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

+ **CRL.M.C. 425/2022**

UJJWALA TIWARI

..... Petitioner

Through: Mr. Pramod Dubey, Sr. Adv. with Mr. Rahul Sharma, Ms. Aditi, Mr. Satyam Sharma, Mr. Shivam Kumar and Mr. Kshitij Goel, Advs.
Ms. Chandni Arora, Mr. Ravi Swami, Mr. Gaurav Gaur, Mr. Shrey Dhingra, Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANR. Respondents

Through: Mr. Hemant Mehla, APP for the State with Inspector Pankaj Thakran, Crime Branch.
Mr. Rudro Chatterjee, Mr. Shariq Nisar, Mr. Yadhovardhan, Mr. Abdullah, Advs. for R-2

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Date of Decision: 21st August, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed under Section 482 read with Section 439(2) Cr.P.C. for seeking cancellation of regular bail granted to respondent No.2 vide order dated 07.01.2022 passed by the learned ASJ-02, South-East District, Saket Courts, Delhi, in

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case FIR No. 76/2019 under section 302 IPC.

2. Brief Facts, of the present case are that upon receipt of information vide DD No. 35A, at PS Defence Colony, the investigation officer had reached the Max Hospital, Saket, where he had found that a person had been brought to the hospital namely, Rohit Shekhar Tiwari by his wife/respondent No.2, who was already declared dead when he was brought to the hospital. Subsequently, after the investigation and on the basis of the PM report an FIR No. 76/2019 was registered under section 302 IPC against respondent No.2 for the murder of her husband.
3. Sh. Pramod Dubey, Learned Senior counsel for the petitioner submits that the trial court has passed an order without any reasons and appreciation of facts, therefore the bail granted to Respondent No.2 is erroneous and untenable in law. Learned Senior Counsel further submitted that the Ld. Trial Court has also not taken into account the gravity of the offence. Learned Senior Counsel further submits that interim bail application had already been dismissed by Ld. Session judge on several occasions. Learned Senior Counsel has also submitted that there was serious marital discord between the deceased and respondent and there was a motive attributed to her act, which is her suspicion of her husband's illicit relations and wanting to grab the property of the deceased. Learned Senior Counsel has also submitted that respondent No.2 and other member of the family are lawyers by profession, therefore is



possibility of tampering the evidence. Hence, the bail is liable to be cancelled.

4. Learned APP for the state vehemently opposed the bail granted to respondent no.2 and submits that the accused is facing trial for a serious offence.
5. Learned Counsel for respondent No.2 submits that respondent no.2 has been falsely implicated in the present case and prosecution theory is solely based on the last seen theory. Learned Counsel has further submitted that the accused had already been in custody for more than 3 years. Learned Counsel further submits that a substantial number of witnesses have been examined. The discretion for the grant of bail and cancellation of bail are entirely different.
6. In this regard, this Court takes note of the decision of Hon'ble Apex Court in *Deepak Yadav v. State of Uttar Pradesh* (2022) 8 SCC 559 wherein it was observed as under:

“...31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).



32. A two-Judge Bench of this Court in *Dolat Ram v. State of Haryana* laid down the grounds for cancellation of bail which are:

- (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 the accused absconding;
- (v) likelihood of/actual misuse of bail;
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:-

- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.
- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.
- d) Where bail has been granted on untenable grounds.
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.



g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case

7. The bare perusal of the abovesaid judgments which makes it clear that bail can be canceled only if there are supervening circumstances. The cancellation of bail cannot be done mechanically and there should be cogent and overwhelming reasons for cancellation of bail. Learned Sessions Judge has fairly exercised the discretion taking into account the period of incarceration and the fact that trial may take a long time. There is no material on the record to suggest that the learned Trial Court has taken into account the irrelevant material or has overlooked the record. The order does not suggest to be perverse. There is also nothing on the record to suggest that the petitioner has flouted the condition of bail in any manner. This court does not find any substantial material on record to cancel the bail.
8. I do not consider that there are any supervening circumstances, hence, the present petition is dismissed.

DINESH KUMAR SHARMA, J

AUGUST 21, 2023

Pallavi