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

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Reserved on: 4<sup>th</sup> February, 2022Decided on: 4<sup>th</sup> March, 2022

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**CRL.M.C. 2946/2021**

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..... Petitioner

Represented by: Mr. Shreeyash U.Lalit and Mr.Tarun  
Narang, Advocates.

Versus

STATE (NCT OF DELHI) &amp; ANR.

..... Respondents

Represented by: Ravi Nayak, APP for State with SI  
Manju Yadav, PS Vikaspuri.  
Mr. Abhay Kumar, Advocate for R-2.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By this petition, the petitioner seeks setting aside of the order dated 7<sup>th</sup> September, 2021 and the consequential cancellation of regular bail granted to the respondent No.2 by the learned ASJ, Fast Track Court, POCSO-1, Dwarka Court in FIR No. 457/2021.
2. The petition has been filed through the father/ legal guardian of the victim who is a female aged 37 years, suffering from bipolar mental disorder episodic mania and psychotic features since the year 2002 and was diagnosed to be suffering from the mental disorder in 2015 with mania shortly after her marriage. The same has also resulted in initiation of divorce proceedings between the victim and her husband.
3. Learned counsel for the petitioner assailing the impugned order states that despite the fact that the learned Additional Sessions Judge called for the



report of IHBAS on 18<sup>th</sup> August, 2021; 21<sup>st</sup> August, 2021; 1<sup>st</sup> September, 2021; and 6<sup>th</sup> September, 2021, however without waiting for the final report which was received on 15<sup>th</sup> September, 2021 passed the impugned order on 7<sup>th</sup> September, 2021 granting regular bail to the respondent No.2 who was arrested on 30<sup>th</sup> July, 2021. It is further stated that while granting bail, though the learned Trial Court took notice of the initial statement of the victim recorded before the Police, however failed to notice her detailed statement recorded under Section 164 Cr.P.C. before the learned Metropolitan Magistrate. The mobile phone of the accused showed the mobile number saved with the title '376' and the accused transferred photos of the victim to the said number for which the mobile phone has already been sent to FSL and the report of FSL is still awaited. Statement of the prosecutrix recorded under Section 164 Cr.P.C. and the call detail record show that the prosecutrix came in touch with the respondent No.2 three days prior to 21<sup>st</sup> July, 2021, and on 21<sup>st</sup> July, 2021 he lured the prosecutrix on the pretext that there was an evil spirit of a dog in her body which needs to be removed. After taking the prosecutrix to Nainital instead of Vaishno Devi by putting vermilion in her head, the prosecutrix was made to believe that they were married and committed sexual intercourse with her. Statement of the prosecutrix recorded by the learned Metropolitan Magistrate clearly shows that she was threatened. The respondent No.2 is living in the neighbourhood of the prosecutrix and thus as a neighbourer he knew the medical condition of the prosecutrix. Taking undue advantage of her medical condition, he lured her and took her away to Nainital, where he committed the offence of rape on her punishable under Section 376(2)(1) wherein the sentence awarded is not less than 10 years imprisonment which



may extend to life imprisonment and fine. Thus, while granting bail to the respondent No.2 the learned Trial Court failed to consider the legal principles applicable for grant of bail i.e. seriousness of offence, likelihood of the witness being intimidated, tampering with the evidence and the conduct of the accused. It is further stated that the respondent No.2 does not have clean antecedents and that prior to the registration of above-noted FIR, two kalandras were registered against him and after registration of the above-noted FIR, the respondent No.2 is involved in FIR No. 734/2021 under Sections 323/341/354/506 IPC registered at PS Vikas Puri on 24<sup>th</sup> November, 2021.

4. Learned APP for the State contends that the statement of the prosecutrix recorded under Section 164 Cr.P.C. gives in detail, the manner in which the respondent No.2 manipulated the prosecutrix and taking advantage of her mental condition lured her to Nainital where he committed the serious offence of rape on her, which statement has not been considered by the learned Trial Court. Further, as per the final report from the IHBAS, Medical Board the prosecutrix was diagnosed with bipolar affective disorder and the diagnosis comes under the definition of “mental illness” under Section 2 of the Mental Health Care Act, 2017. The Board also opined that based on the serial assessment, ward behaviour observation as well as cross-sectional examination, the Board was of the opinion that there is no reason to believe that the prosecutrix may not be able to depose in the Court of law.

5. Learned counsel for the respondent No.2 contends that the prosecutrix is a major and had been married. She entered into a settlement with her husband for seeking divorce by mutual consent which shows her cognitive faculties. After being brought to Delhi, the prosecutrix gave her first



statement on 23<sup>rd</sup> July, 2021 wherein she stated that she went voluntarily with respondent No.2 and that she established physical relationship of her own volition. It is further stated that not only in the statement before the Police but also recorded at the time of counselling by the NGO, the prosecutrix reiterated that she went of her accord and established relationship as per her wish. It is further contended that in case the version of the prosecution is to be accepted that the prosecutrix suffers from a mental illness, then her first marriage is invalid and therefore the respondent No.2 committed no offence by marrying her by putting vermilion on her head. The respondent No.2 also challenges the grant of permission to the father of the prosecutrix to act as a legal guardian, as the prosecutrix is a major and is competent to perform her legal duties. The respondent No.2 states that there is no illegality in the impugned order as the learned Trial Court noted that no further investigation or recovery was required to be made from the respondent No.2. In view of the prosecutrix being a major and having consented to establishing relationship, the respondent No.2 has been rightly released on regular bail by the learned Trial Court.

6. A written complaint of the deponent and his wife i.e. the parents of the prosecutrix was received on 21<sup>st</sup> July, 2021 wherein they stated that the prosecutrix aged 37 years was suffering from mental disorders and depression since 2002 and was taking medicines. When she has attacks of depression, she loses her mental balance and becomes violent, breaking household articles, abusing and acts like a child and speaks irrationally. The divorce proceedings of their daughter was pending before the Tis Hazari Court, however no divorce has been granted. At 6.15 PM on that day their younger daughter who stays in Kashmir received a video call from the



prosecutrix from which it was revealed that the prosecutrix was with one Shiva, R/o Site No.2, House No.3, Vikas Puri and they were in train. She told that she was going to Jammu. Their younger daughter got perturbed as Shiva @ Prabhakar Sharma was a person of criminal bent, who fights with people in the locality, takes drugs and has gone to jail number of times. Shiva has taken their daughter away by enticing her and they suspected that taking advantage of the mental condition of their daughter, Shiva may not sell their daughter or do any wrong act with her. They also stated that their daughter had take ₹50,000/- and gold jewellery at the instance of Shiva.

7. Though the Police registered no FIR on this complaint, however mobile phone record of the prosecutrix was collected from which it was revealed that the prosecutrix was not in Jammu but in Nainital. Hence a raiding team was sent to Nainital on 22<sup>nd</sup> July, 2021 and on 23<sup>rd</sup> July, 2021 the prosecutrix and Shiva were brought to Delhi. It was found out that Shiva had lured the prosecutrix stating that he was a Astrologer and a Palmist and on seeing her hand he stated that a soul of a black dog vested in her and she was required to be taken to a Tantric to remove the same and that he will take her to Vaishno Devi and remove the soul of black dog from her body.

8. In her statement to the Police, the victim on 23<sup>rd</sup> July, 2021 stated that she was 37 years old, married and her divorce case was going on. She was residing with her parents and suffering from depression since 2001. Shiva used to reside in a temple in her neighbourhood. He started speaking to her 2-3 days ago. Shiva told her that they would go to Nainital and on 21<sup>st</sup> July, 2021 she went with Shiva without telling her family members. She went with Shiva to Hotel Corbett, Nainital and where they established physical relationship with her consent. There Police reached and brought



them to the Police Station. She wanted no action against Shiva and herself.

9. On the same day, MLC of the prosecutrix was prepared wherein as per the history given it was stated that Shiva had forcible intercourse with her two times on 21<sup>st</sup> July, 2021. No FIR on the statement of the parents of the victim were recorded and subsequently when the parents of the victim gave complaints to higher authorities followed by a further complaint dated 27<sup>th</sup> July, 2021 along with the medical document via tele-consultation dated 25<sup>th</sup> July, 2021, the above-noted FIR was registered and statement of the prosecutrix was recorded under Section 164 Cr.P.C.

10. In her statement recorded under Section 164 Cr.P.C. before the learned Metropolitan Magistrate on 4<sup>th</sup> August, 2021 the victim stated that around 15 – 20 days ago she went outside her house, when she met Shiva Bhaiya who told her that he will get her married, as she had told Shiva Bhaiya that he should get her married. Shiva had told her that the soul of a black dog vests in her and he will get her relieved from the same. Thereafter, Shiva Bhaiya started sending her messages that he will get her married and would tell her about the details of the boy. The prosecutrix asked Shiva to take her to Vaishno Devi and there he should get her married through a priest. Shiva asked her to meet him on 21<sup>st</sup> July, 2021. Both of them went to some places and thereafter boarded a train for Vaishno Devi. She stated that Shiva Bhaiya takes charas/ ganja and was hurling filthy abuses. In the train Shiva Bhaiya asked her to go to the bathroom with him so that he could have sex her. He asked for sindoor from her. She had mata-ka-tika with her which she gave to him and he put the same on her head. She did not go to the bathroom with him. Instead of taking her to Vaishno Devi, Shiva Bhaiya took her to Kathgodam, Nainital. In the train



Shiva Bhaiya made her video and told her that she has got married to him. In Nainital he took her to Aiysha Hotel where they stayed in room No. 201. There he again put vermilion on her head. The prosecutrix stated that she wanted to marry and bear a child, on which Shiva told her that for a child she will have to sleep. The prosecutrix told him that she did not want a child from him, as he took charas and ganja, on which Shiva stated that he will get her married to some good boy. Thereafter, he gave her fanta to drink and established physical relation. When he was performing sex with her she felt pain, on which Shiva stated that the child is born like this. On this the prosecutrix stated that she did not want the child nor the marriage. She asked for return of her money and that he should let her go, but he did not let her go. On the next day, he took her to Corbett Hotel by bus at Ram Nagar. At the hotel when she was taking bath in the bathroom he was trying to enter the bathroom by opening door, however she did not let him enter. After she came out, he gave her a frooti to drink after which she felt dizzy and does not remember what happened thereafter. Thereafter, she saw a video in the mobile on seeing which she vomited out. Shiva drank liquor and slept. She called the Police, however the Police disconnected the phone. Then She called Vikas Puri Police Station and thereafter she called her sister but got no help. Thereafter, she called her brother and the next day Police came and brought her to Delhi. The Police gave a bill of ₹25,000/- spent, to her brother and now her parents keep the house locked. She further stated that Shiva Bhaiya had threatened her that if she complains in the Police then he would kill her and her family members by pistol. She did not lodge the FIR due to the threat given and that Shiva had made her dirty videos while he was performing sex with her.



11. Vide the impugned order, the learned Additional Sessions Judge after noting the contentions of the parties, held that the video of the accused and the prosecutrix played in the Court prima facie shows that the prosecutrix was conscious, oriented and aware about the nature of the act. The prosecutrix is seen voluntarily accompanying the accused and her consent does not appear to be vitiated by any kind of mental disorder. The learned Additional Sessions Judge further held that admittedly the bipolar mental disorder does not permanently affect the mental status of the person concerned. It involves the episodic attack on the mental psychic of the person concerned that leads to extreme variations/ fluctuations in his or her mood. The learned ASJ noted the definition of bipolar disorder as 'Manic, Depressive Psychosis' as given in Modi's Textbook of Medical Jurisprudence and Toxicology and held that a person suffering from bipolar disorder returns to normalcy after attack without impairment of mental integrity. Hence it is not a permanent mental disorder and temporarily impacts the medical condition only if there is an episodic attack and the time period for which it lasts is variable. Further, it only involves mood fluctuations that may or may not lead to legal insanity. It was also held that in the instant case there is no evidence on record to suggest that during the said three days i.e. 21<sup>st</sup> July, 2021 till 23<sup>rd</sup> July, 2021 the prosecutrix suffered any such attack. On the contrary, the videos manifest that the prosecutrix appears to be in control of her senses, conscious and oriented and her consent is thus not vitiated by the history of her medical condition. The learned ASJ further held that there is unexplained and unjustified delay of nearly 7 days in reporting the matter and in these circumstances, the possibility of false implication of the accused by the prosecutrix under the



influence or pressure of her family members cannot be ruled out. It was held that the accused is no more required for the purpose of investigation. Admittedly, he does not have any other previous criminal involvement and being guided by the sacrosanct principles that '*Bail is rule and jail is an exception*', bail was granted to the respondent No.2.

12. It is trite law that cancellation of bail granted can be directed either because the the order granting bail is perverse, illegal, contrary to law or unjustified or if the accused violates the conditions of grant of bail such as tempering with the evidence, interfering with the investigation, influencing the witnesses or fleeing away from justice. In the present case, the petitioner seeks cancellation of bail on the first ground that the order granting bail is perverse, illegal and contrary to the settled principles of law of grant of bail.

13. In the decision reported as (2001) 6 SCC 338 Puran and Ors. Vs. Rambilas and Ors. Hon'ble Supreme Court following the decision in 1978 CrL. LJ 129 Gurcharan Singh vs. State (Delhi Admn.) held that the concept of setting aside the unjustified, illegal and perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. It was held :

*"10. Mr Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of Dolat Ram v. State of Haryana [(1995) 1 SCC 349 : 1995 SCC (Cri) 237] . In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order*



*directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.*

*11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] . In that case the Court observed as under: (SCC p. 124, para 16)*

*“If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for*



*cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.”*

14. As noted above, contention of learned counsel for the respondent No.2 is also that the father of the prosecutrix cannot be permitted to act as legal guardian. In other words, learned counsel for the respondent No.2 contends that the present petition seeking cancellation of bail supported by the affidavit of the father of the prosecutrix is not maintainable. It may be noted that the parents of the prosecutrix are the complainants who lodged the complaint immediately on 21<sup>st</sup> July, 2021 and certainly fall within the category of ‘aggrieved persons’. Dealing with the *locus standi* of a person to challenge the order granting bail, Hon’ble Supreme Court in Puran & Ors. (supra) held that since the High Court can suo moto exercise the power to cancel the bail granted to an accused, any person can file a petition requesting the High Court to exercise its jurisdiction. Further the present petition has been filed by the father of the prosecutrix on her behalf. The Hon’ble Supreme Court in Puran and Ors. (supra) held :-

*"14. Mr Lalit next submitted that a third party cannot move a petition for cancellation of the bail. He submitted that in this case the prosecution has not moved for cancellation of the bail. He pointed out that the father of the deceased had moved for cancellation of the bail. He relied upon the cases of Simranjit Singh Mann v. Union of India [(1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280] and Janata Dal v. H.S. Chowdhary [(1991) 3 SCC 756 : 1991 SCC (Cri) 933] . Both these cases dealt with petitions under Article 32 of the Constitution of India whereunder a total stranger challenged the conviction and sentence of the accused. This Court held that neither under the provisions of the Criminal Procedure Code nor under any other statute is a third-party*



*stranger permitted to question the correctness of the conviction and sentence imposed by the court after a regular trial. It was held that the petitioner, who was a total stranger, had no locus standi to challenge the conviction and the sentence awarded to the convicts in a petition under Article 32. The principle laid down in these cases has no application to the facts of the present case. In this case the application for cancellation of bail is not by a total stranger but it is by the father of the deceased. In this behalf the ratio laid down in the case of R. Rathinam v. State by DSP [(2000) 2 SCC 391 : 2000 SCC (Cri) 958] needs to be seen. In this case bail had been granted to certain persons. A group of practising advocates presented petitions before the Chief Justice of the High Court seeking initiation of suo motu proceedings for cancellation of bail. The Chief Justice placed the petitions before a Division Bench. The Division Bench refused to exercise the suo motu powers on the ground that the petition submitted by the advocates was not maintainable. This Court held that the frame of sub-section (2) of Section 439 indicates that it is a power conferred on the courts mentioned therein. It was held that there was nothing to indicate that the said power can be exercised only if the State or investigating agency or a Public Prosecutor moves a petition. It was held that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. It was held that the said power could also be exercised suo motu by the High Court. It was held that, therefore, any member of the public, whether he belongs to any particular profession or otherwise could move the High Court to remind it of the need to exercise its power suo motu. It was held that there was no barrier either in Section 439 of the Criminal Procedure Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. It was held that if the High Court considered that there was no need to cancel the bail then it could dismiss the petition. It was held that it was always open to the High Court to cancel the bail if it felt that there were sufficient reasons for doing so.”*



15. One of the grounds on which the learned Additional Sessions Judge granted bail to the respondent No.2 is the unexplained and unjustified delay of nearly 7 days in reporting the matter, thus there being possibility of false implication of the accused by the prosecutrix under the influence or pressure of her family members. The learned Additional Sessions Judge failed to note that a complaint recorded vide DD No. 109-A as noted above was lodged by the parents of the prosecutrix on 21<sup>st</sup> July, 2021 itself i.e. the day when the prosecutrix went. Thus on 21<sup>st</sup> July, 2021 itself it was stated that their daughter has made a video call to their younger daughter from which it was revealed that she was with Shiva and he was taking her to Vaishno Devi. The complaint further stated that the prosecutrix was suffering from mental illness and that the respondent No.2 had earlier gone to jail, was a drug addict, that their daughter had been lured and they suspected that he may not sell her or do any illegal act with her. It is on this complaint when the location of the mobile phone of the prosecutrix was traced, it was found that Shiva had actually taken her to Nainital and not Vaishno Devi. The police then traced them at Nainital and brought them to Delhi on 23<sup>rd</sup> July, 2021. Thus, there was no delay in reporting the matter to the police and the action thereon even if the FIR was registered lateron.

16. Further, the learned ASJ though noted that in the statement recorded on 23<sup>rd</sup> July, 2021, the prosecutrix stated that she went of her own free volition but failed to notice that the prosecutrix also stated that the respondent No.2 was in touch with her or speaking to her for the last 2-3 days only and he was taking her to Vaishno Devi to take out the evil spirit from her and thus on 21<sup>st</sup> July, 2021 she left without telling her parents. Though the statement of the prosecutrix made to the Counsellor is not



admissible in evidence, however the same also reveals that she told Shiva that she wanted a child and that he put vermilion on her head and stated that now she will have a baby. In the MLC recorded on 23rd July, 2021 it was stated that forcible sexual intercourse was committed with her two times on 21<sup>st</sup> July, 2021. In view of the statement of the prosecutrix, since no FIR was recorded on 23rd July, 2021 itself, repeated complaints were made by the parents of the prosecutrix to various authorities when finally on 30<sup>th</sup> July, 2021 the FIR was registered and an application filed before the learned Metropolitan Magistrate for recording of the statement of the prosecutrix under Section 164 Cr.P.C. on 31<sup>st</sup> July, 2021 pursuant where to her statement was recorded on 4<sup>th</sup> August, 2021. In her statement recorded under Section 164 Cr.P.C. she has clearly stated the manner in which the respondent No.2 lured her, that he will get her married to a good boy and then performed sexual relationship after intoxicating her by giving fanta and frooti. While granting bail to the respondent No.2, the learned Additional Sessions Judge totally ignored the statement of the prosecutrix recorded under Section 164 Cr.P.C. and also history noted in the MLC on 23rd July, 2021 itself.

17. As noted above, the respondent No.2 prepared two videos relied by the learned Additional Sessions Judge to infer the mental state of the prosecutrix. In the one of the two videos found in the mobile phone of the prosecutrix, the respondent No.2 is stating that they have got married and he was taking the prosecutrix to Ram Nagar to perform the marriage again as they were Ram and Sita and though he was not Ram but his wife was certainly Sita. Admittedly, no marriage was performed and merely by putting vermilion on the head of the prosecutrix, she was made to believe that she had got married to the respondent No.2. The second video of the



respondent No.2 clearly shows the mala fide intent of the respondent No.2 wherein he is threatening the brother of the prosecutrix that now he will stay as a Ghar-Jamayee and the family members will be out of the house.

18. The learned Additional Sessions Judge failed to notice that the respondent No.2 was living in the neighbourhood of the prosecutrix, thus was aware of the mental faculties of the victim and taking advantage thereof, as her marriage was broken and she was eager to get married, he lured her stating that he would get the evil spirit out of her soul, get her married to a boy and called her on 21<sup>st</sup> July, 2021. On the pretext of taking her to Vaishno Devi, the respondent No.2 took her to Nainital where he performed sexual relationship by giving intoxicants in the cold drinks. The learned Trial Court failed to notice that consciousness and orientation are different from being able to exercise sound mental judgment and to realise that the victim is being enticed to fall prey to the accused.

19. The Division Bench of this Court in the decision reported as 246 (2018) DLT 204 X vs. State of NCT of Delhi accepting the plea of 'unsoundness of mind' under Section 84 IPC taken for an accused who was suffering from bipolar disorder 'Manic Depressive Psychosis' noted the medical literature as under:-

*"45. Turning to the medical literature specific to bipolar disorder, Modi's Textbook of Medical Jurisprudence and Toxicology (24th Edition), at page 753 defines "Bipolar Disorder" as "Manic Depressive Psychosis". It describes the affliction thus: "Bipolar disorder is used for a group of mental illnesses with primary disturbances of affect, from which all other symptoms arise. The affect i.e., the mood varies between extreme poles of cheerfulness and sadness. The illness has a second characteristic of periodicity. The third characteristic is returning to normalcy from attack, without impairment of*



*mental integrity. In practice, one finds that a single attack of a mania or a single attack of depression can occur. It occurs in persons predisposed to mood disturbances.” xxx “The depressives rarely indulge in petty crimes. A minority may commit altruistic type of homicide. Aggressive impulses are normally inhibited by the psychotic condition. Hypochondriacal delusions are often associated with homicidal impulses. Hence, near relatives may be killed in order to prevent them from inheriting or developing some serious disease. The psychotic depressive kills from motive, to his way of thinking, and is inherently good as opposed to the person with paranoid illness, who is motivated by spite and a desire to avenge the imaginary wrong. Homicidal and suicidal tendencies frequently co-exist in depressives, which stems from hopelessness, futility and despair. They believe that the killing of loved ones followed by self destruction is the only practical solution.”*

46. *In the Cambridge Handbook of Forensic Psychology edited by Jennifer M. Brown and Elizabeth A. Campbell, (4th Printing 2013), it is inter alia observed that bipolar disorder, previously known as manic depression, has a mean onset age of about 30 and is characterized by mood swings that can range from extreme happiness (mania) to extreme sadness (depression) over a period of days or months. It is further noted that:*

*“In the depressive phase, symptoms include feeling sad and hopeless, lack of energy, difficulty concentrating, loss of interest in everyday activities, difficulty sleeping, feelings of worthlessness and despair, and suicidal thoughts. In the manic phase, which usually comes after several periods of depression, symptoms may include feeling elated and full of energy, talking very quickly, and feeling self-important with great ideas not known to others, but also being easily distracted, irritated or agitated, not sleeping or eating, and doing things that bring negative consequences, such as over spending and dominating others. Delusions stemming from these disorders can lead the individuals concerned to become violent, for example if they believe that the lives of their*



*families have become intolerable (depressive phase), or where they believe that no one must stand in the way of their important plans (manic phase). The mental disorder can contribute directly to serious violence, e.g. multiple homicide of loved family members. As with schizophrenia, the precise cause of bipolar disorder is unknown, although it is thought to involve physical, environmental and social factors, with about 10-15% of sufferers nearest relatives also being affected.”*

*47. In an article titled Patients with Affective Disorders admitted to Maximum Secure Care (1999-2003) authored by T. White, a Consultant Forensic Psychiatrist based in Perth, Australia (printed in Med.Sci.Law CRL A 1308/2015 Page 20 of 24 (2005) Vol. 45 No.2 p.142), it is noted that: “The McArthur Violence Risk Assessment Study (Steadman et al., 1998) recently reported that patients with bipolar disorder or major depression were more likely than those with schizophrenia to be violent over the course of a year. Similarly, Swanson et al. (1990) in an early analysis of the National Institute for Mental Health Catchment Area Study, reported an equally strong association for depression, bipolar disorder and schizophrenia with reported violence. In addition, the National Confidential Inquiry into Suicides and Homicides (Appleby, 1999) appeared to demonstrate a stronger relationship between depressive symptoms than positive psychotic symptoms in mentally disordered homicide offenders.”*

20. Some of the main factors to be borne in mind while considering an application for grant of bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;



- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

21. As noted above, an order granting granting bail or rejecting bail is not to be interfered normally and it is incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the principles laid down in a plethora of decisions of the Hon'ble Supreme Court in regard to the cancellation of bail. (See AIR 2011 SC 274 Prasanta Kumar Sarkar vs. Ashis Chatterjee and Ors.)

22. Considering the fact that the impugned order granting bail to the respondent No.2 suffers from gross-illegality as the learned ASJ totally ignored the statement of the prosecutrix recorded under Section 164 Cr.P.C., the seriousness of the offence, that the statement of the prosecutrix is still to be recorded before the learned Trial Court, and that the respondent No.2 is living in the vicinity of the prosecutrix and is thus likely to influence the prosecutrix by luring her again and/or intimidating her, the impugned order dated 7<sup>th</sup> September, 2021 is set aside. The bail granted to the respondent No.2 is cancelled. Respondent No.2 will surrender to custody within one week.

23. Petition is disposed of.

24. Order be uploaded on the website of the Court.

(MUKTA GUPTA)  
JUDGE

**MARCH 04, 2022**

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