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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 559/2015

Judgment reserved on 8th November, 2017

Judgment pronounced on 17th November, 2017

Ms. ANURADHA

..... Petitioner

Through: Mr. M. Mohsin Israili & Mr. Saif
Islam Israili, Advocates

versus

GOVT. OF NCT OF DELHI THR. & ORS. Respondents

Through: Mr. Amit Ahlawat, APP for State.
Mr. Puneet Garg & Mr. Nitesh Gupta,
Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present petition have been filed under Article 227 of the Constitution read with Section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred as 'Cr P C') ***challenging the order dated 13.11.2014*** whereby learned Trial Court granted bail to Jitender Kumar/accused/respondent no.2 in case FIR No. 407/2013 registered at PS Jagatpuri, Delhi, under sections 376/328 of the Indian Penal Code, 1860 (hereinafter referred 'IPC').
2. The brief facts of the case are that the complaint was lodged at police Station Jagatpuri on 06.09.2013, by the prosecutrix under Section 376/328 of IPC. It was alleged by her in the complaint that in April 2011, she went to the accused's/respondent no.2 shop to buy jeans where after they started talking to each other. One day, the accused proposed her for the marriage and told her that he had

already told his family members of marriage. Their marriage was later accepted by both the families and then around April 2011, the accused called her at his house on the pretext of meeting his sister-in-law. On reaching the house, she saw that no one was present there, she was offered cold drink by him and after consuming it she became unconscious. It was further alleged that the accused committed sexual intercourse with her. He continued to have physical relations with her on the promise of marriage. It was in March 2013, the accused refused to marry her, that the complaint was lodged by the petitioner under Section 376/328 IPC. The accused was arrested on 07.09.2013 and was granted bail by the learned ASJ vide order dated 13.11.2014. Hence, the present petition.

3. The learned counsel for the petitioner contended that the Trial Court has erred in passing the order dated 13.11.2014 as the same is based on conjectures and surmises; that on 26.05.2014, the accused/respondent no.2 had paid a sum of Rs. 7,10,000 to the prosecutrix on the false pretext of marriage, in pursuance to change of her statements and also obtained signatures of the petitioner on the typed affidavit; that the said money was taken back by them on 02.06.2014 but the signed affidavit was not returned to her; that on 31.10.2014, the said affidavit was misused by him by presenting the same in the concerned court and on that pretext application for interim bail was moved by him in the court; that on 13.11.2014, regular bail was granted by the Trial Court, though the application for grant of interim bail for 2 months was moved on behalf of the

respondent no.2; that after the grant of the regular bail to the respondent no.2, the petitioner was threatened by him and on account of which the complaint was lodged by her 10/11.12.2014 and also furnished the necessary details to the police officials.

4. Per contra, the learned counsel for the respondent no.2 contended that the accused/respondent no. 2 has been falsely implicated in this case; that the petitioner and the respondent no. 2 were in relationship for 2 ½ years and also visited several places together; that there are material contradictions in the statement of the prosecutrix during the process of recording of the evidences; that there is no medical or forensic evidence against the respondent No. 2; that the Trial court had rightly granted him the bail after considering all the materials on record.
5. The submissions made by the both the parties have been considered and the records have been perused.
6. Before making the necessary observations on the said contentions, it is relevant to peruse the principles for considering application for the Cancellation of Bail. In ***'Kamar Singh Meena vs. State of Rajasthan'***, reported in (2012) 12 SCC 180, it was observed that:

“wherein it was observed that while cancelling bail under Section 439(2) of Cr.P.C., the primary considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But that is not all. The High Court or the Sessions Court can cancel the bail 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 indicting 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 or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized 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 tamper with the evidence, to flee from justice, etc. would not deter the Court from cancelling the bail.”

7. In **Onkar Gulati vs. State & Anr.** reported in **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.”

8. After perusal of the above stated well settled proposition of law on cancellation of bail, it is pertinent to see the facts and circumstances of the present case. The respondent no. 2 was granted regular bail by the Trial Court on 13.11.2014 while imposing necessary conditions on him. It was alleged by the counsel for the petitioner that after the grant of the regular bail to the respondent no.2, the petitioner threatened her by sending SMSs, making calls and also threatened her at the bus stand and on these lines complaint was lodged by her 10/11.12.2014 by furnishing the necessary details to the police officials. In an application for cancellation of bail, conduct subsequent to release on bail and the supervening circumstances alone are relevant and important. In the present case, nothing has emerged post the grant of bail to the respondent no. 2, so as to cancel the bail granted to him by the Trial Court. Therefore, the necessary grounds which is to be considered while granting cancellation of bail are not made out in the present case.
9. As far as contention of the counsel for the petitioner that regular bail was granted by the Trial Court, though the application was only moved for grant of interim bail for 2 months holds no ground as the order dated 13.11.2014 granting regular bail was a well reasoned order and all the material particulars have been properly dealt with by the court concerned while granting the bail. There is

nothing on record which satisfies the court to cancel the bail granted on 13.11.2014.

10. On the basis of the above facts, it is observed that there is no need for any interference in the impugned order passed by the Trial Court and hence, the petition is accordingly dismissed.
11. Accordingly, the present petition is dismissed.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 17, 2017 gr//

