

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

**RESERVED ON : 11th FEBRUARY, 2016
DECIDED ON : 4th MARCH, 2016**

+ CRL.M.C.2120/2015 & CRL.M.A.No.1567/2016

‘X’ (Changed name)

..... Petitioner

Through : Mr.Prashant Mendiratta, Advocate
with Mr.Gauravjeet Narwan &
Ms.Poonam Mendiratta,
Advocates.

versus

STATE & ANR.

..... Respondents

Through : Mr.Sanjay Lao, ASC with
Mr.Siddharth Sindhu, Advocate.
Mr.Ramesh Gupta, Sr.Advocate
with Mr.Ashish Dixit, Advocate for
R2.

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

S.P.GARG, J.

1. Present petition under Section 439(2) read with Section 482 Cr.P.C. has been filed by the victim ‘X’ (changed name) assailing the legality and correctness of an order dated 21.03.2015 and for cancellation of anticipatory bail granted to the respondent No.2 (hereinafter referred

‘The accused’) in case FIR No.52/2015 registered under Sections 354/354A/354D/506 IPC at PS Lodhi Colony. The petition is contested by the accused. Status report has been filed by the State.

2. The facts material for adjudication of the petition as stated in the petition are that ‘X’, Research Analyst in the office of the accused at The Energy & Research Institute (In short ‘TERI’) since September, 2013 filed a complaint with the Internal Complaints Committee on 09.02.2015 complaining sexual harassment by him. After that, she was subjected to even more harassment; there were repeated attempts by the accused to call her to his office; meet her alone and talk to her. She lodged complaint with the police on 13.02.2015 against the accused for having committed various offences including that of sexual harassment but it did not register the FIR promptly. After the article regarding her complaint was carried out by the Economic Times, New Delhi on 18.02.2015, the police lodged the FIR. The accused was not only capable of exercising influence and tempering with the evidence but he actually influenced the witnesses and tampered with the evidence.

3. It is further averred that on 26.02.2015, Investigating Officer opposed the grant of anticipatory bail / interim protection to the accused as he had the potentiality to exercise extreme influence over the witnesses.

Since the accused was working as Director-Genral of TERI for the last about 34 years, he had complete control over all the electronic devices and computers. It is further averred that application dated 18.02.2015 for early hearing filed by State was taken up on 21.03.2015 after notice to the accused. Though 21.03.2015 was a date only for hearing the application for early hearing, the learned Trial Court granted anticipatory bail to the accused with certain conditions incorporated therein.

4. Questioning the justifiability of the impugned order, learned counsel for the petitioner strenuously urged that the Trial Court did not appreciate that the investigating agency had filed various documents to reveal that the accused had influenced the witnesses and had directed them to state whatever he desired them to state before the police. Non-consideration of the material facts / documents vitiates the impugned order. The accused has taken contradictory defence in his various petitions and suit. He remains in constant touch with the officials of TERI who are expected to be introduced witnesses in the case. It is further contended that the Trial Court did not appreciate that TERI officials at the accused's behest did not cooperate with the Probing Agency and regularly avoided accepting official notices on one pretext or the other. DD No.24B dated 13.03.2015 confirms it. They did not respond properly on certain issues

and ignored to give replies to the notices received by them. TERI officials declined to provide e-mail details exchanged between the petitioner and the accused. Information sought from TERI officials by the Investigating Officer by issuing notice under Section 91 Cr.P.C. was made available after due consultation with the accused. Learned counsel referred to the statement dated 15.03.2015 of Ramington Fernandes where he admitted that he was called by the accused at Fortis Escort Hospital and he had dictated to file additional details along with the photographs in the chart. The photographer sent by TERI staff gave in writing to the police that he was told by the senior TERI officials that the accused needed help in that hour and he would take care of him in times to come. The Court below committed grave error to ignore e-mail dated 24.02.2015. It is vehemently urged that the police had consciously sought custodial interrogation of the accused. The Court failed to appreciate that the equipments which were being sent and handed over were in fact to be seized by the police from the office of TERI in the presence of the petitioner who could have helped them in identifying the same by logging onto them and opening the portals and the e-mails. Merely picking and choosing the machines by the officials of TERI in the petitioner's absence has no value. The petitioner is aggrieved as fair and free investigation cannot be carried out if the

accused is permitted to roam around freely and keep influencing and dictating the witnesses. He further urged that right from the time when the crime was registered, the accused has tried to create pressure on the investigation machinery / witnesses.

5. State in its Status Report / Additional Status Report asked for custodial interrogation of the accused due to his reluctance to give proper replies to the questions during interrogation. Admitting that the petitioner had joined the investigation on various dates, it disclosed that the witnesses were being influenced by him.

6. In his comprehensive reply, the accused refuting the petitioner's allegations averred that the complaint has been lodged to malign his impeccable credibility. The instant petition for cancellation of bail has been filed to pre-empt the relief sought by him in the application dated 15.05.2015 for modification of the condition 'not to enter TERI'. After the grant of anticipatory bail on 21.03.2015, he never misused the liberty accorded to him and promptly joined the investigation on various dates for sufficient duration. He was even permitted by the Trial Court to travel abroad on many occasions and he returned to India without violation of its terms and conditions. He has neither influenced any witness nor has interfered in the investigation. That apart, it is put forth

that in the absence of any failure on his part to respect the conditions, his liberty should not be put to jeopardy at the instance of an interested party who is bent upon to harass him.

7. Admitted position is that FIR No.52/2015 under Sections 354/354A/354D/506 IPC has been lodged against the accused on X's complaint dated 13.02.2015. She, in her complaint, alleged sexual harassment at her work-place by the accused on various dates and locations in between September, 2013 to December, 2014. She also alleged that the accused had engaged in sexually-laden conversations with her over e-mails and text messages. On 19.02.2015 in the Bail Application 329/2015, notice under Sections 91 & 41 Cr.P.C. directing him to supply the documents / information / evidence was produced. It was informed that the required instruments i.e. laptop, etc. had already been handed over to the Investigating Officer that morning. The accused was granted interim protection against arrest till 23.02.2015 which was further extended by the Trial Court till 26.02.2015. In the application to file additional documents (Annexure 'P6') the accused informed that he had temporarily stepped down from his position as the Director-General of TERI. Status report filed by the State (Annexure 'P8') revealed that on 19.02.2015, the accused had produced various items / devices used for

communication by him since January, 2013; it included mobile phone, hard-disk, laptops & I-pads, etc. It further showed that the accused had undergone cardiac catheterization on 24.02.2015 at Fortis Escort Hospital. The interim protection was extended imposing certain conditions, inter alia that he will join the investigation as and when called; shall not leave the country without prior permission of the Court; shall not enter the office of TERI till the investigation was over and shall not directly or indirectly influence or contact the complainant or other witnesses related to the case. Finally, by the impugned order, the respondent was granted anticipatory bail.

8. It is pertinent to note that State did not file any proceedings for cancellation of bail. It is the victim who has challenged the bail granted to the accused. During the course of arguments, in response to the query about the progress of the investigation, learned Addl. Standing Counsel informed that it was almost complete and charge-sheet was expected to be filed within two weeks. Learned Addl. Standing Counsel or the Investigating Officer did not press for custodial interrogation of the accused.

9. By a letter dated 23.02.2015, the Investigating Officer required Administration (Manager), TERI to furnish information with

supporting documents as to how many outstation official journeys were performed by 'X' with the accused during her both the tenures i.e. since August, 2012 to date. Information was further sought regarding - (a) The purpose, place and date of journey; (b) Details of other employees who accompanied them in such journeys; (c) Duration of such journeys; (d) Mode of journeys (with journey travel documents such as tickets, passes, copy of visa, passport entry copy etc.) and (e) Details of places of stay with relevant documents such as hotel reservations, bills etc. besides any 'other relevant information' regarding such journeys. The necessary information was to be made available on 24.02.2015 at 04.00 p.m. at PS Lodhi Colony, Delhi. Apparently, a very short notice to furnish the detailed information was given to the concerned office. Table giving out the details of journeys in a chronological order marked (Ex.A to Ex.E) was furnished vide letter dated 24.02.2015. It is true that this table incorporates 'additional information' furnished by Ramington Fernandes at the accused's behest. For that, he was summoned by the Investigating Officer to seek clarification vide notice under Sections 160/175 Cr.P.C. on 14.03.2015. In his statement dated 15.03.2015 under Section 161 Cr.P.C., he explained that on the request of the administration TERI, he was asked to collect information relating to all travel undertaken by the accused and

the victim. Based on the same, whatever information that he could pull out in short notice, he prepared a statement (summery table) providing date and time of departure, destination, date and time of arrival of destination, event & hotel. That information was shown by him to the accused in Fortis Escort Hospital where he mentioned that he could include 'some details' in the table. He fairly admitted that the accused had dictated the details mentioned (under column details) in rows 4, 7, 12, 15, 17, 18, 20, 24 & 26 of the table. He also told him to provide photographs of 'himself' and that of the 'prosecutrix' wherever available which he did.

10. I have examined the table incorporating the 'additional information' which the accused required Ramington Fernandes to be incorporated while furnishing the detailed information sought by the Investigating Officer. Prima facie, the 'additional information' so distinctively incorporated in the table has no impact on the substance of the complaint whereby the victim was allegedly sexually harassed or criminally intimidated. Merely because, the accused had asked the official Ramington to provide 'more' / 'additional information', it can't be inferred that he had influenced the investigation or had attempted to interfere with it in any manner. The Investigating Officer herself had sought detailed and comprehensive information in a very short period. It is

not the complainant's case that the 'information' given in addition which is part and parcel of the record was false or fabricated. Counsel for the petitioner has failed to impress as to how the 'additional information' given in the table amounted to interference in the investigation.

11. After hearing arguments on 13.01.2016, case was reserved for orders for 28.01.2016. On 27.01.2016 CrI.M.A.No.1567/2016 was filed by the petitioner to allege that a complaint received by SHO PS Lodhi Colony on 12.01.2016 was not brought to the notice of this Court that day. Counsel urged that the Delhi police had received the complaint from Research Associate Mr.Rahul Singh claiming that he was approached by 'TERI' officers to talk to 'X' to explore possibility of out-of-Court settlement. Status report filed by the State reveals that on receipt of the complaint on 12.01.2016 at around 07.45 p.m. vide DD No.51B, it was sent to the Investigating Officer for enquiry on 13.01.2016. In the complaint, Mr.Rahul Singh, Research Associate had alleged that Senior Directors, Area Convener of 'TERI' had approached him to impress 'X' to settle the dispute out of Court. Mr.Rahul Singh in his statement under Section 161 Cr.P.C. recorded on 27.01.2016 disclosed that in July, 2015 Mr.Sanjay Joshi, Senior Director TERI had told him to talk to 'X' to settle the dispute to which he declined. He further named Dr.Reena Singh, Area

Convener who had similarly spoken to him. He further named Mr.Alok Adholeya, Director, who had allegedly spoken to him twice in October, 2015. He, however, admitted that he was not pressurized by any 'TERI' official. For delay in lodging the complaint, he informed that he feared for his job and had resigned from 'TERI' on 11.01.2016. Status report further records that during their examination Mr.Alok Adholeya and Mr.Sanjay Joshi stated that it was a very casual conversation with Mr.Rahul Singh during his visit to the workstation in 'TERI'. Mr.Sanjay Joshi stated that he was never approached by the accused or anyone else to talk for settlement and he had never pressurized Mr.Rahul Singh for that. Dr.Alok Adholeya could not be examined being out-of-India on official tour. Dr.Reena Singh denied to have any such conversation with Mr.Rahul Singh.

12. Learned counsel for the petitioner urged that the complaint dated 12.01.2016 made by Mr.Rahul Singh was deliberately concealed at the time of arguments on 13.01.2016. An attempt was made on behalf of the accused through these officers to convince Mr.Rahul Singh to explore possibility of settlement out-of-Court with 'X' and it amounted to interference in the investigation. Counsel for the accused has controverted these allegations.

13. The timings of filing the complaint directly to the police by Mr.Rahul Singh on 12.01.2016 at around 07.45 p.m. are intriguing. The complainant herself did not reveal if at any time Mr.Rahul Singh had approached her for any such out-of-Court settlement at the behest of TERI officers. The victim was never approached either by the accused or the officers named by Mr.Rahul Singh for settlement. Though, Mr.Rahul Singh was allegedly approached in July / October, 2015, for no plausible reasons, he came forward to report it promptly. This complaint has been lodged after he tendered resignation on 11.01.2016. Its authenticity and genuineness is to be ascertained during investigation / trial. At this stage, the complaint lodged by him cannot be considered to be an attempt by the accused to scuttle the investigation or to interfere with the due course of administration or any abuse of the indulgence granted to him.

14. It is well settled in law that cancellation of bail after it is granted because the accused has mis-conducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of it or it is founded on

irrelevant considerations, indisputably the superior court can set-aside the order of such a grant of bail. In such an eventuality, the Court delves into the justifiability and the soundness of the orders passed by the Court below. It is equally true that very cogent and overwhelming circumstances are necessary for an order of cancellation of bail already granted. It should not be lightly resorted to. Power to grant bail is not to be exercised as if the punishment before trial is being imposed. The material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. In '*Siddharam Satlingappa Mhetre vs. State of Maharashtra & ors.*', 2011 (1) SCC 694, the Hon'ble Supreme Court held that where the accused has joined the investigation, is co-operating with the investigating agency, and is not likely to abscond, custodial interrogation should be avoided.

15. The impugned order dated 21.03.2015 is based upon fair appraisal of the materials and all the relevant aspect of the matter have been considered minutely. It is informed that the said order has since been modified and the accused has been permitted to enter and visit all the premises of 'TERI' including the Head Office as well as Gurgaon office. It is unclear if the said order has been challenged by the complainant.

16. Petitioner's counsel has failed to impress as to for what purpose, custodial interrogation of the petitioner is required. While granting anticipatory bail to the petitioner, safeguarding the petitioner's interest and that of the Investigating Agency, stringent conditions have already been imposed upon the accused. This Court finds no manifest error in the matter of grant of bail by the Trial Court.

17. The petition is dismissed. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

MARCH 04, 2016 / tr