

Date of Decision : 19.12.2022

+ **CRL.M.C. 738/2022**

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..... Petitioner

Through: Mr. Mohit Monga, Adv.

versus

THE STATE (NCT OF DELHI) & ORS. Respondents

Through: Ms. Priyanka Dalal, APP
SI Neelam, PS GTB
Enclave

Mr. Thakur Sumit, Adv.
for R2

Mr. Gaurav Kochar, Adv.
for R3

Mr. S.L. Sagar &
Mr. Manmohan, Adv. for
R4

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J (Oral)

1. The petitioner / prosecutrix has filed the present petition, challenging the order dated 27.10.2020, passed by learned Additional Sessions Judge, Karkardooma Court, Delhi.

2. By order dated 27.10.2020, Respondent No. 2 was granted regular bail in FIR No. 269/2020 under Section 376/376D/506/34 of the Indian Penal Code, 1860 (IPC).

3. The petitioner, thereafter, filed an application for cancellation of bail which was dismissed by the learned Trial Court by order dated 20.11.2021.

4. Respondent Nos. 3 and 4, who are alleged to have been the co-accused, had filed an application for pre-arrest bail, which was allowed by the learned Trial Court by order dated 24.11.2021. The petitioner, in the present petition, has also challenged the said order dated 24.11.2021.

5. The FIR was registered on a complaint given by the petitioner alleging that, on 22.07.2020, while she was coming back from her workplace, she met Respondent No. 2 and he took her contact number and assured her about getting a job.

6. That on the subsequent dates, 26.07.2020 and 28.07.2020, respondent No. 2 called the petitioner on multiple occasions. Respondent No. 2 met her and assured her about getting her a job and on the same pretext even took her address.

7. It is alleged that on 31.07.2020, respondent No. 2, at around 9:30 a.m. in the morning, visited the petitioner at her residence and had forceful sexual intercourse. The respondent No. 2 also threatened the petitioner to not tell anyone about the incident.

8. On 02.08.2020, respondent No. 2 along with respondent Nos. 3 and 4 visited the petitioner's residence and respondent No. 2 left the petitioner with respondent Nos. 3 and 4, who also had forceful sexual intercourse with the petitioner on that date and threatened her of leaking her videos.

9. The FIR was registered on 11.08.2020 and the petitioner was arrested on 12.08.2020. The chargesheet was filed on 03.10.2020. During the investigation, the State found certain discrepancies and, Respondent Nos. 3 and 4 were kept in Column No. 12 of the chargesheet.

10. The CCTV footage which was recovered, showed that Respondent Nos. 3 and 4 never visited the prosecutrix house on the alleged date of incident, even though the specific allegations were made by the prosecutrix against Respondent Nos. 3 and 4.

11. It was specifically alleged that Respondent Nos. 3 and 4 had forceful sexual intercourse with the prosecutrix and, in fact, Respondent Nos. 3 and 4 also gave beating to the prosecutrix.

The said allegation was found to be 'not true' because the CCTV recovered and the CDR details of Respondent Nos. 3 and 4 showed that they were not present at the victim's house.

12. The learned Trial Court, taking note of the aforesaid facts and also noting that the alleged incident took place on 02.08.2020, whereas the FIR was registered on 11.08.2020 and there was no explanation why the victim also refused the internal examination, granted bail to respondent no.2 by order dated 27.10.2020.

13. Thereafter, an application was filed by the prosecutrix for cancellation of bail granted to respondent no.2. It was pleaded that the bail was wrongly granted to the accused.

14. It is stated that the FSL Report specifically detected the human semen in Exhibit – 3B (lower / pyjama) belonging to the prosecutrix.

15. It was also alleged that subsequent to the grant of bail to the respondent No. 2, the prosecutrix was threatened by respondent No. 2 to 4. All the accused persons came to her residence on 19.02.2021 and threatened her. On 20.02.2021, she gave a complaint to the Police in that regard.

16. The learned Trial Court, by order dated 20.11.2021, dismissed the application filed by the prosecutrix. By another order dated 24.11.2021, the applications filed by respondent No. 3 and 4 seeking anticipatory bail was allowed. The learned Trial Court noted that the chargesheet has already been filed without the arrest of respondent No. 3 and 4 and allowed the application.

REASONING

17. The law in relation to the cancellation of bail and the interference of the High Court with the order passed by the Trial

Court granting bail is well settled.

18. In the application for cancellation of bail, the conduct of the accused subsequent to the release on bail and the supervening circumstances alone are relevant. In case where the accused has been at large for a considerable time, the post-bail conduct has to be taken note of. However, in an appeal against the grant of bail, the factors under Section 439 of the Cr.P.C. continued to be relevant.

19. In the present case, it is not in dispute that the charge-sheet was filed way back on 08.10.2020. During the course of investigation, it has come on record that there are material contradictions in the statement given by the prosecutrix. The alleged incident took place on 31.07.2020 and 02.08.2020, whereas, no reason has been mentioned as to why the complaint was given to the police on 11.08.2020.

20. The specific allegation has been made in the complaint that respondent no. 3 & 4 committed rape on 02.08.2020. The allegations were not found to be credible. The CCTV footage recovered and the CDR details of respondent No. 3 & 4 does not corroborate the allegation as they were not found to be present at the victim's house. The victim also refused to go for any internal examination.

21. The investigation in the present case has already been completed and charge-sheet was filed way back on 08.10.2020. The allegations would be tested during the course of trial.

22. As far as respondent No. 3 and 4 are concerned, the investigation has specifically found that they were not present at the victim's house on the day of alleged incident. The said fact has been corroborated by the CCTV footage and the CDR details. The chargesheet was filed by putting them in column 12. The investigation, thus, in that regard is also complete.

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23. I, therefore, find no infirmity in the order dated 27.10.2020 passed by learned Trial Court, granting bail to respondent no. 2 and the order dated 24.11.2021, passed by learned Trial Court allowing the application under Section 438 of the Cr.P.C. filed by respondent no. 3 & 4.

24. Insofar as the cancellation of bail on the ground of conduct of the accused, subsequent to grant of bail, is concerned, the learned Trial Court noted the contradictions in the statement given by the prosecutrix. It was noted that on 20.02.2021, she had categorically stated that three accused came to her house and threatened her on 19.02.2021, whereas, during the course of proceedings, she stated that on 19.02.2021, her brother had been threatened. She did not make any call at 100 number regarding the alleged incident. The learned Trial Court also did not find it to be probable that when the chargesheet has already been filed and the respondent No. 3 and 4 have been kept in column No. 12, they would go and threaten the prosecutrix.

25. In view of the contradiction as noted by the learned Trial Court, the order dated 20.11.2021 dismissing the application seeking cancellation of bail cannot be faulted with.

26. The petitioner/prosecutrix has also alleged during the present proceedings that subsequent to passing of the impugned orders dated 20.11.2021 and 24.11.2021, she was again threatened on 17.12.2021 by the accused persons, who attacked her with the sharp edged weapon with an intention to kill.

27. It is submitted that Non-Cognizable Offence Report (NCR) in that regard has already been registered by the police station Tila Mod, Ghaziabad.

28. Insofar as the allegations with regard to the alleged event subsequent to passing of the orders dated 20.11.2021 and

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24.11.2021 is concerned, the prosecutrix and the State are at liberty to file application seeking cancellation of bail granted to the accused. The said allegations, if found true, would amount to violation of the conditions imposed while the bail was granted to the accused persons. As and when, any such application is filed, the learned Trial Court would be at liberty to decide the same in accordance with law.

29. At this stage, this Court does not find any infirmity in the order passed by the learned Trial Court. However, more conditions can be imposed to alley the apprehension of tampering with the evidence and that the witnesses are not threatened. The impugned orders dated 20.11.2021 and 24.11.2021, are upheld while imposing further conditions, which are as follows:

- a. The Respondent Nos. 2 to 4 would keep their mobile phones switched on at all times.
- b. The Respondent Nos. 2 to 4 shall give the location of their mobile phones to the IO by dropping a Google Pin.
- c. They shall not contact the prosecutrix or any witness in any manner whatsoever.
- d. They will not take any adjournment before the learned Trial Court.
- e. They will not leave the National Capital Territory of Delhi without informing the IO.

30. The present petition is disposed of in aforesaid terms.

31. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present petition and should not influence the outcome of the trial.

AMIT MAHAJAN, J

DECEMBER 19, 2022 / "SS"

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 02.01.2023
18:26:31

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