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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: November 21st, 2022*

+ CRL.M.C. 3722/2019

M/S DJB INFRASTRUCTURES AND DEVELOPERS

INDIA PVT. LTD.

..... Petitioner

Through: Mr. Akhil Sachar, Ms. S. Tulsyan,
Mr. Sangram Singh, Mr. A. Pal Singh
Advocates

versus

STATE & ORS

..... Respondents

Through: Mr. Raghuvinder Varma, APP for
State with Insp. Kamal Kishor, PS
EOW
Mr. Shiv Charan, Mr. Imran Khan,
Advocates for R3

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition is filed on behalf of the petitioner/complainant under section 482 Cr.PC. for setting aside the order dated 15.07.2019 passed by the Court of Shri Nipun Awasthi, Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi for dismissing the application filed by the petitioner for cancellation of the bail granted to the respondent no.3/accused Rohit Mittal vide order dated 02.08.2018 passed by the Chief Metropolitan Magistrate on account of willful and intentional non-compliance by the respondent no.3/accused Rohit Mittal.

2. The respondent no.3 was granted bail vide order dated 02.08.2018. The perusal of the order dated 02.08.2018 reflects that the respondent no.3 has undertaken to abide by the terms and conditions of the Settlement Terms Cum Memorandum of Agreement dated 07.07.2018 and has also

undertaking to comply all the conditions imposed by the court at the time of grant of bail. The relevant portion of the order dated 02.08.2018 is reproduced as under:-

Considering the above said facts and circumstances of the case and the settlement arrived at between accused and complainant and the fact that co-accused Milind Sadashiv Lavate has already been granted bail, accused Rohit Mittal is also granted bail on Ms furnishing PB/SB in sum of Rs. 50,000/- with one surety in the like amount subject to following conditions as under:-

- (i) that accused shall complied with the all the conditions of settlement Terms cum Memorandum of agreement within one month;**
- (ii) that complainant is at liberty to move appropriate application for cancellation of bail of accused, in case, non-compliance of the settlement terms cum memorandum of agreement by the accused;**
- (iii) that accused shall join the investigation as and when required;**
- (iv) that the accused shall not leave the country without seeking prior permission from the court;**
- (v) that the accused shall attend the proceedings either before the IO or before the court, in accordance with the conditions of the bonds executed by him,**
- (vi) that the accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or temper with the evidence;**
- (vii) that the accused shall not indulge or commit such like offences (s) again similar to the offence to which he is accused now.**

3. Thereafter the petitioner filed an application for cancellation of bail granted to the respondent no.3 vide order dated 02.08.2018 as the terms and condition of the Settlement Terms Cum Memorandum of Agreement dated

07.07.2018 were not complied with. The said application was dismissed vide order dated 15.07.2019 passed by the Court of Sh. Nipun Awasthi, ACMM, Patiala House Courts, New Delhi. It was observed that the respondent no.3/Rohit Mittal was not a party to the Settlement Terms Cum Memorandum of Agreement dated 07.07.2018 and did not subscribe to the settlement. The relevant portion of the order dated 15.07.2019 is reproduced as under:-

Upon perusal of the settlement dated 07.07.2018, it is discovered that the accused Rohit Mittal was not party to this settlement. Rohit Mittal had not subscribed to this settlement. There is no promise to be performed by Rohit Mittal under this settlement. Hence, Rohit Mittal cannot be held responsible for the non performance of the stipulations of the settlement dated 07.07.2018. The promisor in the settlement dated 07.07.2018 is the accused no. 01 Milind Sadashiv Lavate. His bail has already been cancelled by this Court and that order of this Court was found to be proper by the Hon'ble High Court of Delhi too.

**Thus, the application moved by the complainant--
DJB Infrastructure and Developers India Pvt. Limited is dismissed.**

4. The counsel for the respondent no.3 stated and argued that the respondent no.3 was not a party to the Settlement Terms Cum Memorandum of Agreement dated 07.07.2018 as such there is no occasion for the cancellation of his bail which was granted vide order dated 02.08.2018. The counsel for the respondent no.3 referred the order dated 15.07.2019. The counsel for the respondent no.3 further stated that in the Settlement Terms Cum Memorandum of Agreement dated 07.07.2018, there was no direction for the respondent no.3 for compliance and he also remained in Police

custody for the period of 6 days and also in judicial custody since 02.08.2018.

5. The perusal of the order dated 02.08.2018 passed by the Court of Shri Deepak Sherawat, Chief Metropolitan Magistrate, Patiala House Court, new Delhi, primarily reflects that he bail was granted on parity with co-accused Milind Sadashiv Lavate and on the basis of Settlement Terms Cum Memorandum of Agreement dated 07.07.2018. The respondent no.3 had also undertaken to comply the terms and conditions of the Settlement Terms Cum Memorandum of Agreement dated 07.07.2018. The respondent no.3 at the time of grant of bail vide order dated 02.08.2018 did not plead before the Court that he was not a party to the Settlement Terms Cum Memorandum of Agreement dated 07.07.2018 rather he himself volunteered for compliance of Settlement Terms Cum Memorandum of Agreement dated 07.07.2018. The respondent no.3 cannot be allowed to change his stand.

6. After considering all facts, the bail which was granted to the respondent no.3 vide order dated 02.08.2018 stands cancelled. The respondent no.3 is directed to surrender before the concerned Court on 28.11.2022 at 02:00 P.M. for further directions. However, the respondent no.3 shall be at liberty to file fresh application for grant of bail in accordance with law.

7. The present petition alongwith pending applications, if any, stands disposed of.

8. *Dasti.*

(SUDHIR KUMAR JAIN)
JUDGE

NOVEMBER 21, 2022/j/m

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