

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

Date of Decision: 27th April, 2016

+ CRL.M.C. 2100/2014 & Crl.M.A.No.7022/2014

JYOTI SAWHNEY Petitioner

Through Mr. Zeeshan, Advocate

versus

STATE & ANR. Respondent

Through Mr Akshai Malik, Additional
Public Prosecutor for the State
along with SI Sanjeev
Choudhary, PS Vasant Vihar

Mr. Joginder Tuli and Ms.
Joshini Tuli, Advocates for R-2

AND

+ CRL.M.C. 3161/2014

STATE OF NCT OF DELHI Petitioner

Through Mr Akshai Malik, Additional
Public Prosecutor for the State
along with SI Sanjeev
Choudhary, PS Vasant Vihar

versus

SUMIT WALIA Respondent

Through Mr. Joginder Tuli and Ms.
Joshini Tuli, Advocates

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

: SUNITA GUPTA, J.

1. Feeling aggrieved by the order dated 28th April, 2014 passed by learned ASJ-03, Patiala House Courts, New Delhi in case FIR 280/13 u/s 376/406/506 IPC registered with PS Vasant Vihar, New Delhi, both State as well as the complainant have filed separate Criminal M.C.Nos.3161/2014 and 2100/2014 respectively seeking quashing and cancellation of bail granted to the respondent.

2. Before going into the grounds for cancellation of bail, it will be relevant to note the factual matrix of the case:-

a. The FIR in question was registered on the complaint of Ms. Jyoti Sawhney on 26th July, 2013 on the allegations that the respondent has been raping her repeatedly on the pretext of marriage. The complainant has also given Rs.4 crores to the respondent by way of entrustment and he also threatened the complainant.

b. The respondent/accused was already in custody in some other case and was arrested in this case on 28th July, 2013.

c. Pursuant to the bail application moved by the accused, vide order dated 17th August, 2013, he was granted bail by learned ASJ, Patiala House Courts, New Delhi on furnishing personal bond of Rs.1 lac with direction to remain out of National Capital Territory of Delhi till the statement of PWs/complainant is over and only to visit Delhi when he was required by the Courts amongst other conditions.

d. It is alleged that immediately after getting the bail, the respondent started misusing his liberty and in violation of the condition of bail, started threatening the petitioner. On 22nd August, 2013, on the complaint of the complainant, an NCR vide 1455/13 u/s 506 IPC was registered against the respondent wherein it was stated that in violation of bail order, the respondent is roaming in Delhi and further threatened the complainant for life.

e. Another complaint was submitted by the complainant on 23rd August, 2013 to SHO, PS Vasant Vihar against one Jaswinder Singh from Punjab for making a threatening call and calling upon her to withdraw the complaint against Sunny Walia.

f. On 25th August, 2013, a complaint was made to SHO, Vasant Vihar by the petitioner about receiving threatening calls from the allies of accused Sunny Walia threatening to kill her and request was made to take necessary action on her complaint as no action was taken on her earlier complaints.

g. Again on 1st September, 2013, a complaint was made to SHO, Vasant Vihar by the complainant about the violation of the bail order by the accused as he was roaming freely in Delhi and although the complaint was registered vide DD No. 52B, however, no action was taken.

h. On 4th September, 2013, a detailed representation was submitted to the IO of the case seeking verification of the presence of the accused in NCT of Delhi in violation of bail

order dated 17th August, 2013. Request was also made to verify the location of accused and to collect CCTV footage of the concerned areas.

i. An application was moved by the complainant for cancellation of the bail before the Court concerned for flouting the conditions of bail. Notice of the application was given to the respondent. It transpired that the respondent was lodged in Mumbai jail since 11th October, 2013 in case FIR 20/13 u/s 420/465/467/468/471/120B PS Bandra, Mumbai. His father who stood surety for him was repeatedly called, who failed to appear.

j. vide order dated 22nd November, 2013, the bail granted to the respondent vide order dated 17th August, 2013 was cancelled on the grounds:-

(i) One of the general condition for grant of bail is that accused will not tamper with the evidence or threaten the witnesses/complainant. It is stated in the complaint that on 22nd August, 2013 complainant received the call from the mobile phone No. 8427535477. It is stated that this mobile phone is being used by Sunny Walia. The complainant was further threatened on the night of 24/08/2013 and in the wee hours of 25/8/2012. After receiving the threat complainant repeatedly filed the applications to PS Vasant Vihar for her safety.

(ii) A CD has been placed on record which is from CCTC of Lap Bar Samrat Hotel of gate no.2. In this

CCTV footage accused Sunny Walia was found present in the hotel at 01.48 a.m.

I have myself seen the CD and found that accused Sumit @Sunny Walia at the spot.

(iii) Another condition for bail is that he will not involve himself in further offence. His lodging in Mumbai offence shows that he is involved in another offence.

k. The respondent moved an application for bail on the ground that his bail was cancelled without notice to him and it was not clear as to how and what terms and conditions of bail have been violated. As such, prayer was made to restore the application on whatever terms and conditions passed by the Court.

l. Vide Order dated 21st December, 2013, the application was dismissed on the following grounds:-

(i) **Firstly**, essentially by way of present bail application, accused is seeking to review the order of this Court Court dated 22.11.2013 whereby this Court has cancelled the bail granted to accused vide its order dated 17.08.2013. Once the bail has been cancelled, the appropriate mode is to approach before the Superior Courts.

(ii) **Secondly**, accused was repeatedly served and his surety, i.e., his father was also served before disposing of the application for cancellation of bail but despite service no one

came before the Court to explain the circumstances in which accused as well as his surety absented.

(i) **Thirdly**, at the time of granting of bail, one of the condition was imposed on accused that he will not visit Delhi unless required to attend the case in Delhi. Copy of CD which shows that accused was present in Lap Bar Samrat Hotel is on record and duly identified by the IO at that time. The said CD clearly shows that accused Sunny Walia visited at that date and time in Delhi which was the clear violation of terms and conditions of bail. Hence, there is full apprehension that if accused is released on bail, he will tamper with evidence or threaten the complainant.

m. The respondent moved second bail application before the learned ASJ, Patiala House Courts which was dismissed vide order dated 31st January, 2014 on the ground that the respondent has violated the condition for grant of bail. It was also brought to the notice of the Court that during the interregnum another FIR bearing 814/13 PS Mehrauli u/s 376/506/34 IPC was lodged against the accused in which he is alleged to have sexually exploited another girl over a long period of time and also allegedly making pecuniary gains out of such relationship. It was observed that the accused is a habitual offender who tries to entrap gullible women and thereby exploit them sexually and financially.

n. Third application for grant of bail was moved, *inter alia*, on the ground that the accused is in custody w.e.f. 22nd

November, 2013; the victim is a lady of easy virtue as both the accused and victim were close friends and the age of complainant is 46 years and the accused is 26 years. The application was opposed by the Additional Public Prosecutor for the State as well as counsel for the complainant, *inter alia*, on the grounds that the application is not maintainable since the earlier bail application on the same grounds stands dismissed. In view of Section 53A Evidence Act, the character of the prosecutrix cannot be taken into consideration; after release on bail, the accused has committed similar offences and accused is habitual in committing the same offence again and again and there are 8 FIRs pending against him. Learned ASJ was apprised of all the earlier orders vide which the bail granted to the respondent/accused was cancelled and his subsequent attempts to secure bail by moving two successive applications, yet the accused was released on bail by observing as under:-

“Having given careful consideration to the submissions of both the parties and taking note of the aforesaid facts and circumstances, considering the judgments relied upon by the learned counsel for the accused; the observations made in the order dated 17.08.2013 and also considering the period of accused’s judicial custody 12.11.2013, vide which the first bail application was dismissed, I find it a fit case to grant of bail to the accused/applicant after striking a balance between the individual liberty of the accused and larger interest of the society as accused/applicant is in JC more than 5 months and challan has already been filed in this case. Accordingly, accused/applicant Sumit Walia is granted bail on furnishing personal bond in the sum of Rs.1 lac with one surety in the like amount to the satisfaction of concerned Id. MM/Link MM/Duty MM/subject to the same terms and conditions as imposed in the order dated 17.08.2013 except one condition that on release from jail, accused/applicant shall immediately leave the

NCT of Delhi as police administration is free to initiate the externment proceedings against the accused/applicant Sumit Walia in case it feels potential threat from the accused. In accordance with the procedure established by the law and further subject to the condition that accused/applicant neither shall cause any threat to the victim and her family members nor he shall influence or tamper the evidence and proceedings of this case."

(emphasis added)

3. Feeling aggrieved, both the State as well as the complainant has approached this Court for cancellation of the bail.

4. The petitioner/complainant seeks cancellation of bail on the ground that the learned ASJ failed to take into consideration previous involvement of respondent No.2 in several cases. Moreover, his conduct in flouting the directions of the Court and giving continuous threats to the complainant resulted in cancellation of his bail which fact could not have been ignored. Further the successive two bail applications were dismissed on 21st December, 2013 and 31st January, 2014. Without any substantial change in fact situation there was no occasion to release the accused on bail. The mere fact that the accused was in custody for the last 5.5 months was not a good ground to grant bail to respondent No. 2. This is more particularly so, as the respondent No.2 has no respect for law. He is in the habit of playing with the sentiments of innocent girls. Various FIRs were registered against him even after his release on bail. Emphasis was also laid on the press release by the Crime Branch for showing his involvement in several other serious offences. Reliance was placed on *State of Maharashtra vs. Captain Buddhikota Subha Rao*, AIR 1989 SCC

2292; *Balbir Kumar & Ors. vs. State*, 2006 SCC 1338; *Kamlesh Gupta and Anr. vs. The State*, 2007(2) JCC 1407; *Kailash Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr.*, 2004 (7) SCC 528 and *Maya Rani Guin etc. vs. State of West Bengal*, 2003 Cr.LJ.1

5. Learned Additional Public Prosecutor for the State also seeks cancellation of bail on the ground that the learned Additional Sessions Judge has failed to take into consideration the seriousness and gravity of the offence, more particularly, the conduct of the respondent which reflects that he is involved in as many as 18 cases which are as follows:-

S. No.	FIR No.	Under Section	Police Station	Present status
1.	22/09	452/323/506/34 IPC	Vasant Vihar	Could not be traced
2.	132/09	323/341/506/34 IPC	Vasant Vihar	Could not be traced
3.	446/09	406/34 IPC	Vasant Vihar	Compounded on 13.05.14
4.	128/11	420/406/120B IPC	Crime Branch	Pending trial in Saket Court
5.	214/12	376/406 IPC	Vasant Vihar	
6.	267/12	406 IPC	Crime Branch	Pending trial in Patiala House Court
7.	294/12	66A/67 IT Act 384/506/509	Vasant Vihar	Pending trial in CMM Court of Sh.Sumit Dass and NDOH 21.04.16
8.	20/13	420/467/468/47 IPC	Bandra Mumbai	Charge sheet filed on 19.08.14 in ACMM Court No.47, Mumbai

9.	246/13	323/341/506/34 IPC	Vasant Vihar	Pending trial before the Hon'ble court of Sh.Harvinder Singh, NDOH 08.04.16
10.	770/13	406	Mehrauli	Pending investigation
11.	280/13	376 IPC	Vasant Vihar	Pending trial before the Hon'ble Court of Sh.D.K. Sharma, ASJ NDOH 02.05.2016
12.	814/13	376/384/354/34	Mehrauli	Pending trial before the Hon'ble Court of Dr.Aditya Arya, ASJ, Saket Court, NDOH 30.03.2016
13.	1418/14	323/341/506/509 IPC	Vasant Vihar	Pending trial before the Hon'ble Court of Sh.Harvinder Singh, MM, PHC NDOH 29.04.16
14.	248/14	323/341/506/509/3 54/354D IPC	Defence Colony	Pending trial before the Hon'ble Court of Charu Gupta, MM, Saket Court 10.05.16
15.	870/15	354/323/506 IPC	PS Rohini South	Pending investigation
16.	1595/15	406 IPC	Bindapur	Accused absconding
17.	202/16	420/406 IPC	Mehrauli	Pending investigation
18.	E-FIR 23726/15	379 IPC	Vasant Vihar	Pending investigation

6. Counsel further submits that in case FIR 1595/15 u/s 406 IPC registered at PS Bindapur, the respondent is absconding and process u/s 82 Cr.P.C. has been initiated against him. He approached this Court for grant of anticipatory bail which was dismissed vide order dated 1st February, 2016. Moreover, on the complaint of Ms. Jyoti Sawhney, three NCRs vide No.1455/14, 3200/14 and 1518/14 u/s 506 IPC has been lodged at PS Vasant Vihar and PS Vasant Kunj. Further in *E FIR* No. 23726/15 u/s 379 IPC registered with PS Vasant Vihar, the accused approached the learned Additional Sessions Judge for grant of anticipatory bail. He was directed to join investigation. Despite service, he did not turn up, accordingly, an application for cancellation of bail was moved. Again direction was given to the respondent to join investigation thereupon he did join investigation but left the same in hub without informing the IO and since then he did not turn up despite service of notices.

7. Counsel further submits that the respondent is a listed bad character of PS Vasant Vihar in active/'A' Category. The file was transferred from PS Vasant Vihar to PS Tilak Nagar and now he is a listed bad character of police station Tilak Nagar. Under the circumstances, it is submitted that there was no ground for granting him bail after the cancellation of bail even otherwise his post conduct subsequent to the grant of bail also deserves cancellation of bail.

8. In reply to the status report filed by the State, the factum of registration of FIR No.1418/2014 u/s 323/341/506/509 IPC PS Vasant

Vihar; FIR No.248/2014 u/s 323/341/506/509/354D IPC PS Defence Colony; FIR No.870/2015 u/s 354/323/506 IPC PS Rohini South; FIR No.1595/2015 u/s 406 IPC PS Bindapur; FIR No.202/2016 u/s 420/406 IPC PS Mehrauli; FIR No.23726/2015 u/s 379 IPC has been admitted by the respondent/accused, however, it is alleged that in FIR 1418/14 wife of respondent is the complainant and the matter has been compromised. A petition for divorce by mutual consent has already been filed in the Family Court. FIR 248/14 is lodged by the present complainant and the same has been falsely lodged against the respondent who is on bail in this case. In FIR 870/15, the respondent has filed Crl.W.P.3093/16 against the police officials for falsely implicating him in this FIR. FIR No.1595/15 has been compromised. In FIR No. 202/16, he is on interim bail. In E FIR No. 23726/15 the respondent is on anticipatory bail and the stolen vehicle has already been recovered. The examination-in-chief of prosecutrix has already been recorded and now she is under cross-examination. It is submitted that the present petition has been filed with malafide intention to harass the respondent and, as such, the same be dismissed.

9. Reliance is placed on *Amar Mani Tripathi* (supra) for submitting that rejection of bail in a non-bailable case at the initial stage and cancellation of bail so granted have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for directing the cancellation of bail already granted.

10. Counsel for the complainant/petitioner in rebuttal submitted that it has been wrongly averred by the respondent in his affidavit that the complaint which culminated in registration of FIR 1418/15, has been withdrawn by Neha Anand in March 2015. In fact, the investigation is still going on in this case.

11. By virtue of these petitions, the petitioners are seeking cancellation of bail whereby they have called in question the legal pregnability of the order passed by the learned Additional Sessions Judge as well as supervening circumstances after the grant of bail. The basic assail is to the manner in which the learned Additional Sessions Judge has exercised his jurisdiction u/s 439 of the Code of Criminal Procedure, 1973 while admitting the accused to bail.

12. The first question for consideration is whether the learned Additional Sessions Judge should have enlarged the respondent on bail after his cancellation of bail earlier granted to him and thereafter dismissal of his successive two bail applications.

13. In ***Ram Govind Upadhyay vs. Sudarshan Singh***, (2002) 3 SCC 598, Hon'ble Supreme Court observed as under:-

"1. While liberty of an individual is precious and there should always be an all round effort on the part of Law Courts to protect such liberties of individuals - but this protection can be made available to the deserving ones only since the term protection cannot by itself be termed to be absolute in any and every situation but stand qualified depending upon the exigencies of the situation. It is on his perspective that in the event of there being committal of a heinous crime it is the society that needs a protection from these elements since the latter are having the capability of spreading a reign of terror so as to disrupt the life and the tranquility of

the people in the society. The protection thus to be allowed upon proper circumspection depending upon the fact situation of the matter.”

While dealing with the aspect of the grant of bail, it was observed as under:-

“3. Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail - more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and nor exhaustive neither there can be any. The considerations being:

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the

genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

14. The view was reiterated in ***Prahlad Singh Bhati v. NCT of Delhi***, (2001) 4 SCC 280; ***Prasanta Kumar Sarkar v. Ashis Chatterjee***, (2010) 14 SCC 496; ***Neeru Yadav v. State of UP & Ors.***, 2015(X) AD (SC) 265.

15. Undoubtedly, there is a distinction between the factors relevant for rejecting bail in a non-bailable case and for cancellation of bail. In ***Amar Mani Tripathi*** (supra) on which reliance was placed both by the petitioner as well as the respondent reference was made to ***Dolat Ram and Ors. vs. State of Haryana***, (1995) 1 SCC 349, where a distinction between the factors relevant for rejecting the 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."

16. The general rule is that the Court will not ordinarily interfere in matters relating to bail but the same is subject to exceptions where there are special circumstances and when basic requirement for grant of bail are completely ignored.

17. Adverting to the case in hand, a detailed narration of facts reflects that the respondent/Sumit was granted bail vide order dated 17th August, 2013 subject to certain terms and conditions, however, he started misusing his liberty and in violation of the condition of bail started threatening the complainant as a result of which complaints dated 22nd August, 2013, 23rd August, 2013 and 25th August, 2013 were made. Moreover, one of the conditions imposed upon the respondent while granting bail was to remain out of National Capital Territory of Delhi till the statement of the complainant is over. However, in violation of the said order, the respondent was found roaming in Delhi, as such, pursuant to the application moved by the complainant for flouting the condition of bail, vide detailed order dated 22nd November, 2013, his bail was cancelled. Thereafter successive bail applications were moved which were dismissed vide order dated 21st December, 2013 and 31st January, 2014. Third application was moved which was contested by the State as well as the complainant and it was brought to the notice of the Court that the application was not maintainable in view of the successive dismissal of two earlier bail applications. Moreover, even prior to the passing of the earlier bail application, the accused was involved in several other cases and post release of bail also he committed several offences.

Despite the fact that all these facts were brought to the notice of the Court, the respondent was released on bail primarily on the ground that the accused is in custody for more than five months and challan has been filed in this case and that the Court has to strike balance between individual liberty of the accused and larger interest of the society.

18. In ***Captain Buddhikota Subha Rao*** (supra); ***Balbir Kumar*** (supra); ***Kamlesh Gupta*** (supra) and ***Maya Rani Guin*** (supra), it was observed that without any substantial change in the circumstances, the successive bail application is not maintainable.

19. It seems that the period of detention of respondent No. 2 for 5.5 months in jail was considered to be the ground for release on bail, however, this factor alone was not sufficient ground for releasing the accused on bail, more particularly, keeping in view his antecedents coupled with the fact that the discretion exercised earlier in his favour was misused by him by flouting the directions of the Court resulting in cancellation of his bail and even after release, he did not mend his ways, which resulted in registration of several other FIRs against him. Substantially the same issue came up before this court in ***Vijay Khanna***(supra) where it was held as under:-

"8. Counsel for the petitioner-accused, referring to a decision of the Supreme Court in "Ashok Dhingra vs.NCT of Delhi", 2001(1) JCC SC 178, pleaded that the petitioner-accused has already spent about nine months

in jail and as the trial is likely to take considerable time, to detain him jail may not be in the interest of justice.

9. From the side of respondent-State, on the other hand, a reference was made to another decision of the Supreme Court in "**Ram Govind Upadhyay vs. Sudarshan Singh & Others**", AIR 2002 SC 475, to stress the point that the placement of accused in society by itself cannot be a guiding factor for grant of bail and other relevant considerations enumerated therein were also to be kept in view while considering the case of a particular accused for release on bail. It was argued by learned APP that in view of the fact that the petitioner-accused by indulging in criminal acts of cheating has made it a part of his avocation by cheating a number of unsuspecting law abiding persons, his continuance in jail pending trial would rather be in the larger interest of the society. It was pointed out that the criminal instinct of the petitioner-accused has found its manifestation in as many as 18 cases ranging from electricity theft, cheating, forgery, fabrication and false documentation. He furnishes the details of such cases which are as under:-

FIR No. Sections Date/Year Police Station Status 0077/93 379 IPC & 39 Ele. Act 30.3.1993 Ambedkar Ngr Traced 0324/93 379 IPC & 39 Ele. Act 18.8.1993 Ambedkar Ngr Traced 0196/94 420/467/471/34 IPC 02.4.1994 Cont. Place Traced 0200/94 420/467/471/120-BIPC 07.4.1994 R.K. Puram Traced 0138/94 420/467/471/120-BIPC 22.4.1994 H. Nizamuddin Traced 0137/94 406/420/468/471 IPC 22.4.1994 Lajpat Nagar Traced 0079/94 420/120-B IPC 23.2.1994 Karol Bagh Traced 0097/97 420 IPC 23.2.1997 Chitranganj Pk. Traced 0079/97 380/411/468/471 IPC 06.3.1997 Vasant Vihar Traced 0388/02 420/468/471 IPC 14.3.1997 Cont. Place Traced 0248/97 420/468/471 IPC 11.6.1997 Pr. Street Traced 0159/02 406/420/468/47/ 01.4.2004 Ambedkar Ngr Traced 596/120-B IPC 0445/02 406/420/468/47/ 2002 Ambedkar Ngr Traced 596/120-B IPC 0196/02 406/420/468/47/ 2002 Brahampuri Traced 596/120-B IPC Jaipur 0274/02 406/420/468/47/ 2002 Makrana Raj. Traced 596/120-B IPC 0218/02 406/420/468/47/ 2002 Shiprapath Traced 596/120-B IPC 0036/02 406/420/468/47/ 2002 Bahi Park Traced 596/120-B IPC Jaipur 0509/02 420/467/471/ 3.12.2002 Ambedkar Ngr Traced 120-B IPC

10. No doubt liberty of an individual is precious, however the larger public interest is paramount. As held in **Ram Govind Upadhyay**(supra), the nature of the offence, apart from other factors, is one of the basic

considerations for grant of bail. It is not a singular act of criminal conspiracy cheating and forgery which comes into focus in the instant case rather the petitioner-accused is alleged to be perpetrator of such criminal acts in a number of cases over a period of time beginning from 1994 onwards giving an impression that the larger public interest may perhaps be better served by letting him continue in jail. Reluctance of the learned Additional Sessions Judge to admit the petitioner-accused to bail would thus appear to have been justified on taking an overall view of the matter. I am not persuaded to take a different view."

20. In **Ram Govind Upadhyay**(supra) also the period of one year spend in jail was considered not to be a relevant consideration for grant of bail.

21. Furthermore, when the bail earlier granted to the respondent was cancelled and subsequent two applications did not yield any fruitful result, while considering the subsequent application, if the Court was of the opinion that bail has to be granted then the Court should have given specific reasons. The reasons need not be very detailed or elaborated, lest it may cause prejudice to the cause of the parties, but must be sufficiently indicative of the process of reasoning leading to the passing of the impugned order. In this regard, the observations made in **Kailash Chandra Sarkar** (supra) may be reproduced:-

*"12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See **Ram Govind Upadhyay**, supra)."*

22. However, the impugned order did not dealt with the effect of cancellation of earlier bail order or dismissal of subsequent two bail applications and involvement of respondent in various cases, six of which, at least were registered after the grant of initial bail. True, the Court has to strike a balance between the individual liberty of the accused and larger interest of the society, however, it was not made explicit as to what larger interest of society was served by releasing the accused on bail as the criminal instinct of the accused has found its manifestation in as many as 18 cases pre and post bail. Moreover, there was ample material available on record to show that despite the directions given by the Court, the accused leisurely flouted the same and kept on indulging in criminal activities. The mere fact that after the release of accused on bail some of the cases have been compromised does not warrant taking a liberal view so as to extend the benefit of bail to the accused, who according to the prosecution, is a bad character of the area in active/‘A’ Category. While granting bail, the learned Trial Court has not dealt with antecedents of the petitioner or post conduct whereby he indulged in threatening the complainant and also flouted the order of the Court. Merely because he remained in jail for 5 months, to my mind should not have been a ground for grant of bail, particularly when there was no change in circumstances after the dismissal of two earlier bail applications which were dismissed by detailed speaking orders.

23. The inevitable result is the decimation of the impugned order. Resultantly, the petitions are allowed. The impugned order passed by

the learned Additional Sessions Judge is set aside. If the respondent is at large, he shall be taken in custody forthwith.

24. It is clarified that while passing this order, no opinion has been expressed with regard to other cases and simultaneously the observations in this case are only made for the purpose of setting aside the order granting bail and would have no impact or effect during the trial.

APRIL 27, 2016/rs

**(SUNITA GUPTA)
JUDGE**

