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

DECIDED ON : 23rd MAY, 2017

+ **CRL.M.C. 177/2016**
RITU BATRA & ANR Petitioners
Through : Mr.Parinav Gupta, Advocate.

versus

THE STATE & ANR Respondents
Through : Ms.Manjeet Arya, APP.
Mr.Mohit Mathur, Sr.Advocate with
Mr.Manoj Pant, Advocate for R2.

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

S.P.GARG, J. (Oral)

1. Present petition under Section 439(2) Cr.P.C. has been preferred by the petitioners – victim's daughters to challenge the legality and correctness of an order dated 27.02.2015 of learned Addl. Sessions Judge in FIR No.940/2014 registered under Sections 302/201/364/380/404/411/457/34 IPC at PS Dwarka North whereby respondent No.2 - Atul Kumar (hereinafter referred as 'the respondent') was granted regular bail under Section 439 C.P.C. The petition is contested by respondent.

2. I have heard the learned counsel for the parties and have examined the file.

3. Admitted position is that the respondent along with co-accused - Pramod Kumar @ Pintu, Rohit Gupta @ Gulshan and Gaurav Sharma @

Guddu Pandit is facing trial in FIR No.940/2014 registered under Sections 302/201/364/457/380/411/404/34 IPC PS Dwarka. Main charge-sheet and supplementary charge-sheet have since been filed. The FIR in Delhi was lodged on 31.12.2014.

4. On 13.10.2014, Insp.K.K.Sharma, SHO PS Babri, Distt. Shamli, U.P. along with staff was on official duty for checking suspicious vehicles. At about 10.30 p.m. a Ford Figo car No. DL 1CM 9765 came from Shamli side. When the police officials on duty tried to get it stopped, its driver instead of slowing it tried to speed away; it was stopped by barricading. On checking the vehicle, three individuals namely Pramod Kumar @ Pintu, Rohit Gupta @ Gulshan and Gaurav Sharma @ Guddu Pandit were found present in it. Pramod Kumar @ Pintu was on driver seat and Rohit Gupta @ Gulshan and Gaurav Sharma @ Guddu Pandit were sitting on the rear seat. During inquiries, the police officials came to know that dead body of one Rattan Chander Papneja was lying in the dickey of the said Ford Figo car. On interrogation, the three individuals disclosed that they had committed Rattan Chander Papneja's murder by strangulation along with their fourth accomplice Atul Kumar (the respondent). They further informed that they were going to dispose off the dead body. Case FIR No.277/2014 under Sections 302/201 IPC came to be registered at PS Babri, U.P. The said vehicle was taken into possession.

5. During investigation, the vehicle was thoroughly searched and a SIM (9818838555) of Airtel was recovered. It was ascertained that the deceased was Subhash Manocha's brother-in-law (jija) and he was missing since the previous day. Post-mortem examination on the body was conducted and various injuries were found on his person. Cause of death

was asphyxia as a result of strangulation. On 20.10.2014, the investigation was transferred to Insp.K.P.Sharma, SHO PS Gadhi Pukhta. The said three accused persons were interrogated and their disclosure statements were recorded. Later on, investigation of this FIR was transferred to PS Dwarka North, New Delhi.

6. Respondent's involvement in the crime emerged on 13.10.2014. Specific role was assigned to them by co-accused Pramod Kumar @ Pintu, Rohit Gupta @ Gulshan and Gaurav Sharma @ Guddu Pandit in their disclosure statements. The respondent evaded his apprehension and remained absconding. Charge-sheet against the other three accused persons was filed on 10.01.2015.

7. Record reveals that the respondent moved bail application CF-117/2015 seeking anticipatory bail on 17.01.2015. After making submissions for some time, the respondent's counsel expressed respondent's willingness to surrender. The respondent who was present in the Court was accordingly taken into custody. Order dated 07.01.2015 records the submission of the respondent's counsel that wagon R car bearing No. DL 3C BJ 3110 belonging to the victim which the police was trying to recover had already been recovered and it was lying in the premises of PS Sardhana, Meerut. The Investigating Officer was asked to verify the information and seize the vehicle. Since the appellant had surrendered, the application was dismissed as 'infructuous'.

8. Subsequently, bail application CF 185/2015 dated 27.01.2015 under Section 439 Cr.P.C. was filed to seek regular bail. On 02.02.2015, the respondent's counsel after making submissions for some time sought permission to withdraw it; it was 'dismissed as withdrawn'.

9. Again, the respondent moved another bail application CF 378/2015 dated 24.02.2015 to seek regular bail under Section 439 Cr.P.C. During the course of arguments on 25.02.2015 the respondent's counsel claimed that the respondent was working as a Chartered Accountant with a firm in Connaught Place and was not a property dealer as contended by the prosecution. He submitted that the respondent was not involved in any property transaction with the deceased. The Investigating Officer was directed to verify the factum of the employment and submit a report on the next date of hearing i.e. 27.02.2015.

10. On 27.02.2015, by the impugned order, the learned Trial Court admitted the respondent to bail on his furnishing person bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the learned Metropolitan Magistrate. It was observed that the prosecution had failed to point out any prima facie legally admissible evidence suggesting respondent's involvement in the crime. The Trial Court further observed that the prosecution case against the respondent appeared to be doubtful. It was further observed that the respondent had surrendered on 17.01.2015 and nothing incriminating was recovered at his instance.

11. This Court is conscious that cancellation of bail is a serious matter. Bail once granted can be cancelled only when there exist very cogent and overwhelming circumstances. It is settled law that parameters for grant of bail and cancellation of bail are different. However, if the Trial Court while granting bail acts on irrelevant materials, bail can be cancelled. The bail can be cancelled 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 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 temper with the evidence, to flee from justice etc. would not deter the Court from cancelling the bail (*Kanwar Singh Meena vs. State of Rajasthan & Anr.*, AIR 2013 SC 296).

12. In the instant case, on examining the record minutely, seemingly, the learned Trial Court did not take into consideration the vital incriminating materials against the respondent while granting him regular bail. The occurrence had taken place on 13.10.2014 when co-accused Pramod Kumar @ Pintu, Rohit Gupta @ Gulshan and Gaurav Sharma @ Guddu Pandit were caught red handed while transporting the victim's body at a far away place at Shamli Muzaffarnagar Road (U.P.). Pramod Kumar @ Pintu driving the said vehicle did not stop it during checking and attempted to flee, it was got stopped by barricading. Victim's body was found in the dickey of the said vehicle. On enquiry, the co-accused persons disclosed about the commission of victim's murder with the active connivance and participation of the respondent. It is not in dispute that the Ford Figo car No.DL 1CM 9765 used for transportation of the dead body belonged to the respondent's wife Kirti. Admitted case is that the said vehicle was handed over by the respondent to his friend co-accused Pramod Kumar @ Pintu. In the bail application, it was claimed that the vehicle was taken by Pramod Kumar @ Pintu for some 'family function' on 13.10.2014;

later on the respondent came to know that about registration of the present FIR on 31.12.2014 at Delhi in which he was falsely named by the co-accused persons. The respondent, however, did not offer plausible explanation in the bail application as to why soon after handing over the offending vehicle to Pramod Kumar @ Pintu for some 'family function' on 13.10.2014, he did not enquire about its return for about more than three months. Nothing is on record to show if the respondent attempted to contact Pramod Kumar @ Pintu to know whereabouts of his vehicle. The respondent - owner of the vehicle is not expected to remain ignorant of the movement of his vehicle for such a long period and he would not ask for its return from Pramod Kumar @ Pintu or his family members. It has come on record that Pramod Kumar @ Pintu was the respondent's family friend. Nothing is on record to show that the respondent had contacted Pramod Kumar @ Pintu or any of his family members before moving the application for anticipatory bail on 27.01.2015. It cannot be believed that the respondent was not aware of the arrest of his friend Pramod Kumar @ Pintu and Rohit Gupta @ Gulshan for such a long period. The Trial Court while granting the bail did not take into consideration this vital fact whereby the vehicle belonging to the respondent was used to transport the dead body. Nothing has emerged to show if the vehicle was to be used for any 'family function', at a specific place. No such plea was taken by the respondent in his earlier bail application No. CF 185/2015 dated 27.01.2015.

13. In bail application CF 117/2015 seeking anticipatory bail, the respondent's counsel expressed respondent's willingness to surrender and accordingly he was taken into custody on 17.01.2015 itself. It was further informed by the respondent's counsel that the Wagon R car bearing No. DL

3CBJ 3110 belonging to the deceased was lying in the premises of PS Sardhana, Meerut. Status report and Charge-Sheet reveal that the said vehicle was found abandoned on a vacant piece of land at a distance of 1 k.m. from Shiv Chowk Sardhana and was taken into possession by the police of that area on 19.01.2015. It was thereafter deposited at PS Sardhana by Const.Devender and Const.Veer Sen. It is a mystery as to how on 17.01.2015 two days prior to the recovery of the said vehicle, statement was made before the Trial Court that the said vehicle was lying in the premises of PS Sardhana, Meerut. Allegations against the respondent are that he pointed out the place where he had left the vehicle after its seizure from the victim on 19.01.2015. In the impugned order, the Court granting bail did not take into consideration material facts about the recovery of the victim's vehicle in abandoned condition on 19.01.2015.

14. In the bail applications CF 185/2015 and CF 378/2015, the respondent did not claim that he was working as a Chartered Accountant with any particular firm. In para No.10 of the bail application CF 378/2015, it was informed that Pramod Kumar @ Pintu and Rohit Gupta @ Gulshan were also involved in their property dealing business whereas the applicant i.e. respondent was doing a private job as accountant in Connaught Place with the same company for the last six years. The respondent did not disclose the name of the company with whom he was in employment. No details of the company were divulged. When the bail application No. CF 378/2015 was taken up for hearing on 27.02.2015 the respondent claimed that he was working as a Chartered Accountant with a firm in Connaught Place and was not a property dealer. On verification, it was found that the respondent was an employee of M/s. Peprika Hospitality Pvt. Ltd., Saket,

New Delhi, having joined it on 01.08.2014. Prima facie, it falsified the respondent's contention that he was working as a Chartered Account with a firm in Connaught Place for the last about six years. Impugned order dated 27.02.2015 further records that the respondent had remained absent from duty since 11.10.2014. Petition in hand discloses that the respondent remained absent from duty since 11.10.2014 and was later on terminated due to unauthorized absence. This aspect was not taken into consideration by the Trial Court while releasing the respondent on bail. The respondent did not explain as to what had compelled him to remain absent from duty since 11.10.2014 or where else he was present. The factum of abscondance from duty was ignored in the impugned order.

15. Admittedly, Rohit Gupta @ Gulshan and Pramod Kumar @ Pintu were known to the respondent. In their disclosure statements, they had implicated him in the crime as one of the associates along with them. No ulterior motive was assigned by the respondent to Pramod Kumar @ Pintu and Rohit Gupta @ Gulshan for falsely implicating him in the crime in his earlier two bail applications. Only in the application in hand i.e. CF 185/2015, the respondent came up with the plea that Pramod Kumar @ Pintu had taken ₹6.05 lacs, out of which ₹4 lacs was arranged by him through local financier with his security. This loan was taken by him in 2013 to open bike-repairing shop. It was alleged that after 6 or 7 months Pramod Kumar @ Pintu (respondent's family friend) avoided to make payment of interest to the financier and it created dispute between him and Pramod Kumar @ Pintu. This explanation deserves outright rejection. Nothing is on record if any loan as claimed was arranged through the respondent's assistance and non-

payment of interest was Pramod Kumar @ Pintu's motive to falsely implicate the respondent.

16. The Trial Court also ignored Call Details Record of the deceased, Rohit Gupta @ Gulshan, Gaurav Sharma @ Guddu Pandit, Pramod Kumar @ Pintu, Atul Kumar (the respondent) and Kirt-respondent's wife. The Call Details Record reveals that all the accused persons were in constant touch. On 13.10.2014, the respondent was in contact on phone 7529942449 with Pramod Kumar @ Pintu and Rohit Gupta @ Gulshan. It is alleged that on 13.10.2014, there was an SMS on the respondent's phone No. 9212446699 from Rohit Gupta @ Gulshan. Location of mobile phone No. 9212446699 on 13.10.2014 at 17.30.21 was at plot no.1, Mohan Garden Extension as was that of co-accused Rohit Gupta @ Gulshan.

17. There were serious allegations against the respondent whereby he along with co-accused persons acted / participated in the brutal murder of victim - Rattan Chander Papneja who used to live alone to get the two shops owned by him transfer in their names. It is alleged that victim had demanded ₹80 lacs for sale of his two shops but it was not agreeable to the accused persons. It is relevant to note that the other co-accused persons continue to be in custody. Grant of bail to the respondent on irrelevant material on 27.02.2015 after withdrawal of earlier bail application on 02.02.2015 without sufficient change of circumstances cannot be sustained / justified.

18. Taking an overall view of the matter, this Court is of the opinion that in the interest of justice, the impugned order granting bail to the respondent deserves to be quashed. There are no sound reasons why a

legally infirm and untenable order passed in the arbitrary exercise of discretion releasing the respondent involved in a gruesome crime should be allowed to stand.

19. The petition is allowed and the impugned order dated 27.02.2015 granting bail to respondent is set aside / cancelled.

20. Respondent shall surrender before the Trial Court on 31.05.2017.

21. It is made clear that the observations made herein are for the purpose of deciding whether the learned Trial Court was any way in error in granting bail to the respondent. This order has been passed on the basis of the material that has been placed on record for that purpose. Observations shall have no impact on merits of the case. As and when the trial is conducted, it will be decided on the basis of the evidence which will be brought on record during the course of the trial.

(S.P.GARG)
JUDGE

MAY 23, 2017 / *tr*