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

Judgement delivered on: 2nd December, 2015

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CRL.M.C. 2392/2015

STATE (GOVT OF NCT OF DELHI) Petitioner

Represented by: Mr. Ravi Nayak,
APP for the State with
SI Dhrender, P.S. Alipur.
Versus

RUPAK RANA Respondent

Represented by: Mr. Siddharth
Luthra, Senior Advocate with Mr.
Sahil Malik, Advocate.

AND

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CRL.M.C. 3322/2015

RAJPAL RANA Petitioner

Represented by: Mr. Jaideep
Malik and Mr. Sumit Kundu,
Advocates.

Versus

STATE & ORS. Respondents

Represented by: Mr. Hirein
Sharma, APP for the State with
SI Dhrender, P.S. Alipur.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present petitions have been filed under Section 439(2) r/w Section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred as 'Cr P C'). Vide CrI.MC No.2392/2015, petitioner/ State seeks direction thereby quashing/setting aside the order dated 02.03.2015 whereby learned Trial Court granted bail to respondent Rupak Rana accused in case FIR No. 246/2014 registered at PS Alipur under sections 302/34 IPC and Section 25/27/30 Arms Act pending trial against him. The complainant Rajpal Rana/petitioner in CrI.MC No.3322/2015 has also confined to the same relief sought by the State in CrI.MC 2392/2015, therefore, both these petitions were heard together and are being disposed of by this common judgment.

2. Learned APP for the petitioner/State submitted that counsel for the respondent/accused argued before the trial court that role assigned to the respondent/accused is only after firing incident and accordingly he has been impleaded merely with the aid of Section 34 IPC. Learned APP argued that the respondent/accused had also sustained bullet injuries in his hand which clearly shows his presence at the spot at the time of the incident in question. To strengthen his arguments, he referred to the opinion dated 20.03.2014 given by Dr. Bhim Singh with regard to bullet injury sustained by the respondent/accused to the effect that said injury could be possible due to low velocity project-tile (bullet), which lost velocity after piercing the body of the deceased Rajbeer Rana.

3. Learned APP further submitted that vide supplementary statement dated 06.06.2014 complainant Rajpal Rana alleged that the respondent himself exhorted the words “*Iska Kaam Tamam Kar De*”.

4. Learned APP referred to the *Rukka* sent by the police after recording the statement of the complainant wherein it is clearly stated that he was inside the house when he heard noise and accordingly came outside and saw that Prem father of the respondent/accused was engaged in abusing with his brother Rajbeer Rana. His brother asked Prem not to hurl abusive on which the said Prem called his sons Pushpak @ Bunty and Rupak @ Nicky (respondent) and asked them to bring revolver. The complainant tried to stop the accused Prem from doing so, meanwhile co-accused Pushpak s/o Prem came close to his brother Rajbeer and shot at him 3-4 times. The learned trial court considered the statement of the respondent that he was not present at the time of the incident.

5. Learned APP submitted that respondent Rupak Rana is accused in a case under section 302 IPC for which the punishment is life imprisonment or death. Thus, granting bail is barred under section 437 of Cr.PC.

6. To strengthen his arguments, learned APP relied upon the judgment of the Supreme Court in the case of ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Another***

(2004) 7 SCC 528 in which the Apex Court observed as under:-

“11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge.

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15. Learned counsel for the appellant as also learned Additional Solicitor General have pointed out to us that there are allegations of threatening of the witnesses and that the prosecution has filed an application for the recall of witnesses already examined which has been allowed, but the same is

pending in revision before the High Court. In such circumstances the High Court could not have merely taken the period of incarceration and the delay in concluding the trial as grounds sufficient to enlarge the respondent on bail.”

7. Learned APP also relied upon the judgment of the Supreme Court in the case of ***State of U.P. through CBI vs. Amarmani Tripathi (2005) 8 SCC 21*** in which the Apex Court observed as under:-

“17. They also relied on the decision in Samarendra Nath Bhattacharjee v. State of W.B. where the above principle is reiterated. The decisions in Dolat Ram and Bhattacharjee cases relate to applications for cancellation of bail and not appeals against orders granting bail. In an application for cancellation, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. We, however, agree that while considering and deciding appeals against grant of bail, where the accused has been at large for a considerable time, the post bail conduct and supervening circumstances will also have to be taken note of. But they are not the only factors to be considered as in the case of applications for cancellation of bail.”

8. Learned APP contended that one young person has lost his life. The learned trial court by relying on wrong facts advanced by the respondent/accused has granted bail.

9. In addition to the above, learned APP submitted that the

opinion of the FSL expert clearly shows the injury is possible upon the deceased Rajbeer Rana by gun-shot and is not self-inflicted. It is further opined that the injury could be possible due to low velocity project-tile (bullet), which lost velocity after piercing the body of the deceased Rajbeer Rana.

10. On the other hand Mr.Siddharth Luthra, learned Senior Advocate appearing on behalf of the respondent/accused Rupak Rana submitted that the present petitions are filed under section 439(2) Cr.PC and under this provision the post bail conduct of the accused is to be seen and there is no allegation against the respondent that after granting bail he has violated any condition of bail. Moreover, the petitioner failed to establish any perversity or illegality in the order. Learned Prosecutor for the State has taken all the grounds before the trial court and, thereafter, the trial court granted bail to the respondent/accused. The supplementary statement relied upon by the petitioner was recorded on 06.06.2014, i.e., after 80 days of the incident. The respondent/accused has no role in the present case, however, he has been falsely implicated by supplementary statement dated 06/06.2014.

11. Learned Senior Advocate further submitted that the only allegation against respondent/accused is that he exhorted in the incident. However, neither he fired upon the deceased nor supported the accused who had fired. Moreover, PW-1 & PW-12 have improved their statements in deposition before the trial court.

Out of 29 witnesses, 12 witnesses have already been examined. Among them all the eye witnesses have been examined. There is no apprehension that the respondent/accused will influence the witnesses. Learned Senior Counsel submitted that the cases relied upon by the learned APP for the State are not relevant in the facts and circumstances of the case.

12. To strengthen his arguments, learned Senior Counsel relied upon the judgment of the Supreme Court in the case of ***Dolat Ram and others vs. State of Haryana (1995) 1 SCC 349*** in which the Apex Court observed as under:-

4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and delay 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 of 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. These principles, it appears, were lost sight of by the High Court when it decided

to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

13. Learned Senior counsel further relied upon the judgment of the Supreme Court in the case of ***Onkar Gulati vs. State & Anr. 71 (1998) DLT 463*** in which the Apex Court observed as under:-

“6. It is a well established principle of law that it is easier to grant bail in a non bailable case. However, once a bail is granted it cannot be cancelled merely on a request from the side of the complainant unless and until the complainant shows that the same is being misused and it is no longer conducive in the interest of justice to allow him any further to remain on bail. Once a man has been set at liberty through an order of a Court he cannot be deprived of the same unless the complainant makes out a case for cancellation of the same. There is a consensus amongst different High Courts and the Hon'ble Supreme Court on this points that a bail once granted can be cancelled only in those discerning few cases where it is shown that a person to whom the concession of bail has been granted is misusing the same by subverting the course of justice i.e. efforts are being made to suborn the witnesses, threats are being extended to the witnesses and they are being intimidated not to appear against the accused persons and in case they do so they will have to bear dire consequences. The bail can also be cancelled in case the accused on bail fails to appear before the court at the time of the trial and thus there is an abuse of the process of the court.”

14. Learned Senior Counsel also relied upon the judgment of

the Supreme Court in the case of ***Dilawar Balu Kurane vs. State of Maharashtra (2002) 2 SCC 135*** in which the Apex Court observed as under:-

“14. We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven day; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact prosecution has not been able to throw any suspicion, we, therefore, hold that no prima facie case was made against the appellant.”

15. Learned Senior Counsel submitted that even the deposition of PW-1 and PW-2 does not fully support the case of the prosecution. Moreover, once the bail is granted that cannot be cancelled until and unless such situation warrants. In the present case, the petitioner/State failed to establish any ground whereby the impugned orders can be quashed or set aside.

16. I have heard learned counsel for parties.

17. It is true that once bail granted should not be cancelled in a mechanical manner without considering any supervening circumstances which is not conducive to fair trial. It is also settled law that once bail is granted, it cannot be considered barely on a request from the side of the complainant unless and until the complainant shows that the same is being misused and it is not no

longer conducive in the interest of justice to allow the accused any further to remain on bail. The bail can be cancelled only in those discerning few cases where it is shown that a person to whom the concession of bail has been granted is misusing the same.

18. It is held in case of ***Kalyan Chandra Sarkar*** (Supra) that at the stage of granting bail, a detailed examination of evidence and elaborated documentation of the merit of the case need not to be undertaken. The nature of accusation and surety of punishment in case of conviction and the nature of supporting evidence to be taken into consideration. Moreover, the Court need not take in view the period of incarceration and delay in concluding the trial.

19. The respondent is facing trial for the offence punishable under Section 302 IPC and Section 25/27/30 Arms Act. The respondent sustained bullet injuries in his hand which clearly shows his presence at the spot at the time of incident in question. This fact has been further established by the opinion dated 20.03.2014 given by Dr. Bhim Singh with regard to bullet injuries sustained by respondent. He opined that the said injuries could be possible due to low velocity project-tile (bullet), which lost velocity after piercing the body of the deceased Rajbeer Rana.

20. However, the learned Judge believed the argument of counsel for the respondent that role assigned to the accused is only after a firing and he was not present on the spot. Thus, he has been impleaded merely with the aid of Section 34 IPC. As per

rukka sent by police after recording the statement of the complainant whereby the complainant stated that he was inside the house when he heard noise and after coming out from the house he saw that accused Prem (father of the respondent) was abusing his brother Rajbeer Rana, who asked Prem not to hurl abusive on which the said Prem called his sons Pushpak @ Bunty and Rupak @ Nicky (respondent) and asked them to bring revolver. Meanwhile, co-accused Pushpak son of Prem came close to his brother Rajbeer and shot at him 3-4 times.

21. It is not in dispute that the accused is facing trial under Section 302 IPC for which punishment is life imprisonment or death. Thus, granting bail is barred under Section 437 of Cr.P.C. If in such a case, bail is granted in a mechanical manner then wrong message goes to society that after committing a heinous crime one can move freely out of the jail. This type of concession encourages the offender and discourages the victim in particular and the society as a whole. Thus, in such cases bail should be granted rarely in a case where the involvement of the accused is prima facie doubtful.

22. In the case in hand the respondent actively participated in committing murder. His presence is very much established by the injuries received on his hand. Accordingly, I hereby set aside the order dated 02.03.2015 whereby the learned trial Court granted bail to the respondent.

23. Accordingly, the respondent is directed to surrender before the trial Court within one week from today.
24. The petitions are accordingly allowed.
25. Order *dasti* to the parties.

**SURESH KAIT
(JUDGE)**

DECEMBER 02, 2015
RS/afa/jg