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

Date of decision: 27.09.2019

+ CRL.M.C. 4924/2019

M/S DJB INFRASTRUCTURES AND DEVELOPERS INDIA PVT.
LTD. Petitioner

Through Mr.Akhil Sachar, Adv.

versus

STATE & ORS.

..... Respondents

Through Mr.Tarang Shrivastava, APP for State.
Insp.Umesh Sharma EOW.
Ms.Neha Jain, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

Crl. M.A. 37052/2019

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

Crl.M.C.4924/2019 & Crl.M.A. 37053/2019

3. Notice issued.
4. Notice is accepted by learned APP for the State and counsel for the respondent no.3 and with the consent of the counsel for the parties, the present petition is taken up for final disposal.

5. Vide the present petition, the petitioner/complainant seeks direction thereby to quash and set aside the order dated 09.09.2019 passed by learned ACMM-II, Patiala House Courts, New Delhi in case no.18429-2018 bearing FIR No.132/2018.

6. Learned counsel for the petitioner has argued that respondent no.3/accused moved an application for interim bail for a period of one month, however, the learned court has granted him regular bail without converting the interim bail application to regular bail and without giving any reasons while passing the above mentioned order.

7. On perusal of order dated 09.09.2019, the past history of the case is mentioned in the order and it is mentioned that the law applicable to the accused is the mandate of section 446-A Cr.P.C., however, there is no reason given how section 446-A Cr.P.C. is applicable in the present case.

8. However, by mentioning aforesaid provision, learned Judge admitted the respondent accused on regular bail. Thus, learned Judge has exceeded his power without considering the fact that the accused never asked for regular bail from the court.

9. Learned counsel appearing on behalf of respondent no.3/accused submits that once the bail is rejected and thereafter surety amount is paid, the order of bail is restored under section 446-A Cr.P.C.

10. I totally disagree with the above submissions, therefore, in my considerate view, until the bond gets cancelled as stated above, in order to secure the presence of the accused, the Magistrate may issue a process which may be either a summons or a warrant (Bailable or non-bailable) for his arrest. Before the bond gets cancelled, if the accused appears, the Magistrate, on an appropriate petition under section 70 Cr.P.C., may cancel the warrant issued. Until the bond gets cancelled, there is no requirement to get a fresh bond executed by the accused and the sureties. If once the bonds stand cancelled in terms of Section 446-A of the Criminal Procedure Code, then the accused can be released only on execution of a fresh bond with or without sureties as the case may be. Thus, it emerges tacitly clear that prior to the introduction of Section 446-A, the bail bond shall stand cancelled only when the bail is cancelled either under Section 437 or 439 of the Criminal Procedure Code, whereas, now, such cancellation takes place automatically by operation of Section 446-A of the Criminal Procedure Code without there being an order of cancellation of bail. If once bail itself is so cancelled, the

only remedy for the accused is to get into judicial custody and then apply for fresh bail.

11. However, the fact remains that firstly; there was no such prayer that he should be remained on the same bail and secondly; he only asked for interim protection for one month and that fact has been overlooked by the court below and granted regular bail without recording reasons.

12. Accordingly, I hereby set aside order dated 09.09.2019. Consequently, respondent no.3 is directed to surrender before the Trial Court on 01.10.2019 before 12:00 noon.

13. Needless to state that respondent no.3 is at liberty to move application for regular bail, if so advised and the same will be considered on merit by passing reasoned order.

14. The petition is allowed and disposed of, accordingly.

15. Pending application also stands disposed of.

16. Order *dasti* under the signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 27, 2019/ab