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

% Judgment delivered on: 01.11.2023

+ **CRL.M.C. 7246/2023, CRL.M.A. 27035/23 & CRL.M.A. 29030/23**

KARAN KUKREJA

..... Petitioner

Through: Mr. Siddharth Agrawal, Sr. Advocate
with Mr. Talib Mustafa, Mr.
Sowjhanya Shankaran and Mr. Aalok
Kumar, Advocates.

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Richa Dhawan, APP for State
with SI Vinod Kumar PS Greater
Kailash-I
Mr. Deepak Vohra, Mr. Abhinav
Agnihotri, Mr. Vinay Kumar Dubey,
Mr. Divesh Shawney, Mr. Shivam
Tiwari, Mr. Prateek Tiwari and Mr.
Vishal Kumar Malhotra, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed seeking quashing and setting aside of order dated 26.09.2023 passed in Misc. CrI. No.231/2023 by the court of learned ASJ (FTC)-02, Saket Courts, by which the bail granted to the petitioner vide order dated 27.04.2023 in connection with FIR No.246/2022 under Sections 406/420/467/471/120B IPC registered at PS Greater



Kailash-I, was cancelled.

2. The case of the prosecution which led to the registration of aforesaid FIR is that the complainant/respondent no.2 received a call from the petitioner who happens to be his close friend, whereby the petitioner asked the complainant/respondent no.2 to give his car for couple of hours on the pretext of some medical emergency concerning his mother. Upon which the respondent no.2 handed over his car (make Fortuner) to the petitioner. It is alleged that certain jewellery articles were lying in the dashboard of the said vehicle which the complainant/respondent no.2 forgot to take out. As per the complainant the petitioner did not return his car and jewellery articles. On these allegations, the aforesaid FIR came to be registered under Sections 406 IPC. It is further the case of the prosecution that during course of investigation, it was found that the petitioner has sold the said vehicle by forging an NOC and relevant forms, thus, Sections 420/467/471/120B IPC were invoked during investigation and the petitioner was arrested on 12.03.2023. The car in question was recovered from one Jasbir Singh from Punjab.

3. The learned ASJ-05, South-East District, Saket Courts, New Delhi vide order dated 27.04.2023 considering the transcript of WhatsApp chats which revealed that the complainant had indeed agreed to handover his car to the petitioner observed that the contention of defence regarding false implication cannot be brushed aside lightly and consequently enlarged the petitioner on bail.

4. Subsequently, the complainant/respondent no.2 filed an application under Section 439(2) CrPC seeking cancellation of bail granted to the petitioner on 27.04.2023.



5. By the impugned order dated 26.09.2023, the learned ASJ (FTC)-02, Saket Courts cancelled the bail granted to the petitioner mainly on the following grounds:- (i) the petitioner/accused contacted the complainant irrespective of the purpose of contact and the language used in the chats in the form of abuses was not suggestive of any intention of actually settling the matter as claimed by the petitioner, and; (ii) the petitioner, after having been granted bail, has further indulged in another criminal activity for which another FIR No.189/2023 under Sections 323/341/506 IPC was registered against him on 14.08.2023 at PS Greater Kailash-I.

6. Learned senior counsel for the petitioner submits that the petitioner and the complainant/respondent no.2 were close friends and as a matter of fact, respondent no.2 had taken several loans from the petitioner which have till date not been paid. He submits that the petitioner having been cheated by the respondent no.2 was constrained to lodge a complaint against the respondent no.2 which culminated into an FIR No.284/2023 at PS Dhumanganj, Allahabad. He submits that the car in question was also a collateral security to the loan taken by the complainant/respondent no.2.

7. He invites the attention of the Court to the WhatsApp chats between the petitioner and the complainant/respondent no.2 wherein the complainant/respondent no.2 has threatened the petitioner to get his bail cancelled by alleging that both police and judge are with him and has demanded an amount of Rs.10 crores from him.

8. He further invites the attention of the Court to the chats between the petitioner and the respondent no.2, to contend that a perusal of the same discloses that the chat was initiated with the intention to settle the matter between the two friends which later escalated into reciprocal use of abusive



language between the two parties. He submits that the petitioner at no point even remotely resorted to extending any threat to the respondent no.2.

9. He submits that insofar as registration of fresh FIR against the petitioner by one Ravi Shanker Pandey is concerned, said Mr Pandey is admittedly a friend of respondent no.2 against whom the petitioner had earlier on 17.07.2023 filed a complaint with PS Inderpuri alleging assault, criminal intimidation at the use of gunpoint and extortion in connivance with the complainant/respondent no.2. To buttress his contention, the attention of the court is invited to the said complaint, which is annexed as Annexure A-7 to the present petition. He further submits that the FIR registered at the instance of Mr Pandey was placed before the court and brought to the knowledge of the petitioner only on the date of hearing of application for cancellation of bail.

10. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that besides the two grounds on which the petitioner's bail was cancelled, the petitioner has also made a spoof call impersonating the mobile number of the erstwhile IO and the present IO of the case, to demand money from the complainant/respondent no.2.

11. In rejoinder, the learned senior counsel for the petitioner refers to the status report dated 16.10.2023 filed by the State, more particularly, paras 20 and 21 thereof, to contend that both the petitioner and the respondent no.2 had access to the application and the account from which the alleged spoof calls were made. He submits that there is strong possibility that the calls were made by the complainant/respondent no.2 himself to create a ground for cancellation of petitioner's bail. He submits that even the impugned order rightly did not premise the cancellation of bail on the said factor.



12. I have heard the learned senior counsel for the petitioner as well as the learned APP for the State, supported by the learned counsel for the complainant/respondent no.2.

13. It is trite law that cogent and overwhelming circumstances are necessary for an order directing cancellation of bail which has already been granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) they are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade 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 trial.¹

14. The learned ASJ has not given any finding to the effect that any supervening circumstances have rendered it no longer conducive to a fair trial to allow the petitioner to retain his freedom by enjoying the concession of bail during trial. One of the grounds on which the bail has been cancelled is that the petitioner after grant of bail has indulged in criminal activity which led to the registration of a second FIR No.189/2023 which was registered at the instance of Mr Ravi Shanker Pandey. A perusal of the said FIR dated 14.08.2023, which has been annexed as Annexure A-6 to the present petition alleges the date of incident as 22.07.2023, which is

¹ Dolat Ram & Ors. Vs. State of Haryana: (1995) 1 SCC 349



subsequent to the complaint made by the petitioner against said Ravi Shanker Pandey at PS Inderpuri on 17.07.2023. Thus, the possibility that the said FIR being registered as a counter blast to the complaint made by the petitioner being prior in point of time cannot be discounted at this stage. That apart, it appears that the Ravi Shanker Pandey is a friend of the complainant/respondent no.2. Furthermore, the allegations in the FIR No.189/2023 are only that of simple threat and wrongful restraint, therefore, false implication of the petitioner only to get his bail cancelled cannot be ruled out, especially when seen in the light of the WhatsApp chats where the complainant/respondent no.2 has categorically threatened the petitioner of his cancellation of bail alleging *“kale teri bail cancellation hai na. Deekhte ja judge bhi mera police bhi meri. Pehle bail cancel Tihar jail Aur fir Allahabad jail.....”*

15. As far as the petitioner contacting the complainant/respondent no.2, irrespective of purpose of contact and using abusive language, a perusal of the impugned order shows that for the abusive language used the petitioner had expressed his remorse and tendered an unconditional apology with an undertaking not to repeat the same in future. Further, there is also substance in the submission of learned senior counsel for the petitioner that in the said chat the petitioner has not resorted to extending any threats to the complainant/respondent no.2. Even, there is no observation to that effect in the impugned order.

16. Undoubtedly, in normal circumstances, the petitioner/accused ought not to have contacted the complainant/respondent no.2 but it is the case of the prosecution itself that the petitioner/accused is friend of the complainant/respondent no.2, therefore, in such a situation it cannot be



disregarded that the chat was initiated by the petitioner with the intention to settle the matter which later escalated into reciprocal use of abusive language.

17. From the above narration of facts, it appears that there were no overwhelming circumstances warranting cancellation of the bail and the trend today is towards granting bail because it is now well settled by a catena of decisions of the Hon'ble Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available to face the trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence².

18. No observation has been made in the impugned order that the petitioner is a flight risk or that he may tamper with the evidence in case he continues to be on bail or that the petitioner's liberty is not conducive to a fair trial of the case.

19. In view of the above, the present petition is allowed and the impugned order dated 26.09.2023 passed in Misc. Crl. No.231/2023 is set aside and the order dated 27.04.2023 granting bail to the petitioner by the learned ASJ is restored with following modifications:-

- (i) The petitioner shall be released on bail on his furnishing a fresh Personal Bond in the sum of Rs.50,000/- and one Surety Bond of the like amount subject to the satisfaction of the Trial Court/CMM/Duty Magistrate.
- (ii) The petitioner shall report to the IO on first Saturday of every

² Bhagirathsinh s/o Mahipat Singh Judeja vs. State of Gujarat: (1984) 1 SCC 284.



month at 11:00 AM till the commencement of the trial.

20. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.
21. Order *dasti* under the Signatures of the Court Master.
22. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

NOVEMBER 01, 2023/MK