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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C.5498/2014**

PRAMOD GARG

.....Petitioner

Through:

Mr. Ramesh Gupta, Senior Adv.
with Mr. Manoj K.Singh,
Mr. Sanjay Sehgal, Mr. Tarun
Narang and Mr. Vishal Ghera
Advocates.

versus

GOVT OF NCT OF DELHI

....Respondents

Through:

Mr. Mukesh Kumar, APP for State.
Ms. Latika Choudhary, Adv. with
Respondent No.2 & 3.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

01.12.2017

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1. Present petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure 1973, (hereinafter referred to as 'Cr.P.C.') whereby the petitioner seeks **setting aside of order dated 18.11.2014**, passed by the Court of Special Judge-07, (PC Act Cases of ACB, GNCTD), Delhi in FIR No.44/2010 under Sections 420/467/468/471/120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') read with Section 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act'). Vide the said order dated **18.11.2014**, the bail previously granted to the petitioner by the Court of Additional Sessions Judge (hereinafter referred to as 'ASJ') vide order dated

28.12.2012 stood cancelled.

2. Mr. Ramesh Gupta, learned Senior Counsel for the petitioner contended that the impugned order, dated 18.11.2014 passed by the Court of Special Judge whereby the bail granted to the petitioner by the Court of ASJ vide order dated 28.12.2012 was cancelled, is illegal and perverse as the Special Judge lacks jurisdiction to cancel the bail; that by cancelling the bail granted to the petitioner by the ASJ, the Special Judge had used the power of an Appellate Court which is not permitted under law; that in the said circumstances the impugned order dated 18.11.2014 is liable to be set aside.
3. On the contrary, Ms. Latika Chaoudhary, learned Counsel for respondent No.2 & 3 submitted that FIR has been registered under Sections 420/467/468/471/120-B IPC read with Section 13(1)(d)/13(2) of the PC Act, the appropriate forum to take cognizance in the present case was the learned Special Judge and the Court of ASJ lacked jurisdiction as the same is not the designated Court to deal cases under the PC Act; that hence there is no illegality in the impugned order dated 18.11.2014 passed by the Special Judge and the same shall be upheld.
4. Mr. Mukesh Kumar, learned APP for State also opposed the present petition and submitted that the order dated 18.11.2014 passed by the Court of Special Judge is legal and does not suffer from any infirmity.

5. I have heard the learned Counsel for the parties and perused the material available on record.
6. As per the records, FIR No.44/10 was registered against the petitioner under Sections 420/467/468/471/120-B of IPC read with Section 13(1)(d)/13(2) of the PC Act, on 22.02.2010 at P.S. Kotla Mubarakpur. The petitioner preferred an anticipatory bail application before the Court of Special Judge (ACB), Tis Hazari Courts, Delhi and the same was dismissed vide order dated 18.10.2012.

On 05.06.2010, the complainant filed another complaint under Section 156 (3) Cr.P.C. before the Special Judge. In the Status Report dated 24.08.2012, as no supporting evidence had been found against the DDA officials, Sections 13(1)(d)/13(2) of the PC Act were dropped. The said application was dismissed vide order dated 22.11.2012 by the Special Judge.

Thereafter the petitioner was arrested on 27.12.2012 and produced before the Court of Metropolitan Magistrate, Saket Courts, New Delhi and the Magistrate granted one day PC Remand. Same day the petitioner also preferred an application for bail before the learned Magistrate, however the same was dismissed vide order dated 27.12.2012.

The petitioner then moved an application for Regular Bail before the ASJ and bail was granted vide order dated 28.12.2012. Against this, the respondents preferred an application for cancellation of bail under Section 439(2) Cr.P.C. before the Court of ASJ, but since the ASJ was not competent to deal with cases under the PC

Act, the application was withdrawn on 24.07.2013.

Thereafter the respondents filed an application for cancellation of bail before the Court of Special Judge which was allowed vide order dated 18.11.2014. Now the present petition has been filed, opposing the order of cancellation of bail passed by the Special Judge on 18.11.2014.

7. Perusal of the record reveals that the petitioner was granted bail on 28.11.2012 by the Court of ASJ and the same was cancelled by the Court of Special Judge vide order dated 08.11.2014 whilst observing as under:-

"the net result is that as Sh. V.K. Khanna ASJ-04, Saket, New Delhi, being not a designated Special Judge relating to Prevention of Corruption Act, 1998 and had no jurisdiction to entertain the Bail Application dated 27.12.2012 and pass said Bail Order dated 28.12.2012 relating to offence under Section 13(1)(2) of Prevention of Corruption Act, 1998 in favour of accused Pramod Garg and therefore, said Bail Order dated 28.12.2012 stands cancelled and the application under Section 439(2) Cr.P.C. is disposed of accordingly."

8. It is a settled law that no Court can comment upon the functioning of a co-ordinate Bench of the same Court in as much as the same would amount to exercising powers of Court of Appeal/Revision which is legally impermissible. It is only in exceptional circumstances that a Court of concurrent jurisdiction can interfere with an order of bail already granted.

9. In **Gurcharan Singh & Ors. v State (Delhi Administration)** reported in **AIR 1978 SC 179**, the Apex Court observed as under:-

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

10. Similarly in **Harjeet Singh v. State of Punjab** reported in (2002) 1 **SCC 283**, the Supreme Court held as under:

"In our view, the submission made by the learned Counsel for the appellant is a justified one. It is not open to the other Judge of the High Court to sit in appeal against the order passed by coordinate Bench of the same Court. If the accused had obtained bail order by misrepresentation or by suppression of facts, it is for the State Government or the aggrieved party to approach the appropriate higher forum. In any case, for cancellation of the bail on the grounds of misrepresentation or misstatement, the matter ought to have been placed before the same judge."

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In this view of the matter, this appeal is allowed, the impugned order is set aside. It would be open to the State Government or the aggrieved party to approach

the Court for cancellation of bail on the ground of any objectionable conduct on the part of the accused and/or by pointing out that the order granting bail was obtained by suppression of material fact and in such case matter may be placed before the same Judge, who granted bail, if available."

11. In the present case, bail granted to the petitioner by the ASJ vide order dated 28.11.2012 was cancelled by the Court of Special Judge which in fact is a court exercising concurrent jurisdiction. Hence the Special Judge lacked jurisdiction to cancel the bail granted to the petitioner. An application for cancellation of bail granted by the Court of ASJ can be adjudicated upon only by a Court of superior authority. **Hence, the impugned order dated 08.11.2014, being without jurisdiction, is set aside.**
12. Furthermore so far as order dated 28.11.2012 of the ASJ is concerned, whereby the petitioner was released on bail, the same is also bad in law as initially the FIR in the present case was registered under Sections 420/467/468/471/120-B IPC read with Section 13(1)(d)/13(2) of the PC Act and due to invocation of Section 13(1)(d)/13(2) of the PC Act, the only appropriate forum to grant bail ought to be the Special Court in view of the provisions of Section 4 of the PC Act. Provisions of the PC Act cannot be dropped on mere filing of the Status Report by the IO as the same shall be determined by the Trial Court at the time of taking cognizance and summoning the accused/ petitioner. Hence the respondents are at liberty to seek remedy before the appropriate forum as provided under law.

13. Accordingly the petition stands disposed of.
14. Copy of this order be given dasti under the signatures of the Court Master.

SANGITA DHINGRA SEHGAL, J.

DECEMBER 1, 2017