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

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Reserved on: 19.09.2023

Pronounced on: 26.09.2023

+ **CRL.M.C. 2346/2020**

ROHIT KUMAR JHA

..... Petitioner

Through: Mr. B.M. Shukla, Mr. Rohit
Kumar Jha, Advocates

versus

**THE STATE GOVT. OF NCT OF DELHI
AND OTHERS**

..... Respondents

Through: Mr. Satish Kumar, APP for
State with SI B.K. Bharti, PS
Najafgarh
Mr. Neeraj Dahiya, Advocate
alongwith respondents in
person

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 read with Section 439 (2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking cancellation of anticipatory bail granted to respondent nos. 3 and 4 by the court of learned Additional Special Judge, Special Court (Electricity), South-West, Dwarka Court, New Delhi *vide* order dated 26.10.2020 in bail application bearing nos. 715/2020 and 739/2020 in case bearing FIR no.



485/2019, registered at Police Station Najafgarh, Delhi for offence punishable under Section 420 of Indian Penal Code, 1860 ('IPC').

2. Issue notice. Mr. Satish Kumar, learned APP accepts notice on behalf of the State.

3. Briefly stated, facts of the case as per the FIR are that respondent no. 3 had initially induced petitioner to become a member of QNET company but petitioner had refused to invest any money. Thereafter, on 15.07.2018, respondent no. 3 had introduced petitioner herein to respondent no. 2 who had induced the petitioner to invest money forgetting membership of QNET company. The respondent nos. 2 and 3 had then obtained his identification cards i.e., PAN card, Aadhaar card and had obtained signatures of petitioner on blank papers. On 15.07.2018, an amount of Rs. 6,50,000/- was transferred into the account of one Saurabh Saluja and one Sunny Arora with Rs. 3,00,000/- each. Upon demanding the money, respondents had threatened the petitioner with dire consequences. Subsequently, on the complaint of petitioner, present FIR dated 25.09.2019 was registered. The learned Trial Court had granted anticipatory bail to respondents nos. 2 and 3 *vide* order dated 26.10.2020.

4. Learned counsel for petitioner states that the respondents had threatened petitioner before they were granted bail and even after they were granted anticipatory bail by learned Trial Court *vide* order dated 26.10.2020. It is also stated that respondents have intentionally flouted the bail conditions. It is stated that since the respondents have not complied with the anticipatory bail conditions and have threatened the petitioner herein, anticipatory bail granted to



respondents be cancelled.

5. Learned counsel for respondent nos. 2 and 3, on the other hand, submits that the respondent nos. 2 and 3 have joined investigation as per the directions of the IO. It is stated that chargesheet has not been filed even after four years. It is stated that petitioner had willingly taken membership of QNET company and had willingly submitted his identification cards to respondent nos. 2 and 3. It is also stated that the membership was free of cost and did not require any sort of consideration. It is further stated that the petitioner had purchased three holiday packages in total and no amount with regard to the first holiday package was transferred or received by respondent nos. 2 and 3. It is also stated that petitioner had willingly transferred the disputed amount of Rs. 6,00,000/- in the account of his seniors at QNET company namely, Saurabh Saluja and Sunny Arora. It is further stated that petitioner had knowledge regarding the return/refund policy of the company. Therefore, it is prayed that present petition be dismissed.

6. I have heard arguments addressed by learned counsel for petitioner and learned counsel for respondents and have perused material on record.

7. Since the petitioner seeks cancellation of anticipatory bail granted to the accused, it will be trite 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..."

8. The Hon'ble Supreme Court in *Ketan Suresh Pawar v. Yuvraj Sandeepan Sawant* 2018 16 SCC 511 had refused to cancel bail granted to an accused on the ground, *inter alia*, that there was no material on record to indicate that any of the conditions imposed while granting bail had been violated.

9. Further Hon'ble Supreme Court in *Ms. X v. State of Telangana* (2018) 16 SCC 511, had also held as under:

" 15. For the above reasons, we hold that the order of the High Court allowing the application for bail cannot be faulted. Moreover, no supervening circumstance has been made out to warrant the cancellation of the bail. There is no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty."

10. In the case at hand, petitioner has alleged that respondent nos. 2 and 3 had induced him to invest in a membership offered by QNET Company. On 15.07.2018, on the instructions of respondent nos. 2



and 3, an amount of Rs. 6,50,000/- had got debited from the account of petitioner and Rs. 3 Lakhs each had been transferred into the account of one Saurabh Saluja and one Sunny Arora. After a month, petitioner herein had received an amount of Rs. 40,000/- and it had come to the knowledge of the petitioner that respondent nos. 2 and 3 had taken a loan in his name and petitioner had been paying installments of Rs. 14,596/- since 10.08.2018.

11. A perusal of the bail order dated 26.10.2020 passed by the learned ASJ, Special Court (Electricity), Dwarka, Delhi reveals that the accused had joined investigation even prior to the filing of anticipatory bail application. The relevant portion of order reads as under:

“Present application under Section 438 Cr.P.C moved on behalf of applicants/accused persons namely Naresh Kumar and Bhrigraj Singh for grant of anticipatory bail.

Reply to the bail applications already filed by IO.

Arguments heard at length,

There are allegations of cheating to the tune of Rs. 6,50,000/- against the accused persons. The product has been purchased by the complainant from Qnet company and he already get the benefit in the form of commission which has been transferred in the name of the complainant. Accused has already joined the investigation with the IO. In my considered opinion, no further order is required to be passed. Accordingly, in the event of arrest, applicants/accused persons namely Naresh Kumar and Bhrigraj Singh be released on bail on furnishing personal bond in the sum of Rs. 20,000/- with one surety of like amount to the satisfaction of IO/SHO concerned.

Applicants/accused are directed to join investigation with the IO as and when required by IO and shall not temper with the evidence in any manner and cooperate in the investigation.

Applications are disposed of accordingly.”



12. This Court notes that there has been no complaint against the accused persons after the grant of anticipatory bail, regarding violation of any condition of bail. Learned counsel for the petitioner has stated that respondent no. 2 and 3 had threatened the petitioner after securing anticipatory bail, but has placed nothing on record to corroborate the same. As such, this Court notes that there is no cogent material to indicate that the accused persons are guilty of conduct which warrants them being deprived of their liberty.

13. In these facts and circumstances, this Court is not inclined to cancel anticipatory bail granted to respondent nos. 2 and 3, as interfering with personal liberty of respondent nos. 2 and 3, once they have been granted bail by a reasoned order, without there being any strong material against them warranting cancellation of anticipatory bail, is not the mandate of law. Therefore, no ground for cancellation of anticipatory bail is made out.

14. In view thereof, present application for cancellation of anticipatory bail stands rejected.

15. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

16. Accordingly, present application is disposed of.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 26, 2023/dk