

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

% *Date of Decision: July 4, 2017*

+ **BAIL APPLN. 1252/2017**

SOHAN LAL

..... Petitioner

Through: Mr.Gaurav Sahdev, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms.Meenakshi Dahiya, APP for
the State with SI Sanjogita PS
Palam Village

PRATIBHA RANI, J. (Oral)

CRL.M.A.10288/2017

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 1252/2017

1. The petitioner is aggrieved by the order dated 5th May, 2017 whereby on the date fixed for prosecution evidence, after the examination of the prosecution witnesses, his bail was cancelled by the learned Trial Court on the oral information given by learned counsel for the complainant (father of the child victim) about presence of Sh.Suresh (brother of the accused/petitioner and father of the child victim) alongwith his wife and son outside the Court.
2. On 5th May, 2017 when the matter was listed before the learned trial Court for prosecution evidence, the learned Trial Court recorded the proceedings as under:-

“SC No.441258/2016

State Vs. Sohan Lal

05.05.2017

Present: Sh.S.K.Berwal, Ld.Addl. PP for the State.

Accused on bail with counsel Sh.Gaurav Sehdev.

Ms.Archana Dwivedi, counsel from DCW.

One PW i.e. mother of the child victim is present alongwith one witness Smt.Chander Kala, Ld.APP submits that he will examine Smt.Chander Kala after the examination of the other witnesses.

PW2 Mother of the child victim has been examined, cross-examined and discharged.

During the course of recording the statement, the counsel for the complainant Sh.H.R.Arya had submitted that the relatives of the accused had gathered outside the Court and they threatened him and the complainant outside the Court in the presence of Sh.Aditya Kumar, Ld.APP. After recording the evidence, the Court had called all the persons gathered who had no concern with this case and had come in the Court premises.

Sh.Suresh, his wife Ms.Santosh and Sh.Deepak had appeared and had submitted that they had been visiting the Court to support the accused. Even on the last date of hearing, the quarrel has been taken place between the accused and the complainant and Suresh had also visited the Court on the last date of hearing.

Even the mother of the child victim had also made a complaint against the behaviour of the accused.

Considering the fact of the accused of bringing the persons, who had no concern with the case, the bail of the accused is cancelled. Accused be taken into custody.

Suresh Kumar, his wife Santosh and son Deepak had tendered their apology and submit that they will not appear in the Court unless they be called. They are allowed to leave the Court after administrating the warning.

Put up for remaining prosecution evidence on 12.05.2017.

sd/-

(Atul Kumar Garg)

ASJ-01/South West District

Dwarka Courts

05.05.2017”

3. The petitioner is real Uncle (Chacha) of the child victim. FIR No.50/2016 was registered against the petitioner for allegedly attempting to commit rape on his minor niece aged about 13 years. On dismissal of the application seeking anticipatory bail, the petitioner/accused surrendered before learned Trial Court and applied for regular bail. He was admitted to bail on 3rd March, 2016 by the Link Court and the bail order reads as under:-

‘State Vs.Sohan Lal

FIR No.50/2016

PS: Palam Village

U/s 4 r/w 18 POCSO Act

03.03.2016

Present: Sh.Shiv Kumar, Ld.Addl. PP for State.

Sh.Gaurav Sahdev, Ld.Counsel for the applicant.

W/SI Sunita Singh in person

This is the 1st application under Section 439 Cr.P.C. moved on behalf of accused/applicant Sohan Lal for grant of bail.

This application was moved before regular Court, but Ld.Presiding Officer of regular Court is on leave today, hence, this application is being considered today by this Court.

Arguments on the bail application heard.

In the application, it has been alleged that the applicant was arrested by the police on 02.03.2016 and he came to know that he has been falsely implicated in the present case. It is further submitted that there has been series of disputes between the family members of the prosecutrix and the applicant and the prosecutrix is the niece of the applicant and the main reason behind the dispute is that the accused has been given the job in SDMC on compassionate grounds after the death of his mother, who died while being employed in SDMC and the family of prosecutrix wants that the accused should surrender his share in the joint family property as he has been awarded the job of their mother. It is further stated that the case has been planted on the applicant as he is a Government servant.

Per contra, Ld.Addl.PP for the State has strongly opposed the bail application of the applicant on the allegation levelled upon him.

As per the FIR, the present case has been registered on the complaint of prosecutrix namely Anita alleging that on 31.01.2016, at about 3:30 p.m. when she was coming down after taking bath, her uncle (Chacha) Sohan Lal pulled her down to his room, removed her pant, lied upon her and tried to commit rape upon her. She pushed him and got herself removed from the clutches of accused and opened the latch of the door and called her mother. Thereafter, prosecutrix called her

chichi, who had gone to her parental home and she took the prosecutrix to hospital for her medical examination and on examination the doctor told that there was no problem.

On the query of the Court, it is stated by IO that medical report of prosecutrix is negative. No fresh marks have been found. It is further stated by IO that there is property dispute between the applicant and mother of prosecutrix. It is further stated by IO that at the time of alleged incident there were other family members in the house.

Keeping in view the entire facts and circumstances of the case and nature of allegation, the family dispute and the fact that applicant is a government official, this application is allowed. Applicant/accused Sohan Lal is admitted to bail subject to his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount. Bail application disposed off accordingly.

Copy of this order be given dasti to the IO as prayed for.

Sd/-

(ANIL KUMAR)

*Link Addl.Sessions Judge-03,
Dwarka Courts/03.03.2016'*

4. The question that requires consideration is whether on the basis of an oral submissions by counsel for the complainant about the presence of Sh.Suresh (brother of accused/petitioner and father of the child victim) alongwith his wife and son outside the Court and threat being extended, could have been a ground to cancel the bail of the petitioner especially when various complaints made by brother of the accused (father of the child victim) to the police after he was released on bail, were not found to be correct and were filed.

5. CrI.M.C. No.1162/2016 filed by the child victim, through her father praying for cancellation of the bail of the petitioner was dismissed by this Court vide order dated 19th July, 2016. The reasons given for dismissing CrI.M.C. No.1162/2016 read as under:-

‘Respondent No.2 who is the paternal uncle of the petitioner was granted regular bail by the learned Sessions Court in case FIR No.50/2016 under Sections 4 read with Section 18 of the Protection of Children from Sexual Offences Act, 2012 (in short ‘POCSO Act’) registered at PS Palam Village. By this petition, the petitioner seeks cancellation of the bail granted to respondent no.2.

The contention raised by learned counsel for the petitioner is that despite anticipatory bail application having been dismissed, learned Trial Court granted bail to the respondent on his surrender. Considering the gravity and seriousness of the offence, the learned Trial Court ought not to have granted regular bail to Respondent No.2. The parents of petitioner were not apprised about the arrest and date and time when Respondent No.2 was produced in Court and thus they could not oppose the bail application. It is also stated that Section 29 POCSO Act mandates that unless the contrary is proved, a presumption is required to be raised that the accused has committed the crime alleged. It is alleged that respondent no.2 and his family members are extending threat after release of respondent No.2 and thus the bail is required to be cancelled on this ground itself.

Learned APP has placed on record the status report which narrates the allegations in the FIR. On instructions, learned APP submits that complaint of threat filed by the petitioner’s father copy whereof has been filed as Annexure

P-9 at page 60 of the paper book was inquired into and has been filed.

Learned counsel for Respondent No.2 submits that the abovenoted FIR is a false case and lodged against respondent No.2 only because the parents of the petitioner wanted the respondent no.2 to relinquish his share in the ancestral property which is a 25 sq.yds. plot in which all the four brothers are residing.

Heard learned counsel for the parties.

The allegations in the FIR are that while the prosecutrix was coming down after taking bath, respondent No.2 her paternal uncle dragged her in the room, removed his pant and laid over her. When he was trying to commit rape, she pushed him, opened the bolt, went downstairs and called her mother upstairs.

Learned Trial Court while granting regular bail noted that in the medical report, there were no marks of injuries and on verification, it was found out that there was property dispute between the parents of the petitioner and respondent No.2 and at the time of incident, other family members were also in the house.

Consideration for grant of anticipatory bail and regular bail are different. The petitioner was denied anticipatory bail however he was admitted on bail when he surrendered before the Court.

Considering the fact that the respondent No.2 was a government servant and there was property dispute, learned

Trial Court granted regular bail to respondent No.2. The view taken by learned Additional Sessions Judge cannot be said to be perverse warranting interference.

As regards cancellation of bail on the ground that the wife of respondent No.2 was threatening the prosecutrix and her parents, complaint in this regard has already been filed as the same warranted no action. As the allegations of threat are not substantiated, I find no reason to cancel the bail granted to respondent No.2.

Petition is dismissed.'

6. It is settled legal proposition of law that the Court which has granted the bail has also the power to cancel the same. The discretion of grant or cancel the bail can be exercised by the Court at the instance of complainant or public prosecutor on account of finding new material or circumstances or on account of misuse or abuse of liberty. It is also settled proposition of law that the Court which considers the bail application must try to maintain a balance between social interest viz-a-viz personal liberty while adhering to the fundamental principles of criminal jurisprudence that accused has to be presumed to be innocent till he is found guilty by the Court of competent jurisdiction.

7. In the case of Dolat Ram & Ors. Vs. State of Haryana (supra) it was held as under :

"4. 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 of 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.”

8. Ms.Kusum Dhalla, learned APP for the State has been specifically questioned by the Court as to whether any written application was filed before the learned Trial Court in respect of the incident of threat on 5th May, 2017 or correctness of the incident was confirmed/verified by the APP orally or in writing. The answer given by learned APP for the State is in negative. The Court proceeding also does not refer to the version of learned APP.

9. The bail of the petitioner has been cancelled by learned Trial Court for the following reason:-

‘Considering the fact of the accused of bringing the persons, who had no concern with the case, the bail of the accused is cancelled. Accused be taken into custody.’

10. The persons stated to be present outside the Court were not strangers or bad elements. They were closely related to the parties as Suresh was real brother of the petitioner and father of the child victim

and other two persons were wife and son of Suresh. It is not uncommon for the relatives to accompany on the dates of hearing in the litigation involving family members. The petitioner/accused must have remained present in the Court only during Court proceedings.

11. Mention of the incident of previous date in the order dated 5th May, 2017 is not supported by any ordersheet, police complaint or any other action taken by the complainant against the accused brother or another brother Suresh for extending any kind of threat.

12. Learned ASJ has not taken any action against Suresh – brother of the parties or his wife and son who were allowed to leave the Court with a warning not to appear in the Court unless called. Even the complainant has not lodged any complaint either with the police or with the Court narrating the time and details of the incident. Otherwise also had there been any threat to the prosecution witnesses in presence of learned APP outside the Court, with a view to ensure protection to the witnesses to enable them to depose fearlessly, learned APP would have informed the Court immediately about the threat being extended in his presence. When the matter was taken up for prosecution evidence, till the examination of PW-2 – mother of the child victim was completed and other public witness Smt. Chander Kala was discharged, the learned ASJ was not informed about any such threat being extended by or on behalf of the accused. During the Court proceedings threat could not have been extended by Sh.Suresh or his family as they were present outside. Learned APP for the State is also expected to be busy with the Court proceedings and not to remain outside the Court and was hardly having any opportunity to

witness any such incident.

13. There appears to be a property dispute between the brothers i.e. the petitioner/accused and father of the child victim. After the petitioner was admitted to bail, initially various complaints were made against the petitioner, which were filed by the police as the allegations made therein could not be substantiated. Thereafter the complainant sought cancellation of bail on the alleged ground of threat being extended which was dismissed by this Court vide order dated 19th July, 2016 passed in CrI.M.C. No.1162/2016.

14. With this background, the bail granted to the petitioner could not have been cancelled by the Trial Court merely on an allegation which the learned Trial Court even did not bother to verify. The petitioner/accused is a government servant. He had been in custody for almost two months now. The father of the child victim when failed to get the bail cancelled by making various complaints to the police, has been able to achieve by making just an oral submission and bail was cancelled without the incident being affirmed by the learned APP. The learned ASJ, without even caring to verify the correctness or such allegations or giving an opportunity of being heard to the accused/petitioner, cancelled the bail and sent him to judicial custody.

15. Although the petitioner has filed the instant application under Section 439 Cr.P.C. seeking bail, it is a fit case where to prevent abuse of the process of court and also to secure the ends of justice, this Court needs to exercise its power vested under Section 482 Cr.P.C. The order dated 5th May, 2017 passed by the learned Trial Court cancelling the bail of the petitioner is quashed. The order dated 3rd March, 2016

whereby the petitioner was granted bail, is restored.

16. Since the petitioner is a government servant, if pursuant to cancellation of his bail vide order dated 5th May, 2017 any department action has been taken against him, the petitioner is at liberty to seek revocation of any such order/action.

17. The bail application stands allowed in above terms.

18. A copy of this order alongwith copy of orders dated 5th May, 2017 shall be placed before the Inspecting Committee of Sh.Atul Kumar Garg, ASJ-01, South-West District, Dwarka Court.

19. A copy of the order be also sent to the concerned Court and be also sent to the concerned Jail Superintendent for information and compliance. The petitioner be set at liberty forthwith if not wanted in any other case.

20. As prayed, a copy of this order be also given dasti to learned counsel for the parties.

PRATIBHA RANI, J.

JULY 04, 2017

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