

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 5th May, 2015

+ CRL .M.C.4443/2013
ANAM

..... Petitioner

Through: Mr A.K. Padhy and Ms S.R.Padhy, Advs.
versus

STATE & ANR.

..... Respondents

Through: Mr O.P. Saxena, Additional Public
Prosecutor for the State
Mr K.S. Kashyap, Adv. for the respondent
no.2

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is an application/petition under Section 439(2) Cr.PC moved by the petitioner/complainant for cancellation of bail granted to the respondent no.2/accused - Mohd. Imran Khan by learned Additional Sessions Judge in case FIR No. 111/2013, Police Station Seelampur, Delhi under Sections 354/328/363/323/341/384/34 IPC.

2. The FIR in the instant case was registered on the basis of a complaint made by prosecutrix wherein she alleged that the respondent no.2/accused was on friendly terms with her, but for the last five months she was not on friendly terms with him. He used to take money from her and on her refusal to pay the same, he used to abuse her. On 06.03.2013 at about 5.15 pm after taking tuitions she was proceeding to her house when the respondent no.2/accused alongwith one other boy came in a van and dragged her in the van and thereafter put some medicine in her mouth as a result of which she came under its influence. She was taken to some place where the respondent no.2/accused tried to remove her clothes. She, however, protested, but he removed the same and during the scuffle, he torn her clothes and took her nude photographs in his mobile and

threaten to give money failing which he will defame her. On the basis of this complaint, an FIR under Section 354B/354C/328/363/323/341/384/34IPC was registered.

3. Vide impugned order dated 17.04.2013, the learned ASJ admitted the respondent no.2/accused on bail on his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount.

4. Feeling aggrieved the present application has been filed by the petitioner/complainant seeking cancellation of bail of the accused inter alia on the ground that the accused was in custody only for a period of 21 days. He was released on bail without a through inquiry. It was incumbent upon the police officials to get the medical examination of the complainant done and the Investigating Officer is not to go by the version of the victim. Two school records filed by the accused were completely opposed to each other and a detailed inquiry was warranted. The Investigating Officer helped the accused, who did not take his police remand nor seized the mobile phone or the video clips nor seized the vehicle nor arrested the other accused. On 06.04.2013, a threatening letter was sent by the accused for killing the prosecutrix. Under the circumstances, bail granted to the accused is liable to be cancelled.

5. The application is opposed by the respondent no.2 by submitting that correct date of birth of the respondent no.2 was given to the Investigating Officer of the case. The respondent no.2 was not even in Delhi and as such the question of such like incident does not arise. He was at his native house at Mohalla Shahbazpur, Sahaswan, Badaun, Uttar Pradesh for three (3) days. The petitioner has misused the platform of justice as such application is liable to be dismissed.

6. In the status report filed by the State, it is submitted that during the medical examination, the complainant/prosecutrix refused for examination of her internal organs and also refused for any sexual assault. The clothes of the complainant, her school I-card and address proof were also seized. After arrest of accused/ respondent no.2, his police remand was taken for the arrest of co-accused, recovery of mobile phone, video clips and van, but neither mobile phone nor video clips nor van could be

recovered nor the co-accused could be arrested. As regards school certificate, it was submitted that during the course of investigation it was discovered that accused – Imran took admission in Govt. Boys Sr. Sec. School, Hauz Rani, Malviya Nagar, New Delhi and as per school record his date of birth is 20.07.1997. The father of accused – Imran also produced transfer certificate issued by Pramod Inter College Sahasvan (Badayun), U.P. wherein his date of birth is mentioned as 08.03.1997 whereafter both the documents were verified from the concerned school/college and found correct, but there was variance in the age of accused. As regards threatening letter sent by accused/respondent no.2 – Imran on 06.04.2013, it was submitted that as per the record the accused was in judicial custody till 17.04.2013. It was denied that the offence was minimized by the Investigating Officer in order to avoid prosecution of rape case. Even the complainant did not allege about rape and refused for sexual assault before the doctor.

7. The parameters for grant of bail and cancellation of bail are different. In *Daulat Ram v. State of Haryana, (1995) 1 SCC 349* wherein the distinction between the factors relevant for rejecting bail in a non-bailable case and cancellation of bail already granted, was brought out:

""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."

The above principle was reiterated in *Samarendra Nath Bhattacharjee v. State of W.B.*, (2004) 11 SCC 165 and again in *State of U.P. vs. Amarmani Tripathi* [(2005) 8 SCC 21.

8. In *Union of India vs. Hassan Ali Khan & Anr.* 2011 (11) Scale 302, it was observed that there is a distinction between an application for cancellation of bail and an appeal preferred against the order granting bail. Two stand on different footings. While the ground for cancellation of bail would relate to post-bail incidents, indicating misuse of the said privilege, an appeal against an order granting bail would question the very legality of the order passed.

9. Coming to the factual matrix of the instant case, the cancellation of bail of the respondent no.2/accused is primarily sought on the ground:

- (i) The Investigating Officer failed to obtain the police remand of accused and to seize the maruti van, video clips, van, etc.
- (ii) It was incumbent upon the Investigating Officer of the case to get the internal examination of prosecutrix done.
- (iii) The bail was granted on the basis of a forged certificate recording the contradictory date of birth of the respondent no.2/accused.
- (iv) The petitioner sent a threatening letter to the respondent no.2 /complainant/prosecutrix on 06.04.2013.

10. As regards the first contention of non-obtaining of police remand of accused and non-seizure of vehicle, video clips, van etc., as per the status report submitted by the State, after arrest of accused on 26.03.2013 his police remand was taken for two (2) days for arrest of co-accused and recovery of mobile and van but neither co-accused could be arrested nor the mobile phone and van could be recovered.

11. As regards second contention regarding medical examination of prosecutrix is concerned, in the status report it is submitted that the complainant was examined at Jag Parvesh Hospital and during medical examination, she refused for examination of her internal organs. Once the complainant herself refused her internal examination neither the Investigating Officer nor the doctor concerned can compel the prosecutrix to undergo her internal medical examination.

12. As regards the third contention regarding date of birth of the accused, as per school record of Govt. Boys Sr. Sec. School, Hauz Rani, Malviya Nagar, New Delhi where the accused took admission, his date of birth is 20.07.1994. As per the transfer certificate issued by Pramod Inter College Sahasvan (Badayun), U.P., the date of birth of accused is 08.03.1997. Both the documents were verified from the concerned school/college and were found correct. However, there was contradiction in the age of accused. This fact was taken note of by learned Additional Sessions Judge while granting bail to the accused by observing that the discrepancy in the two certificates requires inquiry and it was specifically observed that no final opinion about the age of accused/applicant is being given. As such, as per the status report, it cannot be said that the document furnished by the accused were forged, however, there was discrepancy in the certificates.

13. As regards, the last contention that a letter dated 06.04.2013 was sent by accused threatening the complainant to kill her, it is reported that as per the record, at the relevant time accused was in judicial custody and remained in custody till 17.04.2013.

14. Although the allegations are serious in nature but keeping in view the fact that parameters for cancellation of bail are entirely different from grant of bail and the grounds set up by the complainant does not warrant cancellation of bail, the application is accordingly dismissed.

(SUNITA GUPTA)
JUDGE

MAY 05, 2015/*rd*