gave their reply.

11. It is asserted that the Ld. ASJ has not appreciated the following facts:

(a) that the Respondent No.1 had committed cheating and fraud with *Ms. Jasbir Kaur, Mr. Harvindar Singh, Ms. Shashi Bala, Mr. Chander Mohan*, Mr. Vishal Arora, Mr. Sanjay Kumar and Mr. Vijay Kumar by using the same modus operandi and has caused huge financial loss by reselling the property to others number of times, even though it had already been sold to the Petitioner;

(b) the Respondent No.1 has even cheated PNB by procuring a loan of Rs.2 Crores on the basis of forged and manipulated documents;

(c) The Ld. ASJ was totally unjustified in observing that respondent no.1 has ***clean antecedents*** despite his involvement in the following criminal cases:

(i) *FIR No.28/2019 registered U/s. 420/ 406/ 468/471 IPC at P.S. Jagapuri, Delhi.*

(ii) FIR No.232/2019 registered U/s. 420/ 406/ 468/ 471 IPC at P.S. Jagapuri, Delhi.

(iii) FIR No. 233/2019 U/s 467/420/406/34 IPC at P.S. Jagatpuri, Delhi.

(iv) FIR No.160/2019 registered U/s. 406/ 420 IPC at P.S. Jagapuri, Delhi

(v) FIR No.33/2019 registered U/s. 420/ 406 IPC at P.S. Gandhi Nagar, Delhi.

(vi) FIR No.02/2019 U/s. 376 IPC at P.S. Gandhi Nagar, Delhi.

(d) the Respondent No.2 herein after absconding for long, did not join the investigations and surrendered before the Court only after commencement of proceedings under Section 82 and 83 Cr.P.C.

(e) the Investigating Agency has two addresses of Respondent No.2 i.e. 13/49, Geeta Colony and 13/74, Geeta Colony, Delhi, out of which Respondent No.1 has already sold the first property and *there is every apprehension that he may sell the second property as well and abscond* causing huge financial loss of Rs.4.5 crores to the individuals and financial Institutions;

(f) the Bail Application of Co-accused Bhushan Kumar who has the similar role and involvement in the present matter along with the Respondent No.2, has been dismissed by learned ASJ on 21.07.2020 and has not been granted Bail by this Court and the matter is listed on 21.01.2021;

(g) Bhushan Kumar, co-accused under the garb of Covid-19, had secured the Interim Bail from the Court of learned Duty Magistrate which has been subsequently cancelled on finding that he had wrongly procured the Bail by misleading the Court; and

12. The Ld. ASJ has committed grave error in not considering and appreciating the aforementioned aspect while granting Bail to Respondent No.2. The conduct of both the accused persons involved in the present matter has not been considered especially that they are habitual offenders of cheating and fraud. They have every possible means and resources to flee

from the system of justice; to pressurize the witnesses; manipulate and forged the documents and influence the trial, particularly when one property had already been sold by Respondent No.2. The Bail has been granted on totally irrelevant considerations while referring to the alleged conduct of the Complainant or other persons. It has been overlooked that there is every apprehension that Respondent No.2 would flee from justice and would not be traceable thereby causing an irreparable loss to the Complainant and other persons.

13. The Ld. ASJ was not justified in granting the Bail and referring to the present matter as a Civil wrong and dispute, by overlooking the fact that Respondent No.2 has not only cheated the Petitioner but many other persons. The Respondent No.2 has been granted Bail without securing the sufficient financial security as the quantum of fraud and cheating is more than Rs.4.5 crores. There are multiple litigations between the Petitioner and Respondent No.2. There was there was no delay in registration of FIR as the fraud came to the knowledge of the Petitioner in 2018, and the FIR was registered promptly thereafter.

14. *It is thus, submitted that the Impugned Bail Order dated 24.12.2020 is liable to be set aside*.

15. ***The Respondent No.2 Raj Kumar in his reply*** has stated that co-accused Bhushan Kumar, has also been granted Bail by Ld. ASJ on 22.12.2022. This present Petition is nothing but an abuse of process of law designed solely to harass Respondent No.2 with intention to extract money from him. Furthermore, it does not fall within the cornerstones of cancellation of Bail as enunciated by the Apex Court and various High Courts in numerous judgments. It is asserted that the Bail has been granted

rightly by the Ld. ASJ by following the principle that *Bail is the Rule and Jail is the Exception.* There is no perversity in the Impugned Order dated 24.12.2020 granting Bail. All the facts have been carefully scrutinized and evaluated before granting Bail. It is further submitted that even though Bail in this case was granted vide Order dated 24.12.2020, but the Respondent No.2 could not be released till 05.06.2023 on account of other criminal cases against him. It is further contended that Ld. Trial Court has rightly observed that Respondent No.2 has clean antecedents which points out the false implication of Respondent No.2. The FIRs pending against him and his brother Bhushan Kumar, are all filed by the Complainant party or at their behest, in relation to the same properties of Respondent No.2.

16. It has been rightly observed that the facts and circumstances show that it is a case of civil nature and colour of criminal case has been given by the Complainant. The exceptional delay in lodging the FIR in the year 2019 when the transaction was that of the year 2012, has also been rightly noted. Aside from this it has also been appreciated that he is not a flight risk and is judicial custody is not required. He had himself surrendered before the Police on 15.11.2019 and was never arrested nor the proclamation executed under Section 82 Cr.P.C.

17. The Respondent No.2 in his defence, has explained that he and his real brother Bhushan Kumar were the joint owners of plot of land admeasuring 200 sq. yds. at Khasra No.188-189 and 190 Khewat No.95/467, Killa No.10/19, 20, 22, 23/2 situated in the Abadi of Silver Park, Chander Nagar in the area of village Khureji Khas, Delhi. He was engaged in the business of Fabrics and was known to one Sachin Malhotra since 2010, who was involved in the business of financing loan. He used to take simple

business loans from Sachin Malhotra on interest basis since 2010. The Petitioner Smt. Rachna is bhabi of Sachin Malhotra and Smt. Kanchan Kakkar is Mami of Sachin Malhotra. The Respondent No.2 stated that from August, 2012 till October 2012 he had taken loan on interest basis, from Sachin Malhotra. As a security, registry of the subject property was done in the name of the Petitioner and Kanchan Kakkar. However, the original title documents as well as the possession of the property was never given to her or to any other person. *The Sale Deed was executed only as a security for repayment of loan amount taken by Respondent No.2.*

18. Sachin Malhotra told Respondent No.2 and his brother to deposit the interest amount in his wife Rohini's bank account and accordingly Rs.10 lakhs were deposited in her account. Sachin Malhotra further told him to deposit the interest amount in the bank accounts of his relatives, which was done. Thereafter, at the instance of Sachin Malhotra, on 17.01.2015 Rs.60 lakhs were deposited in the bank account of Rajesh Kumar Vij which was transferred.

19. Thereafter, both the accused persons requested Sachin Malhotra to cancel the Sale Deed dated 28.09.2012 as loan amount had been cleared, but he told them to presume that the Sale Deed stands cancelled and the document destroyed. On this assurance of Sachin Malhotra, having cleared the loan amount taken from Sachin Malhotra, the Respondent No.2 sold parts of property to other buyers by dividing the property in three parts as 60 yards, 60 yards (gaz) and 80 yards (gaz) which was sold to Smt. Jasbir Kaur, Sh. Harvinder Singh, Smt. Sashi Bala, Sh. Chander Mohan, Sh. Vishal Arora, Sh. Sanjay Kumar, Sh. Jitender Pruthi and Sh. Vinay Kumar. Even after selling the parts of the property, accused persons gave Rs.40 lakhs as

interest to Sachin Malhotra. Despite receiving the entire loan amount and interest, Sachin Malhotra failed to cancel the Sale Deed.

20. One *Civil Suit for Declaration and Injunction* for declaring the Sale Deed dated 28.09.2012 as null and void, has been filed by Respondent No.2 against Petitioner and others which is pending trial in the Court of Ld. ADJ, Delhi.

21. The Respondent No.2 has asserted that after during the investigations, Chander Mohan and Shashi Bala showed the original Sale Deed dated 28.04.2016 entered between them and the Respondent No.2 and his brother and also produced the photocopy of rest of the chain of tile to the subject property. Similarly, Vishal Arora, Sanjay Kumar, Jitender Pruthi and Vijay Kumar showed their original Sale Deed dated 18.06.2015 executed in their favour. It is asserted that the subsequent purchasers were *bonafide* purchasers and were not involved in any kind of fraud.

22. The Petitioner during investigations, when questioned about the complete chain of documents, had stated that Respondent No.2 had told her that he had forgotten where he had kept the original chain of documents and would hand them over after he is able to find them.

23. *It is, therefore, submitted that there is no merit in the present Petition, which may be dismissed*.

24. ***The Status Report has been filed on behalf of the State***, wherein all the investigations carried out in the FIR has been narrated. It is further submitted that the misuse of the Bail granted to the Respondent No.2 is apprehended as he has intentionally not disclosed the fact of bank loan from PNB in the present Bail Application. He has also correctly disclosed that the Interim Bail of 45 days was granted to co-accused Bhushan Kumar on the

basis of Covid-19, by intentionally hiding that the Chargesheet was not only under Section 406/420/34 IPC but also under Section 467/468/471 IPC. The Court thus been mislead about the nature of offences, the Interim Bail of the co-accused Bharat Bhushan was cancelled.

25. There are 15 public persons along with PNB Bank, who have been cheated by the Accused. Application under Section 156(3) Cr.P.C had been filed in the Court of Ld. ACMM. As per the Bank record, the total outstanding is Rs.3,68,70,000/- up till 25.01.2021. There are five involvements of Respondent No.2 in different FIRs. The total cheated amount is approximately Rs.5 - 6 crores.

26. In the light of the aforesaid, there is genuine apprehension that he would destroy the other forged chain of property documents which are yet to be recovered. *Hence, it is submitted that the Bail be cancelled*.

Submissions heard and record perused.

27. The petitioner has sought recall of Order dated 24.12.2020 granting Bail to Respondent No.2 **on the grounds** that ***firstly,*** the Ld. ASJ has wrongly stated that it is *essentially a civil dispute* and has failed to consider the *enormity of the cheating, defrauding and fabrication of documents* has been done to re-sell the suit property which has been done by the respondent No2 causing a total loss of approximately Rs.5-6 crores to multiple parties. ***Secondly,*** it has been wrongly observed that the Respondent No.2 has clean antecedents despite five criminal cases pending against him. Thirdly, bail has been not granted to co-accused. ***Fourthly***, there is every likelihood of his absconding.

28. Before considering the contentions on merit, it is significant to observe that there is a distinction between recall and cancellation of Bail.

While recall can be made only if it is established that Bail has been granted by not considering the relevant facts on merits, cancellation is prompted by subsequent events and violation of terms of Bail by the respondent.

29. In recent judgement of *Ashok Dhankad vs. State of NCT of Delhi and Another* 2025 SCC OnLine SC 1690, Apex Court reiterated that while considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like *the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail.*

30. The Apex Court in *Y v. State of Rajasthan* (2022) 9 SCC 269 underscored that an order granting bail can be tested on *illegality, perversity, arbitrariness and being based on unjustified material*. While setting aside the order granting bail, the Court made the following observations highlighting the distinction between recall and cancellation of bail:

> **"15. *It is worth noting that what is being considered in this case relates to whether the High Court has exercised the discretionary power under Section 439CrPC in granting bail appropriately. Such an assessment is different from deciding whether circumstances subsequent to the grant of bail have made it necessary to cancel the same. The first situation requires the Court to analyse whether the order granting bail was illegal, perverse, unjustified or arbitrary.***

On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation.

16. *In* Neeru Yadav v. State of U.P. (2014) 16 SCC, Apex Court held as follows:

> ***"12. ….It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse.***
>
> ***If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court."***

31. Three-Judge Bench of Apex Court in P v. State of M.P., (2022) 15 SCC 211 has explained the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) CrPC as under:

> *"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain*

> *his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237].* ***To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."***

32. In the recent case of *Ajwar v.Waseem*, (2024) 10 SCC 768, it was observed as under:

> *"27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order."*

33. It has been further observed in *Ajwar (supra)*:

> *"28. The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party* ***include any supervening circumstances that may have occurred after granting relief to the accused****, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner."*

34. In the recent judgement of *Ashok Dhankad, (supra)*, the Apex Court has succinctly explained and summarized the factors for consideration for setting aside of Bail Orders as under:

> *"19.The principles which emerge as a result of the above discussion are as follows:*
> *(i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;*
> *(ii) The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;*
> *(iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court.*
> *(iv) An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;*
> *(v) However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and*
> *(vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above."*

35. *In the light of aforesaid principles, the contentions raised in the present Petition be now considered.*

36. The ***first contention*** is that serious criminal offences have been committed by the respondent No.2 which cannot be trivialized by terming them as ***essentially civil in nature***. Civil Suit may have already been filed by the Complainant for cancellation of the subsequent Sale Deed executed by Respondent No.2 in favour of subsequent buyers, but there are specific allegations alleging *cheating and fraud*.

37. It needs no reiteration, that there may be a civil dispute as well as

criminal offence made out from the same set of facts. Merely because a Civil Suit has been filed, may not in itself be a ground to grant the Bail and the totality of the circumstances have to be considered, if it is a fit case of Bail.

38. In the present case, though the Petitioner has a Sale Deed in her favour, but there is no gain saying that there are various aspects which merit evidence to prove the offences. Also, reference to Civil Suit is essentially in the context of gravity of offence. The respondent no.2 has already been in jail for about three and a half years and Charge Sheet has already been filed. It cannot be said that this aspect of pendency of Civil Suit, has been wrongly referred by the Ld. ASJ, in the impugned Bail order.

39. The ***second ground*** on which the Complainant/Petitioner has sought cancellation of Bail is that the Ld. ASJ has wrongly observed that he has ***clean antecedent*** despite it being clearly indicated in the Status Report that there are *five other FIRs registered against him*. It is also pertinent to note that the Respondent No.2 has explained that each of the five FIRs are registered on the complaints of Petitioner or other family members and relate to the same properties.

40. To appreciate this contention, the entire Bail Order may be read wherein the details of each and every FIR has been clearly mentioned. In the concluding paragraph, it may have been observed that there are clean antecedents, but it cannot be overlooked that when considered holistically there is due mention of the five FIRs in the impugned Order. Therefore, merely because it is written that the Applicant has *clean antecedents*, would not be of any consequences considering the specific mention of five FIRs in the Bail Order.

41. In this context it may also be observed that the Respondent No.2 has asserted that this Sale Deed in fact was intended to be a security for the loan of Rs.6,000,000/- taken by him from the Complainant. He has also asserted that he has repaid the loan amount and also the interest in the accounts of various family members, at the instance of Sachin Malhotra. It is the vehement contention of Respondent No.2 that essentially the dispute is civil which has been given a criminal colour.

42. The nature of the transaction and the allegation had been duly considered by the Ld. ASJ while granting bail. It is also pertinent to note that the Bail had been granted on 24.12.2020, while as per the submissions of the Respondent No.2 himself, he could not be released in 2023 i.e. after a period of 3½ years on account of his involvement in other criminal cases. There is no assertion that after he was released on Bail, Respondent No.2 has, in any manner, acted so as to show that he has abused his liberty.

43. Therefore, this ground for cancellation of Bail is completely not tenable.

44. The ***Third ground*** of challenge is the apprehensions of the Petitioner that he may abscond or may not join the proceedings. However, these are merely the apprehensions which have not been substantiated by the subsequent conduct of the Respondent No.2.

45. The last ground of challenge was that the Co-accused Bhushan Kumer has not been granted Bail. However, the Respondent No.2 has placed on record the order dated 22.12.2022 *vide* which the Bail was granted by the Ld. ASJ.

46. It is thus, concluded that the parameters for challenging the order of Bail on merits by claiming that by consideration of erroneous facts and

circumstances in the present case, has not been made. In the totality of circumstances, there is no ground made out for recall of the Bail Order.

47. The petition is hereby, dismissed. Pending Applications are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 28, 2025
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