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

Date of Decision: September 03, 2015

+ CRL.M.C. 1663/2015

RUHEE GUPTA Petitioner

Through: Mr. G.B. Sewak, Advocate

versus

AMIT AGGARWAL & ANR Respondents

Through: Mr.G.M. Farooqui, Additional
Public Prosecutor for respondent-
State with WSI Khiloni

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Vide order of 31st March, 2015 (*Annexure P-2*) pre-arrest bail has been granted to respondent-accused in FIR No.368/2013, under sections 498-A/406/34 of IPC, registered at police station Janak Puri, Delhi. Quashing of aforesaid order is sought in this petition. It is submitted by petitioner's counsel that apart from the cruelty meted out to petitioner, admitted dowry articles have not been returned and mediation has failed due to non-cooperative attitude of respondent-accused.

Mr. G.M. Farooqui, learned Additional Public Prosecutor for respondent-State submits that charge-sheet in this case would be filed within a week and that respondent-accused has cooperated in the investigation of this case. Regarding non recovery of admitted articles, it

is submitted by Mr. G.M. Farooqui, learned Additional Public Prosecutor for respondent-State, that Investigating Officer wanted petitioner-complainant to accompany him to the house of respondent-accused for recovery of admitted dowry articles but petitioner-complainant did not come forward.

The aforesaid stand is strongly refuted by learned counsel for petitioner.

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

“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.”

In *Abdul Basit Vs. Mohd. Abdul Kadir* (2014) 10 SCC 754 , Apex Court has reiterated the parameters governing cancelling the bail, while observing 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.”

Applying the afore-noted parameters laid down by the Apex Court in *Kanwar Singh Meena & Abdul Basit (supra)* to the facts of the instant case, this Court finds that no case for cancellation of bail granted to respondent-accused is made out.

This petition is accordingly dismissed, while refraining to comment upon the merits of the case, lest it may prejudice either side before the trial court.

(SUNIL GAUR)
JUDGE

September 03, 2015

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