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

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Reserved on: 27.04.2023
Pronounced on: 01.05.2023

+ **BAIL APPLN. 664/2018**

DR SWATI BHARDWAJ

..... Applicant

Through: Mr. Sanjay Mann, Mr.
Shashank Bajpai, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Manoj Pant, APP for the
State.
Mr. Pawan Sharma, Advocate
R-2.
SI Amandeep Rana, P.S.
Pashchim Vihar West.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The applicant has preferred the present application under section 439(2) read with section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C') seeking cancellation of bail granted to accused in case FIR bearing No.440/2014, registered under section 354/354A/354D/506/509 of Indian Penal Code, 1860 ('IPC').

2. Petitioner is aggrieved by order dated 13.04.2015 passed by learned Additional Session Judge ('ASJ'), Tis Hazari Courts, New

Delhi in case titled as “*State v. Kuldeep Parashar*”, whereby, Kuldeep Parashar i.e., respondent no. 2 was granted regular bail. The relevant portion of the bail order is reproduced as under:

“Thus, keeping in view of the totality of the circumstances, the period of custody, completion of investigation, the court is of the considered opinion that interest of justice would be met, if the accused is admitted on bail. Accordingly, the accused Kuldeep Parashar is admitted on bail on furnishing BB in sum of Rs.50,000/- with one surety of like amount to the satisfaction of the concerned MM/Duty MM/Link MM, however, subject to the following conditions:

(1) The accused/applicant shall not leave the jurisdiction of Ld. Trial Court without its prior permission and shall surrender his passport, if any, within one week of his release in the concerned court.

(2) The accused/applicant shall not contact or try to contact either the

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complainant, her husband or any other witness either directly or indirectly.

(3) The applicant/accused shall not visit the residential or work place of complainant and his husband during the period of bail and shall also not be found within the radius of 100 meters of the Pujari Apartment near Udyog Metro Station, Rohtak Road, New Delhi or their work place.

(3) Accused/Applicant shall not influence or intimidate the prosecution's witnesses or affect the course of the trial by the accused in any manner prejudicial to either interest of trial or that of to complainant....”.

3. Learned counsel for the applicant vehemently states that learned Trial Court erred in granting bail to the applicant since, it had failed to consider the gravity of offence committed. It is stated that the allegations against respondent no. 2 are serious in nature and learned

Trial Court failed to appreciate the fact that, if respondent no. 2 is granted bail, he will influence the witnesses.

4. *Per contra*, learned counsel for respondent no. 2 vehemently opposes the present application and states that learned Trial Court had considered the gravity of offence as well as the facts and material placed on record. It is further argued that order vide which respondent no. 2 was granted bail, was a reasoned order passed by learned Trial Court and that there is no infirmity in the order, neither has respondent no. 2 violated any conditions imposed upon him by the learned Trial Court while granting bail.

5. Learned counsel for respondent no. 2 also argued that the principles to be followed at the time of consideration of bail applications is that rule is bail and jail is an exception. It is further contended that Trial is already underway and there is no complaint lodged regarding threats against the present applicant and therefore the application be rejected.

6. I have heard arguments on behalf of both the parties and have perused the material on record.

7. The question for consideration before this Court is whether the bail granted to respondent no. 2 be cancelled or not. Before getting to merits of the case, this Court deems it fit to consider the law regarding cancellation of bail, a reference can be made to Section 437 and 439 of Cr.P.C, relevant portion of which is reproduced as under:

“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..."

8. This court reiterates the well-established legal principle that the cancellation of bail should be treated differently from a bail application. The Hon'ble Supreme Court has consistently stressed that orders of cancellation of bail should not be passed casually and should only be passed after assessing whether any new circumstances

have arisen which make it inappropriate for the accused to remain on bail during trial. The decision to cancel bail must be supported by strong and compelling reasons. This position was affirmed in the case of *Deepak Yadav v. The State of Uttar Pradesh* (2022) 8 SCC 559.

9. In *Dolat Ram & Ors. v. State of Haryana* (1995) 1 SCC 349 the Hon'ble Supreme Court laid down the grounds for cancellation of bail which reads as under:

- “17(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”.

10. In *Neeru Yadav v. State of Uttar Pradesh* (2014) 16 SCC 508, Hon'ble Supreme Court examined the precedents on the principles that guide grant of bail which reads 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”

11. In *Prakash Kadam & Ors. v. Ram Prasad Viswanath Gupta & Anr.* (2011) 6 SCC 189 the Hon’ble Supreme Court held that:

“18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. if there are serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. that factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail”.

12. Considering the law on point as well as the judicial precedents, this court is of the opinion that learned Trial Court while granting bail to the accused persons has passed a detailed and well-reasoned order. The learned counsel for the petitioner wants this court to go through the admissibility of evidence and also wants to point out as to how the evidence was not appreciated in detail by the learned Trial Court.

13. However, this Court is of the view that while dealing with an application for cancellation of bail the criteria to be adopted is following the guidelines regarding cancellation of bail and weigh the facts and circumstances of each case to reach a conclusion as to

whether the case in question warrants cancellation of bail to an accused or not.

14. After considering overall facts and circumstances of the case, this Court holds the view that the prosecutrix in this case has been examined who has filed the present application. She has deposed before the learned Trial Court and till date no complaint has been lodged regarding any threat extended to the applicant when she was to depose or after her deposition or after her deposition has been brought to the notice of the court. Therefore, this court is of the opinion that this case does not fall in the category of cases where bail granted to an accused can be cancelled. This court also notes that at the time of grant of bail though the evidence on record has to be kept in mind to weigh as to whether the liberty of bail should be granted to an accused or not as well as the aggravating circumstances. The bail granted to respondent no. 2 was conditional and he has not flouted any of the conditions of bail.

15. Considering the overall facts and circumstances of the case this court finds no ground to cancel the bail granted to respondent no. 2 and dismisses the present application.

16. Accordingly, the present application stands disposed of.

17. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 1, 2023/kss