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

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Reserved on: 14.12.2022

Pronounced on: 05.01.2023

+ **CRL.MC. 1731/2020**

STATE

..... Petitioner

Through: Mr. Satish Kumar, APP for the
State with Inspector Rahul,
P.S. Sarai Rohilla

versus

MOHD. NAVED@PILLA

..... Respondent

Through: Mr. Juned Alam, Advocate

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The applicant/State has preferred the present application under Sections 439(2) read with 482 of Code of Criminal Procedure, 1973 ("Cr.P.C.") seeking cancellation of bail granted to accused/respondent Mohd. Naved@Pilla in case FIR No. 964/2015, registered at Police Station Sarai Rohilla, under Sections 302/34 of Indian Penal Code, 1860 ("IPC").
2. The respondent was granted regular bail in the aforesaid case *vide* order dated 10.10.2018 by learned Additional Sessions Judge, Tis Hazari Courts, New Delhi in SC No.28312/2016 titled as "*State vs. Mohd. Naved @ Peela*".

3. The case of applicant is that the respondent Mohd. Naved @ Pilla misused the liberty granted by the Court and started getting involved in serious criminal activities and have flouted the conditions of bail. It is submitted by learned APP for State that while the respondent was out on bail, an FIR No. 211/2020, PS Sarai Rohilla, under Sections 394/427/506/34 of IPC was registered on 11.06.2020 against the respondent and his family members for robbing the shop of a person namely Akhlakh, who stated that one Mohd. Sadkeen used to took eatables from his shop without paying the same and when he raised his voice against it, Mohd. Sadkeen started beating him and he was joined by his family members including the respondent herein, and all of them then destroyed his shop. Further, when complainant went to the police station to register his complaint regarding the said incident, the accused persons pelted the stones at the police officials also. Learned APP for State submits that on the same day, another FIR No. 210/2020, PS Sarai Rohilla, under Sections 186/353/307/34 of IPC and Sections 27 and 54 of the Arms Act, 1959 was also registered against the respondent on the complaint of SI Pankaj Thakaran who was posted as I/C PP Inderlok, wherein he stated that while he was addressing the dispute among the parties, the respondent started verbally abusing the police officers and he was even carrying a gun while he entered the premises and had fired shots. He also stated that respondent along with the other accused persons attacked the staff posted at PP Inderlok in which he sustained injuries.

4. Learned APP for the State submits that the respondent has flouted the conditions of bail by committing new offences while on

bail. It is argued that is trite law that when the court lay down the conditions of bail, there are certain inherent conditions attached to the bail order as specified in Section 437(3) Cr.P.C while granting bail to the accused involved in commission of heinous crimes. Such inherent conditions include condition which would deter the accused from committing an offence similar to the offence of which he is accused or of the commission of which he is suspected during the period of bail.

5. It is further stated by learned APP that the trial court erred in granting bail to the accused/respondent by taking irrelevant materials into consideration, in view of which, the order granting bail is liable to be set aside.

6. No one appeared before this Court to argue the matter on behalf of respondent/accused. On earlier occasions also, there has been an irregular appearance of the learned counsel for respondent. In view of the same, the contentions of the respondent/accused are being taken from the reply filed on his behalf. The contentions of learned counsel for respondent are that the basic principal of grant of bail is on different footing then of cancellation of bail, and that overwhelming circumstances are needed to cancel the bail if granted one by the competent courts. It is stated that there is no overwhelming circumstances in this case for cancellation of bail.

7. It is further the contention of learned counsel for respondent that the petitioner intentionally did not file the MLCs of the injured persons in the incident dated 10.06.2020 but filed the false and fabricated MLCs of the some police officials without the name of injuries, with the present application. It is stated that in view of the order dated

21.09.2020 passed by this Court, petitioner has filed the copy of MLCs of the alleged accused persons in case FIR No. 210/2020 PS Sarai Rohilla but not filed the MLCs of minor girls prepared at Hindu Rao Hospital, Delhi who received injuries by the hands of the police officials later on when the police officials forcefully entered in the house of the respondent in odd hours in the night and gave merciless beatings to the ladies and minor girls present at that time in the house.

8. Learned counsel for respondent further contends that there is no violation of the bail condition as far as present case is concerned. It is the contention of learned counsel for respondent that in any case, such false FIR bearing no. 210/2020 and 211/2020 has nothing to do with the present case and are independent allegations and as such cannot be considered for the purpose of cancellation of bail in present case. As such, it is submitted that present application for cancellation of bail be dismissed.

9. The rival contentions of the both the sides have been considered and material on record has been perused.

10. The short question that falls for consideration before this Court is whether the bail granted to the respondent be cancelled or not. To consider the law regarding cancellation of bail, a reference can be made to Section 437 and 439 of Cr.P.C, relevant portions of which are extracted hereinunder:

“437. When bail may be taken in case of non-bailable offence

.....(3) When a person accused or suspected of the commission of an offence punishable with imprisonment

which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.”

“439. Special powers of High Court or Court of Session regarding bail.—

.....(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody...”

11. The discussion of Hon’ble Apex Court in ***Deepak Yadav v. State of Uttar Pradesh and Anr.(2022) 8 SCC 559*** on law regarding cancellation of bail is reproduced as under:

“... C. Cancellation of Bail

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 :-

“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. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening

circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court”

12. In *Imran v. Mohammed Bhava and Anr.* 2022 SCC OnLine SC 496 also, the principles guiding cancellation of bail were highlighted as under:

23. *Indeed, it is a well-established principle that once bail has been granted it would require overwhelming circumstances for its cancellation. However, this Court in its judgment in Vipin Kumar Dhir Vs. State of Punjab and Anr. 2021 SCC OnLine SC 854 has also reiterated, that while conventionally, certain supervening circumstances impeding fair trial must develop after granting bail to an accused, for its cancellation by a superior court, bail, can also be revoked by a superior court, when the previous court granting bail has ignored relevant material available on record, gravity of the offence or its societal impact. It was thus observed:-*

“9. ...Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non conducive to fair trial, making it necessary to cancel the bail. This Court in Daulat Ram and Others vs. State of Haryana observed that:

“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course

of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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 the trial.”

10. These principles have been reiterated time and again, more recently by a 3 Judge Bench of this Court in X vs. State of Telegana and Another.

11. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system...”

13. To sum up the aforesaid, the following observations of Hon’ble Apex Court in ***P v. State of Madhya Pradesh 2022 SCC OnLine SC 552*** are extracted herein-below:

“24. As can be discerned from the above decisions, for cancelling bail once granted, the Court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to

retain his freedom by enjoying the concession of bail during trial. To put it differently, in ordinary circumstances, this Court would be loath to interfere with an order passed by the Court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the Appellate Court...”

14. Coming to the present case, *firstly*, to consider the argument that respondent has flouted the bail conditions and liberty granted to him, the conditions imposed upon the respondent while getting enlarged on bail, by virtue of order dated 10.10.2018, are reproduced as under:

“...Considering all the facts and circumstances of the case, and in the interest of justice, applicant/accused Mohd. Naved @ Peela is admitted to bail on furnishing bail bonds in the sum of Rs.35.000/- with one surety of the like amount. Further applicant shall not flee from the justice, shall not tamper with the evidence, shall not threaten or contact in any manner to the prosecution witnesses, shall appear on each and every date without fail and shall not leave country without permission...”

15. The applicant/State has not made any submission that any of the conditions as imposed in the aforesaid order has been violated by the respondent. It is not alleged that respondent has tampered with any evidence, or has threatened or contacted the witnesses in any manner, or that he had not appeared before the learned Trial Court or has left the country. Admittedly, flouting of such conditions is not the case of applicant/State.

16. Though the applicant has referred to Section 437(3) Cr.P.C. where one of the inherent conditions is not to indulge in similar

criminal activities, the same cannot be resorted to in a complete mechanical manner to cancel the bails already granted to accused persons, in as much as such an order curtails the liberty of an individual as guaranteed under Article 21 of Constitution of India. In the present case, the FIR was registered on 25.08.2015, and since then, the accused remained in judicial custody till the time he was granted bail on 10.10.2018. The subsequent FIRs dated 11.06.2020 were registered 1 year and 8 months, post the order granting bail and 5 years post the registration of FIR in present case. The applicant has not brought to the notice of this Court, any connection, whatsoever, between the case registered in 2015 and the cases registered in 2020 against the respondent. Moreover, no suggestion has been made that commission of subsequent offences have any bearing on the fair trial of the present case. As held by Hon'ble Apex Court in *Central Bureau of Investigation v. Subramani Gopalakrishnan & Anr.(2011) 5 SCC 296*, 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 the trial. Similarly, it would also be relevant to take note of the following observations of Hon'ble Supreme Court in *Mehboob Dawood Shaikh v. State of Maharashtra(2004) 2 SCC 362*:

“8. ...It is, therefore, clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted

can be cancelled. Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.”

17. Furthermore, the respondent in his reply has stated that with respect to the subsequent FIRs dated 11.06.2020, the police did not intentionally file with the present petition, the MLCs of the accused persons who had got injured due to the brutality committed by the police officers on the respondent and his family members. It is also stated that such MLCs have also not been filed before the Trial Court by the prosecution. Along with the reply, certain MLCs have been filed before this Court by the respondent to show that several minor persons in his house were physically assaulted by the police officers on the day of incident. Refuting these contentions, the applicant/State raises doubts on the MLCs filed by the respondent before this Court. The MLCs filed along with the Status Report by the State contains two MLCs of the respondent herein, where one of them mentions the respondent to have sustained a gun shot, while the other makes no such mention. This Court cannot decide the genuineness of the subsequent FIRs registered against the respondent or the veracity of the allegations, but several contradictions in the same cannot be brushed aside. Be that as it may, the investigating authorities have all the powers to take appropriate action as per law against the accused persons in subsequent FIRs. Even as per record, the present respondent was granted bail by learned Trial Court vide order dated 05.02.2021 in FIR No. 211/2020 whereas he continues to be in judicial custody in FIR No. 210/2020. However, the

present case i.e. FIR No. 964/2015, PS Sarai Rohilla, and its trial has no relation with the subsequent FIRs, so as to persuade this Court to allow the application for cancellation of bail.

18. *Secondly*, to decide as to whether the order dated 10.10.2018 granting bail to respondent is illegal or perverse, a quick reference to relevant portion of the said order is necessary, which is as under:

“...Perusal of the record reflects that accused is a habitual offender as he is having previous criminal antecedents; weapon of offence i.e. iron rod has been recovered at the instance of the accused, however, the main witness i.e. PW12 Asif @ Yadi who is alleged to have witnessed the entire incident, has not supported the story of prosecution to its entirety and he has been declared hostile, as per record. From the MLC/postmortem report of the deceased, it is reflected that there are number of injuries on his body, however, PW-12, who is stated to have witnessed the entire incident, has not furnished the details thereof. Accused was released on interim bail on earlier occasion and has surrendered within time. All the main witnesses including eyewitness, except IO, have been examined in the present case. Considering all the facts and circumstances of the case, and in the interest of justice, applicant/accused Mohd. Naved @ Peela is admitted to bail...”

19. The learned Trial Court, after hearing the arguments and perusing the material placed before it, considered it appropriate to grant bail to the accused i.e. respondent herein. The reasoning of the learned Trial Court, inferred from the order dated 10.10.2018 as reproduced herein-above, was that the only public witness/eye-witness in the present case had turned hostile and had not supported the case of prosecution, and all other witnesses were police officials only. Further,

charge sheet in the case had already been filed, all witnesses except the Investigating officer had already been examined, and the accused had been in judicial custody for more than three years. There is no gainsaying that an order granting bail cannot be construed to have any bearing on the merits of a case during the trial which is conducted and concluded as per law on the basis of detailed examination of evidence on record. In this context, observations of Hon'ble Apex Court in *Dataram Singh v. State of Uttar Pradesh* (2018) 3 SCC 22 can also be referred to, which are as under:

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.”

20. The applicant/State, while preferring the present application for cancellation of bail on the ground of subsequent involvement of respondent in another crime, seeks to challenge the order granting bail on the ground of perversity, two years after the said order was passed. As observed in preceding para, this Court is not inclined to interfere

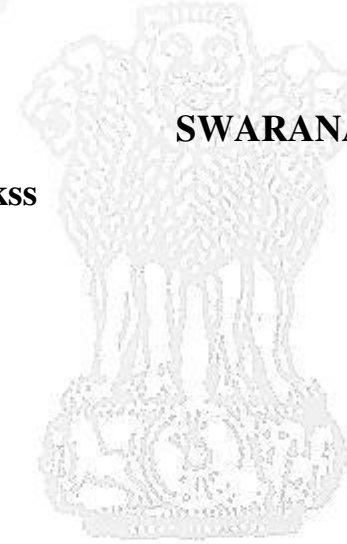
with the order dated 10.10.2018, *vide* which the respondent was granted bail, especially when four years have already passed from the date of grant of bail, at the time when the present application is being decided by this Court.

21. For the reasons recorded above, this Court finds no ground to cancel the bail granted to respondent in the present case i.e. FIR bearing no. 964/2015, PS Sarai Rohilla, under Sections 302/34 of IPC.

22. Accordingly, the present petition/application stands dismissed.

SWARANA KANTA SHARMA, J.

JANUARY 05, 2023/kss



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