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

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Reserved on: 25.01.2023
Pronounced on: 13.02.2023

+ **CRL.M.C. 2352/2020**

SHABNAM

..... Petitioner

Through: Mr. Javed Ali, Advocate.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Satish Kumar, APP for the
State with SI Satish Kumar,
P.S. Seelampur.
Mr. Dalvinder Singh,
Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure (“Cr.P.C”) has been filed by the petitioner for setting aside the impugned order dated 28.09.2020 passed by Learned Additional Session Judge, North East, Karkardooma Court in Bail Application No. 1254/2020 titled as “*State v. Faisal Anwar*” wherein, the court has granted anticipatory bail to the accused namely, Faisal Anwar, in FIR

bearing No. 332/2020 registered at Police Station Seelampur(“PS”) for offences punishable under Sections 323/354/354D/506/34 of the Indian Penal Code (“IPC”).

2. Brief facts of the case are that, the complainants first marriage was solemnized in 1994, after 10-12 years of the marriage her husband expired leaving behind the complainant and one daughter who is 19 years old presently. Complainants second marriage was solemnized somewhere in the year 2004 and out of the said wedlock they had two daughters but in the year 2014 they got divorced. The complainant met the present accused/ respondent no.2 in the year 2017, they lived together without marriage and since then the accused had been sexually assaulting her without her consent at her residence. On various occasions the accused had also beaten the complainant and demanded money, the complainant had also made false promise to marry the complainant. On 15.08.2020, the accused was with another girl and when the complainant went to him at a parking lot near Dharampura Red Light where the accused brothers namely, Danish and Dabbu misbehaved with the petitioner and also threatened to kill her. Furthermore, on 06.09.2020 the accused entered the house of the complainant and stated that he was in need of Rs 5 lakhs and demanded Rs 3 lakhs from the complainant, upon resisting from the same, the accused thrashed the complainant and forcefully took Rs 3 lakhs. Complainant lodged an FIR against the accused herein.

3. Thereafter, an application for anticipatory bail under Section 438 Cr.P.C was moved by the accused/ respondent no.2 whereby, learned sessions court granted anticipatory bail, the concluding part of the

impugned order dated 28.09.2020 reads as under:

“Initially the FIR had been lodged u/s 323/354/354-D/506/34 IPC and later on, after the statement of the complainant u/s 164 Cr. P.C, Sections 313/376/377 IPC were also added. On being inquired, the complainant has told that she is about 36 years old and her first marriage was solemnized with one Sh. Mod. Hasib in the year 1994. After 10-12 years of marriage, he (her husband) expired leaving behind the complainant as widow and one daughter. The said daughter is now 17-18 years old. Somewhere in the year 2004, she again married with one Sh. Nasimuddin with whom divorce took place in the year 2014 and complainant lady is having two daughters from this wedlock. Thereafter, in the year 2014 itself, she entered into 3rd marriage with one Sh. Asif Khan and the said marriage ended in the year 2014 itself as stated by her. Further, somewhere in the year 2017, she started residing with the present applicant/accused in 'live-in' relationship and one day she noticed that the applicant/accused was with some lady/girl on a bike and on being inquired, started quarrelling with her. The complainant lady is not aware even the year in which her first husband had expired or even the gap between the death of her first husband and the solemnization of her second marriage. The initial FIR also does not include any of the Sections i.e., 313/376/377 IPC. Admittedly she had been living with the present applicant/accused without entering into the marriage contract. It is also an admitted fact that earlier also she had lodged complaints including a complaint u/s 376 IPC against other persons including the co-brother (Saadu) of the present applicant/accused”.

4. Learned Counsel for the petitioner states that the impugned order is liable to be set aside since, the learned Sessions Court has failed to consider the gravity and seriousness of the offence. It is further submitted that the impugned order suffers from illegality, infirmity and certain facts are not considered.

5. Learned Counsel for the petitioner further submits that vide the impugned order the learned sessions court has considered irrelevant facts and matrimonial life of the complainant is discussed.

6. *Per Contra*, learned AAP for the state opposes the present application and vehemently submits that at the time of granting bail to respondent no.2 the Learned Sessions Court has considered relevant facts and after granting bail to respondent no.2 there has been no complaint and threat to the present applicant. It is further submitted that the impugned order is a well-reasoned order and it is not necessary to interfere with the order.

7. I have heard both the parties and perused the material placed on record.

8. This court shall recapitulate the well settled legal principle that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. Hon'ble Supreme Court has repeatedly emphasized that once bail is granted, it should not be revoked automatically without evaluating whether any new developments have made it inappropriate for the accused to continue to be free on bail during the trial. To cancel bail, there must be very compelling and convincing reasons to justify the decision to revoke the bail that was previously granted, relied on ***Deepak Yadav v. The State of Uttar Pradesh*, (2022) 8 SCC 559.**

9. In ***Dolat Ram & Ors. v. State of Haryana*, (1995) 1 SCC 349** the Hon'ble Supreme Court laid down the grounds for cancellation of bail which reads as under:

*“17(i) interference or attempt to interfere with the due course of administration of Justice
(ii) evasion or attempt to evade the due course of justice
(iii) abuse of the concession granted to the accused in any manner
(iv) Possibility of accused absconding
(v) Likelihood of/actual misuse of bail
(vi) Likelihood of the accused tampering with the evidence or threatening witnesses”.*

(Emphasis Supplied)

10. In ***Neeru Yadav v. State of Uttar Pradesh, (2014) 16 SCC 508***, Hon’ble Supreme Court examined the precedents on the principles that guide grant of bail which reads as under:

“12... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court”

(Emphasis Supplied)

11. In ***Prakash Kadam & Ors. v. Ram Prasad Viswanath Gupta & Anr., (2011) 6 SCC 189*** the Hon’ble Supreme Court held that:

“18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima

facie case against the accused, the position and standing of the accused, etc. if there are serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. that factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail”.

12. In the present case, as per the statements given under Section 161 and 164 Cr.P.C. the complainant has stated that she was living with the respondent no.2/ accused without marriage and the same has been admitted by the complainant. Moreover, it has not been disputed that the respondent no.2/accused has violated the conditions of bail neither has he tried to threat the complainant. It has been stated that accused/respondent no.2 is co-operating and has joined investigation.

13. Considering the overall facts and circumstances of the case and the allegation and material available on record, this court finds that the impugned order dated 28.09.2020 passed by Learned Additional Session Judge, North East, Karkardooma Court in Bail Application No. 1254/2020 titled as “*State v. Faisal Anwar*” suffers from no irregularity, illegality, impropriety or perversity.

14. Accordingly, the present petition stands dismissed.

15. It is however, clarified that the observations made by this Court are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case during the trial.

SWARANA KANTA SHARMA, J

FEBURARY13, 2023/ns

