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

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Judgment delivered on: 07.02.2018

+ CRL.M.C. 4611/2014

NARESH KUMAR AGGARWAL

..... Petitioner

versus

STATE & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Bankey Bihari, Adv.

For the Respondents : Mr. Arun Kr. Sharma, Addl. PP for
the State with Inspr. Vinod Gandhi
Mr. B.S. Mathur and Mr. Rajat
Mathur, Advs. for R-2

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

07.02.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.M.C. 4611/2014 & CRL.M.A.2642/2015 & 6825/2016

1. The petitioner impugns order dated 06.08.2014 whereby the application of the petitioner under Section 439 (2) Cr. P.C. seeking cancellation of bail of respondent no. 2 and 3 was rejected.

2. The trial court by the impugned order as noticed as under:-

"In the present case, the charge sheet was filed without the arrest of the accused persons/ non applicants and the IO has specifically stated that the accused persons joined

the investigation as and when required. The IO has also stated that during investigation most of the allegations leveled by the complainant were found to be incorrect/ false. The IO need not arrest the accused persons in each and every case and the said discretion has to be exercised by the IO as per law. It is settled law that no arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing and the justification for the exercise of it is quite another. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. Reliance is placed upon judgment of Hon'ble Supreme Court of India in case Joginder Kumar V. State of U.P. (1994) 4 SCC 260. It seems from the argument of Ld. Counsel for applicant that the applicant is not satisfied with the investigation of the IO and also in view of the fact as section 467 IPC was not added in the charge sheet. There are other remedies available to the applicant for venting out his grievances regarding alleged improper investigation of the case, however, the cancellation of bail is not a remedy for improper investigation. In the present matter, the IO in his wisdom did not add section 467 IPC while filing of the charge sheet and its pertinent to note that the cognizance of the offences as mentioned in the charge sheet has already been taken by the Ld. CMM, N/W, Rohini Courts, Delhi, pursuant to which, summons were issued to the non-applicants /accused persons. In the present matter, the applicant/ complainant has failed to show any cogent and overwhelming circumstances required to order the cancellation of bail. The applicant has failed to show that the non- applicants / accused persons interfere or attempted to interfere with the due course of administration of justice or attempted to evade the due course of justice or abused the concession granted to them or any possibility of the accused

absconding. The applicant has also failed to show any supervening circumstances rendering the fair trial of the case not conducive.

In view of above said discussion and settled law, in my considered view, the Ld. CMM, N/W has taken all the relevant considerations in mind while granting bail to the accused persons/non-applicants vide orders dated 21.5.2014. The Ld. Trial Court has also correctly appreciated the law laid down by the Hon'ble Delhi High Court in case COURT ON ITS OWN MOTION V. CENTRAL BUREAU OF INVESTIGATION 2004 (1) JCC 308. In these circumstances, there are no circumstances to cancel the bail of accused Yogesh Mittal and Vineet Mittal as granted to them in the present matter vide orders dated 21.5.2014 and hence, the application u/s.439(2) Cr.PC as filed on behalf of applicant/complainant Naresh Kumar Aggarwal is dismissed. Accordingly, application stands disposed of."

3. Even before me nothing has been pointed out to show that any irrelevant material was taken into consideration by the trial court for grant of bail. The present petition has been pending since the year 2014 and respondent no. 2 and 3 were granted bail on 21.05.2014. It may be noticed that during investigation, respondent no. 2 and 3 were never sought to be arrested by the Investigating Officer and charge sheet was filed without arrest. It is not the case of the State that respondent no. 2 and 3 have misused the liberty granted to them at any point of time.

4. Reference may also be had to the judgment dated 06.02.2018 of

the Supreme Court in '*Dataram Singh Vs. State of UP & Anr.*' Crl. Appeal 227/2018 dated 06.02.2018 wherein the Supreme Court has once again reiterated that the important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home is an exception and the grant or denial of bail is entirely the discretion of the judge considering the case. The Supreme Court has reiterated that one of the factors which may be considered is as to whether the accused was arrested during investigations, when that person perhaps had the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Another important aspect is to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer.

5. In the present case the investigating officer had reported to the Trial Court that the accused was appearing before the investigating officer as and when so required by the IO and there was no complaint made by the IO that accused was not participating in the investigation to the satisfaction of the IO.

6. Keeping in view of the above principles of law and the

circumstances of the case, I find no infirmity with the impugned order and find no circumstance to cancel the order granting Bail or to incarcerate respondent no. 2 and 3.

7. In view of the above, I find no merit in the petition. The petition is accordingly dismissed.

8. Order Dasti under signatures of the Court Master.

February 07, 2018

'JS'

SANJEEV SACHDEVA, J



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