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

+ CRL.M.C. 4926/2015

STATE

..... Petitioner

Through: Mr. Rajesh Mahajan, Additional
Standing Counsel.

versus

PRAVEEN @ MONU & ORS

..... Respondent

Through: Mr. Raj, Adv for non-respondent nos.
1,2 & 3.
Ms. Hemlata, complainant.
SI P. R. Hudda, PS Dwarka.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

10.01.2018

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Vide the present petition, the petitioner seeks cancellation of bail vide order dated 17.09.2015 of the Court of the ACMM, South-West, Delhi in FIR no 342/15, PS Dwarka, Sector-23 registered under Sections 323/354-A/354-D/506/509/34 of Indian Penal Code, 1860 submitting inter alia to the effect that offences punishable under Section 3(i)(xi) of the SC/ST (POA) Act, 1989 were added to the FIR which had been initially registered under Sections 323/354-A/354-D/506/509/34 of Indian Penal Code, 1860 which had been arrayed after the recording of the statement under Section 164 of Cr.P.C., 1973.

It has been submitted further on behalf of the applicant that in view of the allegations in relation to the alleged commission of the offence punishable under SC/ST (POA) Act, 1989 and the statement made under Section 164 of Cr.P.C. of the prosecutrix in relation of the alleged castiest remarks made by the applicants and their co-accused not arrayed in the present petition, named Lokesh bail ought not to have been granted to the applicants. It has been submitted on behalf of the petitioner that the offences punishable under the

SC/ST (POA) Act, 1989 being triable by the Court of Sessions, bail ought not to have been granted by the Magistrate and that it was not appropriate for the Magistrate to have granted bail in the matter.

The complainant has inter alia placed reliance on the verdict of the Hon'ble High Court of Gujarat in the case titled as ***Ashok Govindram Hurra Vs. State of Gujarat*** dated 26.12.2011 in Crl. R. A. No. 543/2011 to contend that she had not been granted a right of being heard and that though the application seeking grant of bail was listed and the applicants had surrendered, no notice was issued to her by the Investigating Agency so that she could assist and to oppose the grant of bail. Inter alia she submits that she has repeatedly been harrassed by the applicants.

On behalf of the non-applicants it has been submitted that there are variations in the FIR and in the statement under Section 164 of Cr.PC, 1973 and that the allegations in relation to the alleged casteist remarks made by the co-accused along with the applicants, are not detailed in the FIR and that it is not possible ordinarily for a person to overlook mentioning the same in the First Information Report in relation to which it has been submitted by the complainant that she was under trauma and she was not in a state to make the submissions in the FIRs, taking into account that she had also been assaulted.

During the course of submissions that have been made on behalf of either side it has been brought forth that the charge-sheet has already been submitted and that the applicants who are on bail from 17.09.2015 have not misued the grant of liberty of bail thereafter and that as submitted by the learned Standing Counsel there has been no complaint made thereafter by the complainant in relation to any harassment meted out to her by the applicants and it has also been submitted in reply on behalf of the State to a specific Court query that the main accused Lokesh is also on bail.

A perusal of the statement under Section 164 of Cr.PC, 1973 of the prosecutrix also brings forth that the allegations allegedly in relation to the casteist remarks were against the main accused and not against the present applicants. Taking into account the totality of the circumstances of the case in view of the factum that the non-applicants are on bail from 17.09.2015 and stated to have not misused the grant of bail and there are no complaints made thereafter by the complainants in relation to any harassment meted out to her, there is no ground for cancellation of the bail granted vide order dated 17.09.2015 by the Court of ACMM (SW), Dwarka Courts, Delhi.

However, there are additional conditions that are being imposed on the applicant qua the conditions of bail. This is so inasmuch as vide order dated 17.09.2015, the applicants have been granted bail in the sum of Rs. 30,000/- with one surety of the like amount which bail bond and surety bonds are stated to have been submitted.

Further conditions imposed on the applicants are as under:

1. the non-applicants/respondent nos. 1,2, & 3 shall not leave the country,
2. shall not intimidate the complainant,
3. shall make no contact with the complainant and her family members,
4. shall not tamper with the evidence and,
5. furthermore shall commit no offence whatsoever.

With these observations, the petition is disposed of accordingly.

ANU MALHOTRA, J

JANUARY 10, 2018/vm