IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

233+212

CRM-M-53422-2023
Decided on: 21.02.2024

Geetika Dahiya ...Petitioner

Versus

State of Haryana …Respondent

CRM-M-57450-2023

Rajiv Gambhir ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.S. Madaan, Advocate
for the petitioner in CRM-M-53422-2023.

Mr. R.S. Cheema, Sr. Advocate with
Mr. Ishan Khetarpal, Advocate
for the petitioner(s) in CRM-M-57450-2023

Mr. Naveen K. Sheoran, DAG, Haryana.

Mr. Manish Bansal, APP, UT Chandigarh and
Mr. Navjit Singh, Advocate
for UT.

Mr. A.D.S. Sukhija, Advocate for the complainant.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
18	14.09.2023	Anti Corruption Bureau, Sector 17, Panchkula	323, 364-A, 365, 384, 386, 120-B IPC (Section 8 of PC Act added vide order dated 04.12.2023)

1. This order shall dispose of two petitions i.e., CRM-M-53422-2023 titled as Geetika Dahiya vs. State of Haryana and CRM-M-57450-2023 titled as Rajiv Gambhir vs. State of Haryana.

2. Petitioner Geetika Dahiya, aged 40 years (in CRM-M-53422-2023), is the wife of the complainant, Amardeep Singh.

3. Rajiv Gambir is the petitioner in CRM-M-57450-2023. and in para 1 of his petition, he claims to be the Managing Director of Quasar Airlines and also claims that his other company, M/s Prominent Comtech Pvt. Ltd., has been short-listed by the Ministry of Defence to produce prototype tanks in partnership with BEML, a PSU of Ministry of Defence.

4. Both the petitioners are apprehending arrest in the FIR captioned above, and have come up before this Court by filing separate petitions under Section 438 CrPC. Vide order dated 19.10.2023 passed in CRM-M-53422-2023, petitioner-Geetika Dahiya was granted interim bail and the said order is continuing till date. Similar relief was given to petitioner Rajiv Gambhir, vide order dated 17.11.2023 passed in CRM-M-57450-2023.

5. I have heard counsel for the parties as well as the complainant's counsel and also gone through the petitions.

6. Petitioner's counsel prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison undertakes to disconnect all other mobile numbers. He further submits that they shall declare all assets and not claim such declaration as self incrimination, violation of Article 20/21 of Constitution of India or any other fundamental law/right. The petitioner contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and family and they already joined the investigation.

7. State counsel opposes the bail on the ground that allegations are serious against the petitioners and prayed for dismissal of petition.

8. FIR in question is registered based on the complaint of Amardeep Singh Mond, which reads as follows: -

> "The Complainant is compelled and constrained to file the present complaint against the aforesaid Accused persons for subjecting the Complainant of serious criminal offences. Complainant is constrained to lodge the present complaint being aggrieved by the illegitimate, illegal and dishonest acts of the Accused person thereby attracting offences, inter alia,in the nature of fraud, cheating, attempt to commit extortion, putting the complainant in fear of injury in order to commit extortion, attempt to commit extortion by putting the complainant in fear of death or grievous hurt, putting the complainant in fear of death or grievous hurt in

order to commit extortion, attempt to commit extortion by threat of accusation of an offence punishable with death or imprisonment of life, dissemination of false information intended for blackmail, defamation, mental harassment, criminal intimidation, falsely charging the complainant of offence with intent to injure punishable under section 420, 384 read with 511, 385, 386 read with 511, 387, 388, 500, 506 and 211 of Indian Penal Code, 1860 (hereinafter referred to as "IPC").

The factual matrix of the case is as follows:

1. That the Complainant is a law-abiding citizen of India. The Complainant is honest tax-payer, highly reputed person who hold an impeccable status in the society. The Complainant throughout has enjoyed the reputation of unmatched integrity which has fetched him credibility of one and all.

2. The incident in question dates back to the year 2019 when Complainant met Accused No. 2 through an online portal for the purpose of surrogacy. She initially agreed to be the surrogate and even convinced the Complainant to buy a flight ticket for her to Houston, USA, where the surrogacy process was supposed to take place. However, she disappeared after reaching New York, thereby cheated the Complainant of the flight ticket expenses.

3. Later, in 2022, Accused No. 2 reappeared and approached the Complainant with a different proposal involving a property investment in Chandigarh. The Complainant, being involved in real estate business, considered her proposal and agreed to invest in the property after she showed the property in sector 33A, Chandigarh to the Complainant. She presented documents of a gift deed signed by her mother-in-law in her favor and induced the Complainant to help her, get the property mutated at the estate office in Chandigarh, for which the Complainant provided her financial assistance of Rs. 1,00,000/-. The said financial assistance was done in good faith.

4. The Accused No.2 introduced the Complainant to her alleged brother-in-law, Mr. Jagmohan Singh Dhanoa, and her husband, Amardeep Singh Mond i.e. Accused No. 1. Accused no.2 and Mr. Jagmohan persuaded the Complainant to communicate with Accused No.1, who was in the USA, to buy his share of the property.

5. Accused No. 2 visited multiple times to the Delhi office and residence of the complainant and kept on pursuing him to invest in the property.

6. In the month of September, 2023 the Accused No. 2 came to Delhi and parked herself in Delhi and told the complaint that until he didn't agree to invest in the property she wouldn't leave Delhi and again gave a proposal of immense profit if the accused was able to procure the share of her husband Amardeep in the said property. The Complainant had told the Accused No. 2 about the costs and hardship that the Complainant will have to suffer in travelling to USA. However, the Accused No 2 represented that in

case the Complainant is able to get Amar's share in the property she, in Lieu of Complainant's investments and Handwork of traveling to USA, will give the Complainant 5% share out of her 25% share in the subject property and further the same could be sold in the open market for profit.

7. The Complainant, believing the representation and assurance of the Accused No. 2, traveled to the USA in February 2023 and met Accused No. 1. The Accused No. 1 informed the Complainant of his financial distress and agreed to sell his 50% share of the property for a consideration of Rs. 2,10,00,000/-. The Accused No. 1 accepted Rupees 15,00,000/- ($18,105) via international transfer to his Bank Account Number 992879079 and cash of $6000 which is equivalent to Rs: 5,00,000/-, as advance payment for selling his 50% share in House Number 276, sector 33A, Chandigarh.

8. Further in order to complete the deal and collect his balance payment, Accused No. 1 came to India during March 2023. On March 15th, 2023, the Complainant and Accused No.1 signed an Agreement to Sell, General Power of Attorney, Will, towards sale of his 50% of share in property situated at 276, Sector 33A, Chandigarh. In this agreement, Accused No.1 stated that the said property is free from all litigation, encumbrances and disputes. As the Complainant had already paid the Accused No.1 an amount of Rs.20,00,000/- and on signing of this Agreement to Sell the Complainant handed him further an amount of Rs 45,00,000/- through cheque bearing number 000124, Rs. 50,00,000 through cheque bearing number 000122, Rs. 50,00,000 through cheque no 000121 and Rs 50,00,000 through cheque bearing number 000123.

9. The Agreement to Sell clearly stated that the above cheques would be presented for encashment only when original registry and possession of the house would be handed to the Complaiant. Though one cheque of Rs.45,00,000/- was approved by the Complainant to get it encashed even though the above conditions were not met as Accused No.1 pleaded with Complainant that he is in urgent need of money. The second cheque of Rupees 50,00,000/- was encashed by Accused No.1 on 04.07.2023, this cheque was encashed under false promises and pretext whereby Accused No.1 assured the Complainant that on encashing the check number 000122 he would hand over the original registry papers of the subjected property to the Complainant.

10. Upon assurance of Accused No.1 the Complainant went to Chandigarh in order to receive the original documents of the subject property. However, to the utter shock and dismay of the Complainant, the Accused told the Complainant that he needed some more cash and demanded another Rs.10,00,000/- from the Complainant. Having been cornered, the Complainant had no alternative but to consider and trust him that what he was saying will be honored by him, and since the Complainant had only Rs. 4,00,000/- with him at that time and the same was handed over to Accused No. 1. Upon receiving that cash Accused No.1 told the Complainant that he is getting the Original Property Papers and asked the Complainant to wait in the car.

11. The Complainant waited there for some time and did not see him return. The Complainant tried to connect him on his mobile number +19177331859 and +918448639130 and found both his numbers to be switched off. The Complainant waited there for half an hour, thereafter an unknown person knocked on Complainant's car window, this person was wearing a mask. The Complainant lowered his car window, whereby the unknown person threatened the Complainant to leave Chandigarh, or the Complainant would be shredded to pieces. Not understanding the situation and feeling threatened and unsafe the Complainant left immediately.

12. On July 15th 2023 the Accused No.1 personally visited the Complainant office in Delhi and shockingly threatened the Complainant to have him killed and hurt his family if he didn't agree to cancel the sale agreement of the above property. As the complainant had already paid large amount of money to the Accused No. 1, he thought of trying to get this resolved by seeking intervention of relatives and friends of the Accused. Sadly no one came forward to help the Complainant as everyone said that the Accused was mentally capable of going to any extreme for money.

13. Again on August 4th 2023, someone visited the office of the accused in Delhi and asked for Jatin, an employee of the complainant and told Jatin, that the complainant be informed that Geetika was sitting in the car across the road and had sent a message that Geetika should be paid 50 Lacs and also cancel the sale agreement with Accused No.1 or he would be shot dead, as per plan already hatched, and his family would also be harmed.

14. It is only on that day that is 4th of August 2023 the whole plan of the Accused 1 and Accused 2 has now become clear to the Complainant.

15. The Complainant subsequently on Dt. 5th August 2023 reached out to Estate Office of Chandigarh to find the credentials of the property and this is when and where the Complainant came to know that there was a stay order issued by a court whereby Accused No. 1 has been refrained from selling/alienating his 50% share in the subjected property. Even having full knowledge of this stay order Accused No.1 kept on fraudulently taking money from the Complainant on regular basis and cheated the Complainant multiple times.

16. The Complainant has paid an amount of Rs. 20,00,000/- and Rs. 95,00,000/- as an advance payment through various cheques. However, it was later revealed that the property was under a stay order, and the Complainant realized that he has been deceived and defrauded by Geetika and Amardeep.

17. During Accused No. 1, visit to Delhi on 15th July 2023 he also threatened Complainant and claimed to have recorded some alleged conversations involving cash transactions, with him and further intimidating the Complainant to abandon his pursuit of the property purchase. He even threatened to harm Complainant

and file false complaints against the Complainant, using the very money that he had extorted from the Complainant.

18. On Geetika's front, Complaint sought assistance from a well-connected social worker, Ms. Jyotsna Gulia, to resolve the matter who approached Accused No: 2, to settle the matter and to my utter shock, I was informed by her that Geetika Dahiya was asking for 50 lakhs, exactly as what was communicated to me through Jatin on August 4th 2023, only after receiving the money she would stop circulating frivolous complaints against me, and also settle the matter with Amar. Geetika also informed Jyotsana that if I didn't pay this amount she would further levy sexual abuse charges against me, Being totally devastated and confused, I requested Jyotsana to pursue the matter and get the same closed and as I was carrying only two lakh rupees with me in my car. I gave those two lakh rupees to Jyotsana to be delivered to Geetika. Jyotsana give this money to Geetika and both of us left Chandigarh for Delhi. On my way back to Delhi Jyotsana counselled me and spoke to me about such kind of woman who even after taking money will not leave me and my family alone and would continuously harass me She gave me strength and support to approach the police department investigate and deal with such criminals legally.

19. The Complainant is deeply disturbed and concerned about the safety and security of his family, and the Complainant further apprehends that the Accused might continue to harass and malign the reputation of the Complainant. Both the accused have conspired to exploit and extort money from the Complainant.

20. The sole motive of the Accused is to threaten the Complainant to extort the 50% share that the Complainant now lawfully hold in the property for which completion of transaction and registration are pending. The said act of the Accused's is a clear attempt to commit extortion against the Complainant and the same is punishable under section 384 read with section 511 of IPC.

21. The Accused No. 2 has also threatened the Complainant of implicating him in false case of rape against the Complainant. The said Acts of the Accused is an attempt of Extortion by threatening the Complainant of accusation of an offence punishable with or imprisonment for life and the same is punishable under section 388 of IPC.

22. The Accused presently has been filing false and frivolous complaints against the Complainant and his friends to various police and government departments with an intention to defarne the Complainant. The said acts of the Accused of falsely charging the Complainant with an intention to injure is an offence punishable under 211 of IPC.

23. Accused clearly intended to harm the reputation of the Complainant and had clear knowledge and a reason to believe that such false and demeaning imputations to the Complainant would harm his reputation, privacy, safety and their mental peace, knowing well that the Complainant would also suffer loss

> of reputation which is immeasurable in monetary terms. The said act of Accused is punishable under section 500 of IPC.
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> It is stated that your kind offices have the jurisdiction to commence investigation in the case at hand as the said offences were committed in the territory falling within your Jurisdiction. That an FIR deserves to be registered against the Accused. The aforesaid acts can only be done by the State Authorities and as such an FIR deserves to be registered under the aforesaid provisions of law and be investigated in accordance with law. The Complainant assures full cooperation.
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> It is requested to your good offices that an early action be taken as the acts of the Accused has further tendency to harm the reputation and image of the Complainant."

9. The Gist of the FIR is that the complainant, Amardeep Singh Mond, had shifted to the USA in 1992, and after that, he got married in 2000, and the marriage broke out in 2009. After that, since the complainant wanted to marry, he was looking for a match in one of the match-making apps, i.e., Jeewansathi.com, where he got to access the profile of accused Deepika (who was Geetika Dahiya and made her profile with a fake name).

10. Upon finding a suitable profile, the complainant contacted Geetika Dahiya on her profile, Deepika, on 28.05.2022. During such a conversation, Deepika (Geetika Dahiya) told the complainant that she already had a visa for the USA and Canada and was planning a trip there for next month, i.e., June 2022, and that she would return around the middle of June 2022. The complainant, Amardeep Singh Mond, called Deepika (Geetika Dahiya) to meet him in California, and she finally made him agree to meet him in Toronto (Canada). Both of them spoke about their families, and during such conversation, Deepika (Geetika Dahiya) proposed to the complainant for marriage.

11. After that, Deepika (Geetika Dahiya) travelled to New Jersey to verify the antecedents of Amardeep Singh Mond. During her visit to New Jersey, Amardeep Singh Mond got married in an online ceremony from the State of Utah on 16.06.2022, and they got the marriage certificate on 17.06.2022.

12. After marriage, Deepika (Geetika Dahiya) insisted on returning to India. She left the USA on 18.06.2022. Deepika (Geetika Dahiya) further insisted that they would have a religious marriage, and according to the complainant, they did not marry.

13. On reaching India, Geetika Dahiya insisted that they demolish the complainant's residential house, 50% of which was owned by the complainant's mother and remaining with the complainant and his sisters. However, Geetika Dahiya insisted on demolishing the house, and the relationship got constrained because of her insistence when the

complainant refused to budge to her demands.

14. On 26.07.2022, Geetika Dahiya forcefully entered the house, broke open the locks, and illegally took possession. She changed the house's locks, restraining her mother and sister from entering the same and throwing their belongings in the street. On the next date, i.e., 27.07.2022, Geetika Dahiya filed a false complaint against the complainant. On this, complainant, Amardeep Singh Mond realized that he had been defrauded by Geetika Dahiya, who had made a false profile in the name of Deepika on the Jeewansathi App.

15. The real controversy in the issue started when the complainant Amardeep Singh Mond visited India on 30.07.2022 and returned on 02.08.2022, which means he stayed in India only for four days, i.e., 30.07.2022, 31.07.2022, 01.08.2022 and 02.08.2022 and during that period also 30.07.2022 & 02.08.2022 would be the traveling dates.

16. After the complainant had left, in between ASI, Shivani made a phone call from the Women's Police Station, Sector-5, Panchkula, and started harassing the complainant's sister and family. She called them to the police station and asked them to compromise with Geetika Dahiya and to give 50% share of the entire house. Subsequently, on her insistence, they allegedly transferred a 25% share of the house to Geetika Dahiya, and she withdrew the original complaint.

17. The complainant further submits that in December 2022, he started getting calls from unknown numbers, and on that phone call, one Rajiv Gambhir talked with the complainant and asked him to transfer 50% of the share of the property in the name of Geetika Dahiya. He further told the complainant that he knew Geetika Dahiya from 2018. Rajiv Gambhir and the complainant came close to him and eventually Rajiv Gambhir, taking advantage of his naive state of mind of Amardeep Singh Mond, was successful in making friends with him.

18. When the complainant realized the conspiracy that Geetika Dahiya had performed marriage with him only to grab the property and Rajiv Gambhir also called him to take advantage to purchase the property, he made a complaint, which led to the registration of FIR.

19. The investigation found the involvement of one ACP, Surender Yadav, who was contacted by Geetika Dahiya and offered her 10 % of the house's value in return for ACP Surender Yadav favoring her. Finally, Geetika Dahiya took advantage of political links with Rajiv Gambhir and was able to dislodge Jaswinder, the mother of the complainant (Amardeep Singh Mond), who is an old lady aged around 83 years.

20. Apprehending arrest, petitioner(s) had filed before the Additional Sessions Judge, Panchkula and by finding gravity of offence, Sessions Judge dismissed the bail application and after that the petitioner(s) have come up before this Court seeking anticipatory bail.

21. Geetika Dahiya's petition, i.e., CRM-M-53422-2023, was listed on 19.10.2023, on which date a Coordinate Bench of this Court had granted interim bail to the petitioner and posted the matter on 06.02.2024. In between, Rajiv Gambhir had also filed his petition bearing case No.CRM-M-57450-2023, in which, vide order dated 17.11.2023, the Coordinate Bench of this Court had granted the same relief as given in CRM-M-53422-2023 vide order dated 19.10.2023. Eventually, the matter was heard on 20.02.2024; this Court passed a detailed order to do substantive justice to Jaswinder, Mother-in-law of Geetika Dahiya, aged 83 years, and had been thrown out of the house creating compelling circumstances.

22. On 20.02.2024, the petitioner was directed to remain present on the next date, i.e., 21.02.2024. When the matter was taken up on 21.02.2024, Geetika Dahiya and Rajiv Gambhir were present in the Court. Counsel for the petitioner, Geetika Dahiya, stated that they would voluntarily comply with the previous order but needed some time. Petitioner Geetika Dahiya explicitly stated that she was not averse to comply with the previous order, but she needed some time due to the reason that the first floor of the house was not in a habitable position and to demonstrate that she showed photographs. In the background of the allegations and the fact that mediation proceedings are already going on, this Court thought it appropriate to refer even a bail petition for mediation, and accordingly, Mr. Suneet Sharma, Advocate, who was a Mediator in the other proceedings, was requested to take mediation in this petition of Geetika Dahiya.

23. Petitioner- Rajiv Gambhir also requested that his matter be sent to the Mediation Center, and consequently, his matter was also sent to the Mediation and conciliation Center of this Court, vide order of even date passed in the pre-lunch session.

24. The report of the Mediator was received at 3.45 PM on 21.02.2024, and at that time, Mr. R.S. Cheema Sr. Advocate, assisted by Mr. Ishan Khetarpal, appearing for the petitioner Rajiv Gambhir, on instructions, stated that the matter has been compromised. Similarly, Mr. G.S. Madaan, Advocate appearing for the petitioner-Geetika Dahiya, also stated that the matter has been settled in terms of the Mediation Report and the statement made by both the counsel, is not disputed by Mr. A.D.S. Sukhija, counsel appearing for the complainant. Counsel for the complainant also submits that the

complainant's mother has been informed about the compromise and mediation proceedings.

25. In the larger interest of justice, equity and fair play, this Court finds it necessary to reproduce the mediation report, which reads as under: -

> "1. The matter was referred to Mediation & Conciliation Centre today vide order dated 11.02.2024 passed by the Hon'ble High Court.
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> 2. That the second party lodged an FIR No.18 dated 14.09.2023 under Sections 323, 364-A, 365, 384, 386, 120-B of IPC at Police Station Anti Corruption Bureau, Sector 17, Panchkula against first party and third party. The third party has also lodged an FIR No.392 dated 28.08.2023 under Sections 420, 120-B, 384, 34 of IPC, at Police Station Rajender Nagar, District Central Delhi against the first party and second party. Another FIR No.70 dated 05.08.2023 under Sections 498-A, 377, 506, 323 of IPC was got registered by first party against the second party due to matrimonial discord.
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> 3. That the first party filed a petition bearing No.CRM-M-53422 of 2023 before this Hon'ble High Court for grant of anticipatory bail in the aforementioned FIR. That the third party has also filed a petition bearing No. CRM-M-57450 of 2023 for grant of anticipatory bail in the FIR mentioned above.
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> 4. That the parties agreed that Mr. Suneet Kumar, Advocate would act as their Conciliator/Mediator in the matter of Mediation and Conciliation proceedings.
>
> 5. Today, joint and separate sessions were held during the process of Conciliation/Mediation. The parties have with the assistance of the Mediator/Conciliator voluntarily arrived at an amicable solution resolving the disputes and differences.
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> 6. The parties hereto confirm and declare that they have voluntarily and of their own free will arrive at this Settlement/Compromise in the presence of the Mediator/Conciliator.
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> 7. That all the parties have settled their disputes on the following terms and conditions:-
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> > a) That the first party has agreed to hand over the possession of the first floor of **House No.276, Sector 33-A, Chandigarh** by today evening to Mrs. Jaswinder Kaur Mond wife of late Shri Sarjit Singh Mond- mother of second party namely Amardeep Singh Mond or to her family member/representative.
> >
> > b) That the second party within a period of ten days from today, will get the repairs done of first floor of **House No.276, Sector 33-A, Chandigarh** at his own expenses and after inspection of the portion by the

respective counsel for suitability of the floor, will hand over the possession of first floor of the aforesaid house to the first party and the first party shall immediately hand over the possession of the ground floor to Mrs. Jaswinder Kaur Mond wife of late Shri Sarjit Singh Mond-mother of second party namely Amardeep Singh Mond or any person authorised by her. It has also been agreed that the second party will help the first party in shifting the household articles/furniture.

c) That the first party and the second party have entered into this settlement/agreement above terms (a) and (b) to the limited extent and will not affect their ongoing matrimonial disputes.

d) That the third party agrees to forego his right to purchase 50% share of House No.276, Sector 33-A, Chandigarh and will reserve his right to recover the amount paid by him as part consideration in respect of agreement to sell dated 15.03.2023 and vice-versa qua Party No. 2.

e) That all the parties agree that they will not oppose bail applications of each other in the FIRs.

f) That it is further agreed between the second party and third party that the second and third party will help each other in getting the FIRS mentioned above quashed/cancelled immediately and will ensure cooperation with each other in this regard by presenting their respective counsel in the Hon'ble Court and will file their respective affidavits, necessary for the same and shall make themselves available for the same.

8. That the parties undertake before the Hon'ble Court to abide by the terms and conditions set out in this settlement/agreement and not to dispute the same hereinafter in future.

9. That both the parties shall not breach the terms of settlement/agreement and if any party backs out of the terms of settlement then the other party shall have a right to take recourse of law.

10. That the parties to this agreement hereby state that they have read the agreement, that they have understood the contents thereof and their execution of agreement is voluntary.

11. With the execution of this agreement, each signatory acknowledges receipt of fully executed original of this agreement.

12. That it has been further agreed between the parties that in case of necessity, all the parties shall be free to present the copy of the above compromise before any authority or Court if the same is required to witness the execution of the compromise or to

settle any pending controversy between the parties.

26. A perusal of the mediation report points towards a settlement and petitioner makes out a case for bail.

27. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In GudikantiNarasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh**, 2018:INSC:107 [Para 7]**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

28. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal v. State (NCT of

Delhi),**2020:INSC:106 [Para 92],** (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

29. *The petitioner is directed to join the investigation as and when called by the Investigator.* The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

30. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

31. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

32. <u>The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers</u>. <u>The petitioner must comply with this condition within fifteen days of release from today.</u> The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner’s name. Since, as on date, in India, there are only four prominent mobile

service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In <u>Vernon v. The State of Maharashtra</u>, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

33. During the trial's pendency, if the petitioner <u>repeats</u> or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

34. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. <u>***It is clarified that in case the petitioner does not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the petitioner to reform and live a normal lifebut did not improve***</u>.

35. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. In Mohammed Zubair v. State of NCT of Delhi, **2022:INSC:735 [Para 28],** Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions, must balance the liberty of the accused and

the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”

36. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

37. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

38. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

39. Given above, Both petitions are allowed, and interim order dated 19.10.2023 is made absolute. Pending applications, if any, stand disposed of. It is clarified that since this bail has been granted because the offence under the Prevention of Corruption Act is not arraigned against the petitioners, as such, this order shall not be used as parity to the other accused person(s), against whom the offence under the provisions of the Prevention of Corruption Act have been attributed.

Petitions allowed subject to compliance of above-mentioned compromise. Interim order made absolute, subject to compliance.

(ANOOP CHITKARA)
JUDGE

21.02.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: Yes