

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

Date of Decision: January 15, 2015

+ CRL.M.C. No.3293/2014

KADHAK SINGH

..... Petitioner

Through: Mr. C.S.S.Tomar, Advocate

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Pravin Bhati, Additional
Public Prosecutor for State with SI
Rohit Kumar PS Jafrabad
Mr. Manish Kumar, Advocate
alongwith Respondents No.2 & 3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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This is a petition filed under Section 482 read with Section 439(2) of *Code of Criminal Procedure, 1973* seeking cancellation of bail granted to respondents No.2 & 3 in case FIR No.186/2012 under Sections 498A/304B/34/302 IPC and Section 3/4 of *Dowry Prohibition Act, 1961* registered at Police Station Zafrabad, Delhi.

Trial court vide order of 5th May, 2014 has granted bail to respondents-accused observing that deposition of public witnesses has already been recorded. It is also noted in the impugned order that evidence recorded is contradictory in nature. Respondents No.2 & 3, who

have been granted bail vide impugned order, are the husband and father-in-law of the deceased and the allegations against them are of subjecting the deceased to cruelty and to pressurize her to bring more dowry. The prosecution case is that the deceased was murdered on account of inability to bring ₹10 lakhs in cash and one BMW car. The marriage of respondent No.2-*husband* and deceased was just 1 ½ year old. Trial court vide impugned order has granted bail to the accused persons primarily on the ground that deposition of public witnesses has been recorded and that there is no chance of respondent-husband tampering with evidence.

At the hearing, learned counsel for petitioner-complainant had submitted that in view of gravity of offence committed, grant of bail to respondents-accused merely on the ground that deposition of public witnesses is recorded results in miscarriage of justice. It is pointed out by learned counsel for petitioner that it has come in evidence of father of deceased that early in the morning on the day of incident deceased had made a telephone call to him and his wife and had disclosed that respondents-accused and their co-accused had not allowed her to take tea and had been beating her for the last two days. It was submitted by learned counsel for petitioner that due to merciless beating of deceased-*Sunny*, she was driven to death and was hanged and as per MLC there are injuries on the face of the deceased. Thus, it is submitted that a clear cut case of murder is made out and motive of murder is dowry demands and heinousness of crime committed by respondents calls for cancellation of bail granted to respondents-accused.

Learned counsel for respondents-accused supports the impugned order and submits that the evidence already recorded is unreliable due to

the contradictions. It was asserted that the witnesses contradicted each other on material aspects. It was pointed out that the phone call purportedly made by deceased to her parents does not stand proved. In this regard, attention of this Court was drawn to deposition of Nodal Officer of Idea Cellular Ltd. (PW-6). It was pointed out by learned counsel for respondents-accused that deceased was under depression and under treatment at IHBAS because she was unable to conceive and the allegations of cruelty leveled against respondents-accused are not substantiated from the evidence on record and so, no case of cancellation of bail granted to respondents-accused is made out.

The parameters governing cancellation of bail as reiterated by Apex Court in *Kanwar Singh Meena v. State of Rajasthan* (2012) 12 SCC 180 are as under:-

“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.”

Upon hearing both the sides and on perusal of the impugned order, material on record and a brief look on the certified copy of the evidence

already recorded, it prima facie appears that prosecution case of deceased making phone call to her parents in the early morning on the day of incident is not corroborated from the deposition of the Nodal Officer (PW-6) of Idea Cellular Ltd.. This Court is conscious of the fact that the evidence already recorded cannot be appreciated in piecemeal amidst trial but just to gauge the gravity of the offence, I had a brief look at the deposition of father of the deceased and Nodal Officer from Ideal Cellular and thereupon I find that necessary ingredient of deceased being subjected to cruelty soon before her death is a moot point, which is required to be considered with sensitivity by the trial court while adopting a practical approach.

Without commenting upon evidentiary value of the deposition of father of the deceased and Nodal Officer, I find that grant of bail to respondents-accused does not result in miscarriage of justice. Though, this court is not inclined to cancel bail granted to respondents-accused but does not appreciate the approach of trial court in dealing with the bail application of respondent-accused.

This application is dismissed while refraining to comment upon merits of this case lest it may prejudice either side at trial.

(SUNIL GAUR)
JUDGE

JANUARY 15, 2015

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