

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

Date of Decision: February 04, 2015

+ CRL.M.C. 4073/2013

SMT JYOTI

..... Petitioner

Through: Ms. Anupriya Yadav, Advocate

versus

STATE & ANR

..... Respondent

Through: Mr. Navin Sharma, Additional
Public Prosecutor for State with SI
Raj Kumar
Ms. Priya Hingorani and Mr. S.
Choudhary, Advocates for
Respondent no. 2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

In this petition, cancellation of pre-arrest bail granted to respondent-accused in FIR No. 159/2013 under Section 406/498A/34 IPC registered at Police Station Krishna Nagar is sought on the ground that petitioner was subjected to cruelty and merely because respondent-accused had agreed to pay a sum of ₹2 lakhs to petitioner-complainant, pre-arrest bail has been granted which is unjustified in the facts and circumstances of this case.

At the hearing, learned counsel for the petitioner has drawn the attention of this court to the various SMS messages sent by respondent-

accused to submit that the conduct of respondent-accused was cruel and he had subjected the petitioner to immense cruelty. It is pointed out that petitioner's family had spent huge amount of money on the marriage in question and the concession of pre-arrest bail has been extended to respondent-accused while ignoring that he had illicit relations with another girl and respondent-accused used to come home under the influence of liquor and often used to beat petitioner. It was pointed out that the custody of the children has been deceitfully taken away by respondent-accused and so impugned order granting bail to respondent-accused deserves to be set aside.

Learned counsel for respondent no. 2/accused had refuted the submission made on behalf of petitioner and submitted that the marriage in question was 12 years old and the children of the parties are residing with petitioner out of their own sweet will and he is keeping them happy. It was submitted that the allegations of cruelty, etc. leveled against the respondent/accused are false and frivolous. It was pointed out that respondent/accused's divorce petition is pending before the family court and petitioner has already joined investigation of this case and so no case of cancellation of bail is made out.

The considerations which ought to weigh with the court while dealing with application seeking cancellation of bail have been succinctly spelt out by Apex Court in the case of *Kanwar Singh Meena v. State of Rajasthan*, (2012) 12 SCC 180 in these words:-

“Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court

are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in

weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

The parameters governing the cancellation of bail as reiterated by Apex Court in *Abdul Basit v. Mohd. Abdul Kadir Chaudhary*, (2014) 10 SCC 754 are as under: -

“14. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last mentioned case, one would expect very strong grounds

indeed. (Raghubir Singh v. State of Bihar [(1986) 4 SCC 481])”

Applying the afore-noted dictum of the Apex Court to the facts of the present case, I find that bail has been granted to respondent/accused by a well reasoned order. To strike a balance, respondent/accused has been asked to pay a sum of ₹2 lakhs to petitioner/complainant in lieu of the dowry articles allegedly not returned. So far as the allegations of cruelty etc. are concerned, the same are required to be tested at trial and judicial notice can be taken of the fact that in such like cases the exaggerated versions as put forward by the parties.

Finding no palpable error in the impugned order, this petition is disposed of while refraining to comment on merits of this case lest it may prejudice either side before the trial court.

(SUNIL GAUR)
JUDGE

FEBRUARY 04, 2015

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