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

% **Date of Decision: 03.01.2024**

+ **BAIL APPLN. 2857/2019**

DEV SORA

..... Petitioner

Through: Mr. Sahil Malik & Mr. Sahil
Lakra, Advocates.

versus

STATE

..... Respondent

Through: Mr. Manoj Pant, APP for the
State.
Inspector Manmeet Singh &
W/SI Sharanya.
Ms. Tara Narula & Ms. Priya
Sahiul, Advocates for
applicant.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

CRL.M.A. 29446/2023 (cancellation of bail)

1. The complainant has moved the present application under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), for cancellation of bail granted to the accused Dev Sora *vide* order dated 02.12.2019, on the ground that the accused is threatening and abusing the complainant and his relatives, despite an order passed by this Court on 08.05.2023.
2. The FIR in this case was registered on the complaint lodged by



the complainant wherein she had alleged that the accused had established physical relations with her on false promise of marriage, and he had subsequently refused to marry her. She had further alleged that the accused had called her at home on 07.07.2019, on the pretext that he had spoken to his parents regarding their marriage. It was stated that she had gone to the house of accused with her friends and had met his parents. However, they had beaten her and torn off her clothes and the accused had also misbehaved with her.

3. Learned counsel for the complainant argues that accused had given an undertaking in the petition being *Crl. M.C. No. 139/2023* that he shall not contact the complainant directly or indirectly in any manner whatsoever. On placing the said undertaking on record, this Court *vide* order dated 08.05.2023, was pleased to dispose of the said petition with the above directions. It is stated that on 13.05.2023 at about 9.30 PM, the accused had stopped the complainant on her way back from temple and had abused her verbally and threatened to kill her. Further, he also said that the complainant will not be able to do anything against him. Thereafter, she called the police on 13.05.2023 and 14.05.2023 regarding this incident, however, no action was taken by them at that time, and she had also filed a complaint with the DCP concerned. It is submitted that since the accused has continued to extend threats to the complainant, the bail granted to him be cancelled by this Court.

4. Learned counsel for the accused, on the other hand, states that all witnesses in this case, including the complainant have already been examined, and now the case is listed for examination of the



Investigating Officer (I.O.), before the learned Trial Court. It is also stated that the I.O. has not appeared since last five dates of hearing, before the learned Trial Court.

5. Learned APP for the State submits that a complaint was received in October, 2022 and thereafter, on 27.10.2023, regarding threats extended to the complainant. It is stated that the complaint received in October, 2022 has been closed, as no substance was found in relation to the same and the complaint dated 27.10.2023 has been transferred to Police Station Sadar.

6. This Court has heard arguments addressed by learned counsels appearing on behalf of complainant, accused and the State, and has perused the material on record.

7. The complainant in the present case has sought cancellation of regular bail granted to the accused vide order dated 02.12.2019. Before considering the merits of the case, it will be relevant to take note of the law on cancellation of bail. In this regard, a reference can be made to the decision of Hon'ble Apex Court in case of *Deepak Yadav v. State of Uttar Pradesh* (2022) 8 SCC 559 wherein it was observed as under:

"...30. This Court has reiterated in several instances that **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 trial. Having said that, in case of cancellation of bail, **very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted)**. A two-Judge Bench of this Court in *Dolat Ram And Others Vs. State of Haryana* (1995) 1 SCC 349 laid down the



grounds for cancellation of bail which are :-

- (i) interference or attempt to interfere with the due course of administration of Justice
- (ii) evasion or attempt to evade the due course of justice
- (iii) abuse of the concession granted to the accused in any manner
- (iv) Possibility of accused absconding
- (v) Likelihood of/actual misuse of bail
- (vi) Likelihood of the accused tampering with the evidence or threatening witnesses.

31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:-

- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.
- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.
- d) Where bail has been granted on untenable grounds.
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
- g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

32. In *Neeru Yadav Vs. State of Uttar Pradesh And Another (2014) 16 SCC 508*, the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under:-

“...It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such



cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail..."

8. The Hon'ble Apex Court in *Ms. X v. State of Telangana* (2018) 16 SCC 511, had also held as under:

" 15. For the above reasons, we hold that the order of the High Court allowing the application for bail cannot be faulted. Moreover, no supervening circumstance has been made out to warrant the cancellation of the bail. There is no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty."

9. It was submitted on behalf of State that a complaint was received by police in October, 2022 regarding threats being extended to the complainant, however, no substance was found in the same, and that one another complaint dated 27.10.2023 has already been transferred to Police Station Sadar. Learned counsel appearing on behalf of the complainant had also drawn this Court's attention to Annexure A-2, which was a complaint lodged with the DCP concerned.

10. However, considering that regular bail in this case was granted in the year 2019, and all the material witnesses including the complainant stand examined before the learned Trial Court, and only I.O. remains to be examined, and since no cogent material has been placed on record to show that either accused has misused the liberty



granted to him or that circumstances are such that it is no longer possible to conduct a fair trial, this Court is not inclined to allow the present application and cancel the bail granted to the accused herein.

11. However, the complainant will be at liberty to approach the Witness Protection Committee, in case of any threat being extended or if the Police does not take any action against her complaint. The concerned Police Station will also ensure that prompt action is taken, if any threat is extended to the complainant herein, in accordance with law.

12. Since it was submitted on behalf of accused that the IO, who remains to be examined before the learned Trial Court, has not been appearing before the Court, the concerned I.O. is directed to remain present before the learned Trial Court on the next date of hearing for recording of his testimony and no adjournment will be sought.

13. With the above directions, the application is disposed of.

SWARANA KANTA SHARMA, J

JANUARY 3, 2024/at