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

+ **CRL.M.C. 1541/2022**

**ARTI**

..... Petitioner

Through: **Ms.NaiemJaha, Adv.(VC)(DHCLSC)**

versus

**THE STATE (NCT OF DELHI) AND ANR.** ..... Respondents

Through: **Mr. Hemant Mehla, APP for the State  
with SI Sangeeta, PS S. B. Dairy.**

**Mr. Vijay Datt Gahtori, Mr. Priyank  
Kharkwal, Mr. Shashi Kala and  
Ms.Sadhna Chand,Advs. for R-2**

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***Date of Decision: 02.08.2023***

**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 439 (2) read with Section 482 Cr. PC for seeking cancellation of bail of respondent No.2 granted vide order dated 31.01.2022 in case FIR No. 106/2022 under section 376 IPC.
2. Brief Facts, of the present case are that the complainant lodged a complaint, alleging therein that under the false pretext of marriage, the



accused had made forceful physical relations with the complainant, due to which she became pregnant and was further also forced by the accused to terminate her pregnancy. Therefore, the present FIR was registered and the accused was arrested on 25.01.2022. The applicant has been granted bail vide order dated 31.01.2022 passed by Learned ASJ, Rohini Court.

3. Learned Counsel for the petitioner submits that the police did not take any action on the complaint filed by the petitioner against respondent No. 2 and since then respondent No. 2 is chasing and stalking her. Learned Counsel also submits that these types of atrocities and threats are trying to pressurise the Petitioner who is the key witness of the FIR and compelling her not to give a true statement before the Trial Court. It has been also submitted that respondent No. 2 is taking undue advantage of the liberty granted by the Learned Trial Court, has violated the main condition of bail by approaching, threatening, following, and chasing the Petitioner and misusing the Bail granted to him, therefore the bail is liable to be cancelled.
4. Learned APP for the State very fairly submitted that the State has not moved any application for cancellation of bail. However, learned APP for the State submits that the threat extended to the petitioner may be taken into Consideration.
5. Learned counsel for the respondent submits that it is only a matter of an extortion and submits that even the alleged incident of 17.02.2022 has been reported on 23.02.2022. The discretion for the grant of bail and cancellation of bail are entirely different. In this regard, this Court takes



note of the decision of Hon'ble Apex Court in **Gurbaksh Singh Sibbia v. State of Punjab** (1980) 2 SCC 565; **Deepak Yadav v. State of Uttar Pradesh** (2022) 8 SCC 559 wherein in 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 Dolat Ram v. State of Haryana, (1995) 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.*

34. *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 :-

*“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...”*

6. 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. There has also



to be material on record that the accused has interfered in the cause of Justice or there is a possibility of the accused person absconding. The bail is liable to be cancelled, if the court has ignored the material on record. In the present case, the petitioner is mainly emphasizing upon the incident dated 17.02.2023 after the respondent No.2 was released on bail. However, it is a matter on record that this matter was reported only on 23.02.2022 and it is also a matter of record that Section 506 and 509 IPC were added. This court does not find any substantial material on record to cancel the bail.

7. I do not consider that there are any supervening circumstances, hence the present petition is dismissed.

**DINESH KUMAR SHARMA, J**

**AUGUST 2, 2023/Pallavi**