



\$~

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

%

Reserved on: 07.07.2023***Pronounced on: 12.07.2023***+ **CRL.M.C. 1531/2023**

N

..... Petitioner

Through: Mr. Bilal Anwar Khan, Ms.
Anshu Kapoor and Mr. Varun
Bhati, Advocates

versus

STATE OF NCT OF DELHI & ANR. & ORS. Respondents

Through: Mr. Satish Kumar, APP for the
State.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant petition under Section 439(2) read with Section 482 Criminal Procedure Code, 1973 ('Cr.P.C.') has been filed by the applicant/complainant for cancellation of anticipatory bail granted to accused Arvind Dalakoti *vide* order dated 24.02.2023 in case FIR bearing no. 606/2022, registered at Police Station Laxmi Nagar for the offences punishable under Sections 354D/376/506 of Indian Penal Code ('IPC') and setting aside the said order.
2. Brief facts of the case are that complainant 'N' had developed professional interactions with the accused during her previous



employment and subsequently, the accused had enticed the complainant to work with him at his company located in Sonipat, Haryana, where she had developed a close relationship with the accused. It was alleged that the accused had manipulated and coerced her into engaging in sexual intercourse with him while also capturing her private images without consent. It was alleged that accused had then resorted to threats, using the private pictures as leverage to coerce her into engaging in further sexual acts. Moreover, he had divulged this sensitive information to her colleagues. It was further alleged that on 09.08.2021, the accused had taken her to his residence located in Laxmi Nagar, Delhi, where he had reassured her that he would delete her private pictures, but he had again sexually assaulted. The complainant initially had filed a complaint at PS Laxmi Nagar, Delhi on 30.05.2022 but the same had been withdrawn. The complainant had again filed another complaint on 07.06.2022 seeking to reopen her previous complaint. Finally, the present FIR was registered on 23.12.2022 on the basis of complaint submitted by the complainant on 22.12.2022. During the course of investigation, the complainant was medically examined and her statement under Section 164 Cr.P.C. was recorded wherein she supported her earlier version.

3. Learned counsel for the petitioner submits that the anticipatory bail was granted to the accused without applying judicial mind at the initial stage of investigation, without considering that allegations against the accused are serious in nature and that his being released on bail will adversely affect the trial. It is also argued that the accused has been intimidating and threatening the petitioner and is also in



possession of her intimate photographs, and she is under threat that those photographs can be misused or posted on social media platforms. It is further submitted that the accused had threatened and defamed the petitioner/complainant and other witnesses immediately after he had got interim protection from the learned Trial Court.

4. Learned APP for the State submits that pursuant to grant of anticipatory bail, the accused had joined investigation and handed over the mobile phone and laptop, as per the direction of learned Trial Court, to the IO. It is further submitted that the said mobile phone and laptop were seized and sent to FSL for further examination and after completion of investigation, chargesheet has been filed against the accused.

5. The arguments have been heard on behalf of both sides and material on record has been perused.

6. Since the petitioner seeks cancellation of anticipatory bail granted to the accused, it will be relevant to discuss the law regarding cancellation of bail. 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:

“...30. 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). A two-Judge Bench of this Court in *Dolat Ram And Others Vs. State of Haryana* (1995) 1 SCC 349 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 accused absconding
- (v) Likelihood of/actual misuse of bail
- (vi) Likelihood of the accused tampering with the evidence or threatening witnesses.

31. 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.

32. In *Neeru Yadav Vs. State of Uttar Pradesh And Another* (2014) 16 SCC 508, the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under:-...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...”

7. After hearing arguments and having gone through the case file, this Court is of the opinion that in the present case, a perusal of the bail order reveals that the IO had submitted before the learned Trial Court that the investigation had been completed, the laptop as well as mobile phone of the accused had been seized, the accused had cooperated with investigation and that there was history of friendship between the parties since they were working and commuting together. The accused was granted bail *vide* order dated 24.02.2023 by the learned Trial Court. No complaint has been lodged by the complainant against the accused after he had been granted bail. The petitioner/complainant has also not approached the concerned Witness Protection Committee in case she is being threatened by the accused. The IO who was present in the Court also stated before this Court that all the photographs and intimate material in the possession of the accused had been seized by him which was contained in the laptop and mobile phone of the accused.

8. In these facts and circumstances, this Court is not inclined to cancel the bail granted to the accused as interfering with personal liberty of the accused, once he has been granted bail by a detailed order, without there being any strong material against the accused warranting cancellation of bail, is not the mandate of law.

9. However, it is directed that the accused will not post, use or misuse the intimate pictures of the complainant in any manner and if he



is still in possession of any such material, he will hand over the same to the IO and in case he will misuse such photographs, etc, the same will become a ground for cancellation of bail and the petitioner/complainant will be at liberty to approach the learned Trial Court for cancellation of anticipatory bail since anticipatory bail in this case was granted by the learned Trial Court.

10. With these directions, the present petition stands disposed of.

11. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 12, 2023/zp

[Click here to check corrigendum, if any](#)



न्यायमेव जयते