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

DECIDED ON : 20th NOVEMBER, 2015

+ **CRL.M.C. 2372/2015**

JAISHREE

..... Petitioner

Through : Mr.Ram Niwas Buri, Advocate.

versus

STATE, GOVT. OF NCT OF DELHI & ANR. Respondents

Through : Mr.Ashok K.Garg, APP with SI
Jitender Rana.
Ms.Divya Attri, Advocate for R2.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. Instant petition under Section 482 Cr.P.C. has been preferred by the petitioner / complainant to challenge the legality and propriety of an order dated 25.02.2013 of learned Metropolitan Magistrate by which respondent No.2 was granted regular bail in case FIR No.63/13 registered under Sections 354/506/452 IPC and 8/12 POCSO Act. Petition is contested by respondent No.2.

2. I have heard the learned counsel for the parties and have examined the file. FIR No.63/13 was registered at Police Station Burari under Sections 452/354/506 IPC and 8/12 POCSO Act on petitioner's complaint on 22.02.2013. It led to respondent No.2's arrest on 23.02.2013. A bail application was moved by his counsel before the learned Metropolitan Magistrate on 23.02.2013 which was taken up for hearing on 25.02.2013. On perusal of the bail application, it reveals that the counsel omitted to disclose registration of FIR under Sections 8/12 POCSO Act also. In the status report, the Investigating Officer, however, reported registration of FIR under Sections 8/12 POCSO Act. Though the IO W/SI Neeraj appeared in person at the time of consideration of bail application on 25.02.2013, she did not point out the omission of offences under POCSO Act in the bail application. Considering that the FIR was registered under the provisions of Indian Penal Code only, the Trial Court, by the impugned order, granted bail to respondent No.2 as he was in custody since 23.02.2013. Certain conditions were put at the time of grant of bail.

3. Subsequently, application under Section 437 (5) Cr.P.C. was moved by the victim / complainant for cancellation of bail on 08.03.2013.

It was disposed of after notice to the accused, his counsel and the

Investigating Officer. It records assurance of the Investigating Officer to remain careful in future. The Trial Court was fair enough to record that there was an irregularity in passing the bail order which she was unable to rectify. Certain observations about the functioning of the IO / SHO were also made. The said order was challenged before Special Court. By an order dated 24.07.2013, the learned Addl. Sessions Judge dealing with POCSO matters declined to cancel the bail.

4. Main grievance of the petitioner is that learned Metropolitan Magistrate had no jurisdiction to entertain and grant bail to respondent No.2 as offences under Sections 8/12 POCSO Act were exclusively triable by a Special Court. Reliance has been placed on '*Ramrahit Singh vs. Dhananjoy Singh & Ors.*', MANU/WB/0218/2015, '*Ramu Ram vs. State of Rajasthan & Ors.*', 2014(2)RLW 987 (Raj), '*State of Andhra Pradesh vs. Mohd.Hussain @ Saleem*', 2014 (1) SCC 258, '*State of Gujarat vs. Salimbhai Abdulgaffar Shaikh*', 2003 (8) SCC 50, '*State of Tamil Nadu vs. Paramasiva Pandian*', 2002 (1) SCC 15 & '*State of Bihar vs. Braj Nandan Raut*', 2001 Cri.L.J. 3678.

5. Without going into controversy as to whether the learned Metropolitan Magistrate was competent to grant bail under POCSO Act, it is to be noted that at the time of grant of bail, the Trial Court was of

bonafide belief that respondent No.2 was booked by the Investigating Agency only for commission of offences under Sections 354/506/452 IPC. The counsel for the respondent No.2 had not revealed in the bail application if Sections 8/12 POCSO Act were also there in the FIR. Since respondent No.2 was in custody for the last two days and the statement of the prosecutrix had already been recorded under Section 164 Cr.P.C., the Trial Court deemed it fit to grant bail putting certain conditions. Perusal of the file reveals that even FIR (At page-41 'annexure P-7') does not reflect if Sections 8/12 POCSO Act were mentioned at the relevant place in column No.2. In other copy of the said FIR (At page-30 'annexure P-4') Sections 8/12 POCSO Act appear against column No. 2(ii). It is not clear as to how and when, these Sections came to be added in the original FIR. The discrepancy has remained un-explained.

6. Besides it, the Court dealing with POCSO matters after considering the rival submissions of the parties did not find any ground to cancel the bail on merits. Apparently, Special Court dealing with POCSO matters has considered the merits of the case and did not find fault with the bail granted to the respondent No.2 on merits.

7. Considering the peculiar facts and circumstances of the case whereby due to bonafide mistake, bail was granted by the Trial Court and

the fact that the said order was upheld by the Special Court, no sound reasons exist to cancel bail specifically when the investigation is over and charge-sheet has already been filed before the Special Court.

8. The petition lacks merit and is dismissed. Trial Court record (if any) be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

NOVEMBER 20, 2015 / tr