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

Date of decision: 13.12.2019

+ CRL.M.C. 581/2019

SAMEER MEHTA

..... Petitioner

Through Mr.D.K. Yatri, Adv.

versus

THE STATE (NCT OF DELHI) & ANR

..... Respondents

Through Mr. Panna Lal Sharma, APP for State.
Insp.Ram Pal PS Prasad Nagar.
Mr.Anushasit Arya, Adv. for R-2
(Amicus Curiae)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

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

1. Vide the present petition, the petitioner/complainant seeks direction to cancel the bail of respondent no.2 in FIR No.676/2015 dated 09.09.2015 registered at Police Station Prasad Nagar for the offences punishable under sections 394/397/34 and 174A IPC.

2. The brief facts of the petition are that on 08.05.2015 at about 10.15 PM, the respondent no. 2 along with three other persons forcefully entered the office of the petitioner and by overpowering the petitioner, the respondent no.2 alongwith the other co-accused committed robbery. In order

to do the same, the respondent no. 2 along with other co-accused stabbed the petitioner with knife, poured liquid substance on his face to make him unconscious and further tied his hands and left him to die in his office as the petitioner was unconscious.

3. Counsel appearing on behalf of the petitioner submits that the main motive behind such criminal action was to rob the money from the office of the petitioner, accordingly, the respondent no.2 along with his associates succeeded in their act and they robbed around Rs.18,50,000/- from the office of the petitioner. After committing the said offence, the respondent no.2 was absconding and declared as a proclaimed offender, thereafter, another case under section 174A IPC was registered against him. The respondent no.2 then approached the Trial Court for grant of bail on the basis of false and misleading grounds. The Trial Court vide its order dated 22.02.2017, wrongly granted bail to respondent no.2, thereby observing that the face of respondent no.2 was not clearly visible and by giving weightage to plea of alibi taken by respondent no.2.

4. Counsel appearing on behalf of the petitioner further submits that the respondent no.2 after obtaining bail, threatened the petitioner to withdraw the criminal case against him and his associates. On 25.10.2017 when the

petitioner was standing outside the court, the accused/respondent no.2 came to the petitioner and again asked him to withdraw the case. Accordingly, the complainant/petitioner reported the same to Police officials of Police Station, Subzi Mandi, Delhi and has given a written complaint to the SHO, consequently, FIR No.296 /2017 was registered at the aforesaid Police Station for the offence punishable under section 195A IPC. Thereafter, the petitioner approached the Trial Court and filed an application for cancellation of bail of respondent no.2, however, the same was dismissed vide order dated 02.11.2018.

5. Counsel for the petitioner submits that there is continuous threat coming from respondent no.2 and the said fact was brought to the notice of the Trial Court and despite the fact that a case was registered against him under section 195A IPC, the Trial Court did not cancel the bail granted to respondent no. 2. Accordingly, prays to this Court that present petition may be allowed.

6. On the other hand, it is pertinent to mention here that the respondent no.2 appeared in person before this Court on 23.08.2019 and submitted that due to financial constraints, he was unable to engage a counsel and prayed that he may be provided a counsel from the legal aid to defend his case.

Accordingly, this Court approached Mr. Anusashit Arya, who was present in court to defend respondent no.2 to which he agreed. Accordingly, he submitted that in the case under section 195A IPC, the respondent no.2 has been acquitted vide order dated 26.02.2019. The said fact has not been brought to the notice of the Court by the counsel for petitioner.

7. On perusal of the order dated 26.02.2019 mentioned above, it reveals, the Trial Court has observed as under:

“8. The entire case of prosecution is based upon testimony of Sameer Mehta (PW-2). He has deposed in his court statement that on 29.07.2017, he had come to Tis Hazari court to attend the proceedings of case FIR no.676/15, P.S. Prasad Nagar. That day, accused Santosh threatened him with dire consequences. On 25.10.2017, accused again repeated the threats. Thereafter, he made a complaint Ex. PW2/B to SHO, P.S. Subzi Mandi.

11. The complainant has alleged that the accused had threatened him for the first time on 29.07.2017. The record shows that the complainant had made a complaint in this regard on 25.10.2017 i.e. after three months of the date when threats were extended for the first time. It has not been elaborated by the complainant that why the authorities were not intimated immediately. The delay in filing of the complaint remained unexplained and it would, in opinion of this court, affect the credibility of the case of prosecution.

12. The complainant has not mentioned the exact words used by the accused either in the complaint Ex. PW2/A or in his court statement. Perusal of court statement would show that only vague allegations that the

accused threatened him with dire consequences have been leveled. During cross-examination, the complainant had admitted that complaint was drafted by his lawyer. Vague allegations in the complaint and the fact that same was drafted by the lawyer indicates towards the possibility that the story was concocted subsequently.

13. The ordersheet Ex. PW3/A and Ex. PW3/B would show that an application for cancellation of bail of the accused was pending before the Id. Sessions Court. Record further shows that the case FIR no. 676/15 was committed to Sessions Court on 06.01.2016. The complainant has nowhere claimed that the accused had ever threatened him between the period 06.01.2016 to 29.07.2017. Now, it appears highly improbable that the accused would have threatened the complainant to withdraw the case at a crucial time when an application for cancellation of his bail was pending.

14. The real picture which emerges from the circumstances is that the complainant had moved an application for cancellation of bail of accused and to ensure the cancellation of bail, he concocted the story of threats and intimidation against the accused. The case of prosecution is highly doubtful. Benefit of doubt is given to accused. Accordingly, the accused is acquitted from the charges for the offences U/s 195A IPC.”

8. In view of the opinion of the Trial Court, it seems that the petitioner had filed the complaint regarding threats by respondent no.2 for the purpose of seeking cancellation of bail of respondent no.2.

9. On cancellation of bail, Mr. Anushasit Arya has relied upon the case of ***Bhagirathsinh s/o Mahipat Singh Judeja vs. State of Gujarat: (1984) 1***

SCC 284, wherein it has been held that “*very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled by a catena of decisions of this court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed.*”

10. Further relied upon the case of ***Dolat Ram & Ors. vs. State of Haryana: (1995) 1 SCC 349***, whereby held that “*rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and delay with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted.*”

11. Accordingly, the Hon’ble Supreme Court is of the opinion that cancellation of anticipatory bail granted to the appellant therein for the reasons given by the High Court was not justified. Nothing has been brought to their notice either from which any inference may possibly be drawn that the appellants have in any manner, whatsoever, abused the concession of bail during the intervening period.

12. It is not in dispute that the respondent no.2 had remained in jail for 9 months when he was granted bail vide order dated 22.02.2017. While

granting bail, the Trial Court has observed that the face of the respondent no.2 was not clear in the CCTV footage, moreover, the complaint was filed by the petitioner about 5-6 months after the date of advancing threat.

13. In view of above, I find no illegality and perversity in the order passed by the Trial Court.

14. Finding no merit in the present petition, the same is accordingly dismissed.

15. Before parting from this order, I hereby appreciate the assistance rendered by Mr.Anushasit Arya, Advocate who was appointed as *amicus* by this Court vide order dated 23.08.2019.

16. Accordingly, Secretary, Delhi High Court Legal Services Committee is directed to pay him Rs.25,000/- as fees.

17. It is made clear that Trial Court shall not get influenced by the observations made by this Court while disposing of the present petition.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 13, 2019
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