



\$~54

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

+ CRL.M.C. 4247/2023, CRL.M.A. 15948/2023 & CRL.M.A. 15949/2023

MALVINDER MOHAN SINGH

..... Petitioner

Through: Mr.Manu Sharma, Mr.Arjun Kakkar,
Mr.Kartikay M., Mr.Karl Tustam
Khan and Mr.Gyandender Kumar,
Advocates

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr.Raghvinder Verma, APP for the
State.
Insp.Satish Dagar, PS EOW
Mr.Lakshya Dheer, Adv. for R-2

%

Date of Decision: 02.06.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed under section 482 Cr.P.C. challenging the order dated 14.03.2023 passed by the learned ASJ-02, South-East District, Saket District Courts, Delhi, whereby the learned ASJ while exercising its revisional jurisdiction set aside the order of the learned

CRL.M.C. 4247/2023

Page 1 of 4



MM dated 15.09.2022 and 12.10.2022 whereby the petitioner was summoned and granted bail.

2. Mr. Manu Sharma, learned counsel for the petitioner submits that the impugned order, on the face of it, is not sustainable as no notice was issued to the petitioner in the present case. Learned counsel submits that even the petitioner was not made a party by the State. Learned counsel submits that the revisional jurisdiction is a concurrent jurisdiction to be exercised by the High Court/Sessions Court. Learned counsel submits that Section 401 (2) Cr.P.C. specifically provides that no order under this Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
3. Mr. Manu Sharma has further invited the attention of this court to Section 399 sub section (2) which provides that the provisions of Section 401 (2) shall *pari materia* apply to the Sessions Judge exercising power of revision. Learned counsel submits that the impugned order has been passed without issuing notice to the petitioner herein who is being prejudiced on account of his cancellation of bail. Ld. Counsel thus submits that the impugned order is not sustainable in law.
4. Learned APP has submitted that in fact in the present case the charge-sheet was filed only against Sunil Godwani and the remaining persons were placed in column 12 and the investigation qua them is still continuing. Learned APP submits that learned MM passed the



summoning order against all the persons placed in column No.11 and 12 and granted bail to the persons placed in column no.12. The State aggrieved of the same preferred a revision petition.

5. Mr. Lakshya Dheer, learned counsel appearing for the respondent no.2/ complainant states that in fact after passing of the impugned order much water has flown under the bridge. It has been submitted that after this order learned MM interpreted the order in a manner that the cognizance itself has been set aside and thus released the only person placed in column no.11 and consigned the matter to the record room. Learned counsel for the complainant submits that thereafter again a revision petition was filed. In the revision petition the learned Session court clarified that vide the present impugned order only the summoning order qua the present petitioner was set aside.
6. I consider that the learned additional sessions judge has passed an illegal order by deciding the revision petition without issuing notice to the petitioner who has certainly been prejudiced by the impugned order against and in violation of provisions of Sections 399 (2) and 401 (2) Cr.P.C. Therefore, without going into the merits of the case at hand, the impugned order is set aside. The matter is relegated back to the learned Additional Sessions Judge with a direction to decide the same in accordance with law after issuing the notice to the parties affected by the orders dated 15.09.2022 and 12.10.2022 passed by the learned MM.
7. Accordingly, the present petition along with the pending applications stands disposed of.



DINESH KUMAR SHARMA, J

JUNE 2, 2023
rb..



CRL.M.C. 4247/2023

Page 4 of 4