



2024:DHC:9244



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

% **Date of order: 13<sup>th</sup> November, 2024**

+ **CRL.M.C. 170/2023**

**SANDEEP YADAV**

.....Petitioner

Through: **Mr. Gautam Khazanchi and Ms.  
Suruch Jaiswal, Advocates**

versus

**STATE OF NCT OF DELHI & ANR.** ....Respondents

Through: **Mr. Satish Kumar, APP for the State  
with Si Anil Kumar, Insp. Ranveer  
Singh  
Mr. L. K. Verma, Mr. Hritik Verma  
and Mr. Vikas Goyal, Advocates for  
R-2**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **ORDER**

#### **CHANDRA DHARI SINGH, J (Oral)**

1. The instant petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”) [now Section 483(3) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”)] has been filed on behalf of the petitioner seeking cancellation of bail, which was granted to the respondent no. 2 by learned Additional Sessions Judge-06, New Delhi District, Patiala House



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Courts, Delhi (hereinafter as the “ASJ”) vide order dated 28<sup>th</sup> November, 2022.

2. The brief facts of the case, as per the petitioner, are that on 26<sup>th</sup> June, 2022, the petitioner was forcefully apprehended from his house on gun point by one Mr. Akash Kumar, who is an accused in the aforesaid FIR. It is stated that the petitioner was beaten mercilessly by the co-accused and his associates, demanding a ransom of Rs. 1,00,000/-, which was arranged by the petitioner and duly transferred to his account.

3. It is stated that the petitioner was later taken onto a building’s terrace and was allegedly tied to a cot, when the father of co-accused i.e., respondent no. 2, came to the spot. Thereafter, it is stated that the petitioner was taken to Meerut in a car by the respondent no. 2 and the co-accused/son, in order to kill him. While the accused persons were on their way to Meerut, the police apprehended them and the accused persons were arrested, including respondent no. 2.

4. In view of the arrest, the respondent no. 2 filed an application for regular bail before the Court concerned, however, the same was dismissed vide order dated 30<sup>th</sup> July, 2022.

5. Aggrieved by the same, the respondent no. 2 filed another application for regular bail before the learned ASJ and vide order dated 28<sup>th</sup> November, 2022 (hereinafter as the “impugned order”), the respondent no. 2 was granted regular bail.



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6. Aggrieved by the impugned order, the petitioner filed the instant petition seeking cancellation of the regular bail granted to the respondent no. 2.

7. Learned counsel appearing on behalf of the petitioner submitted that the learned ASJ erred in passing the impugned order without considering the facts and circumstances of the case and the gravity of offences leveled against the respondent no. 2.

8. It is submitted that the learned ASJ failed to take into consideration that the respondent no. 2, who is the father of the main accused, has been in constant touch with the main accused during entire period of commission of offence. Moreover, the respondent no. 2 was in possession of a pistol and threatened to kill the petitioner, thereby playing an active role in commission of the offence.

9. It is submitted that the learned ASJ erroneously granted regular bail to the respondent no. 2 while stating that he did not play an active role in commission of the offence, however, the proximity of the call recordings between the main accused and the respondent no. 2 clearly indicates that the respondent no. 2 had been aiding the main accused since the beginning of the kidnapping.

10. It is further submitted that the respondent no. 2 is an Assistant Sub-Inspector in Central Bureau of Investigation and therefore, being in a position of power, there are high chances of him exercising influence on the victim as well as the witnesses in the instant case.



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11. It is submitted that the learned ASJ failed to apply judicial mind while granting bail to the respondent no. 2 as the same was passed in a mechanical manner and non-consideration of the settled position of law.

12. In view of the foregoing submissions, it is prayed that the instant petition be allowed.

13. Learned APP appearing on behalf of the State submitted that the facts submitted on behalf of the petitioner corroborate the statement given under Section 164 of the Code, however, it is submitted that the requisite evidence including the CCTV footage and CDR's of the respondent no. 2 and the petitioner have already been taken on record.

14. It is further submitted that the investigation in the instant case is completed, and chargesheet and supplementary chargesheet were already filed.

15. *Per Contra*, learned counsel appearing on behalf of the respondent no. 2 submitted that the learned ASJ has rightly passed the impugned order by observing that there are no specific allegations leveled against the respondent no. 2 regarding any physical torture of the petitioner.

16. It is submitted that the learned ASJ has rightly observed that there is no apparent case against the respondent no. 2 and accordingly, he was granted regular bail.

17. It is submitted that it is a settled law that for cancellation of bail, supervening circumstances and misuse of liberty or bail conditions is a requirement. However, since the respondent no. 2 has not violated the liberty



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granted to him and in absence of supervening circumstances, his bail is not liable to be cancelled.

18. It is further submitted that the investigating agency had already completed the investigation in the present case and chargesheet has been filed. Therefore, there is no physical requirement of the respondent no. 2 for further investigation.

19. It is also submitted that the evidence in the instant case such as the CCTV footage has already been collected by the investigating agency and therefore, there are no supervening circumstances of respondent no. 2 tampering with the evidence, hence, his regular bail is not liable to be cancelled.

20. In light of the abovementioned submissions, it is prayed that the instant petition, being devoid of any merit, is liable to be dismissed.

21. Heard learned counsel for the parties and perused the record.

22. At this juncture, it is pertinent to note that the respondent no. 2 was granted regular bail vide order dated 28<sup>th</sup> November, 2022, wherein the learned ASJ observed that there are no sufficient grounds involved against the respondent no. 2 in the instant case and no sufficient allegations were leveled against him especially with respect to the physical torture and demanding ransom from the petitioner.

23. Before advertng to the facts of the case, it is pertinent to understand the scope of Section 439(2) of the Code. The said provision merely states as to when a person who has been released on bail may be taken into custody upon appropriate direction of the High Court or Sessions Court. However,



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the essence and objective of the provision and the jurisprudence therein has evolved over the years and the position of law pertaining to the cancellation of bail has been settled by the Hon'ble Supreme Court as well as the High Courts in catena of judgments, wherein a set of grounds for cancellation have been laid down.

24. Here, it is pertinent to mention the case of ***Dolat Ram And Others Vs. State of Haryana, (1995) 1 SCC 349***, wherein the grounds of cancellation of bail are encapsulated as follows –

- a) Where there is an interference or an attempt to interfere with the due course of administration of justice;
- b) Where there involves evasion or an attempt to evade the due course of justice;
- c) Where the accused misuses the concession granted by the Court concerned;
- d) Where there involves possibility of absconding;
- e) Whether there is a likelihood or an actual misuse of the bail; and
- f) Where there is a likelihood of accused tampering with the evidence and threatening the witnesses;

25. Moreover, while considering a case of cancellation of bail, it is also to be borne in mind that once the bail is granted to the accused, the same should not be cancelled until and unless the accused violated the bail conditions due to his misconduct or some supervening circumstances warranting such cancellation have occurred.



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26. Adverting to the facts of the instant case, upon perusal of the impugned order, it is observed that no specific allegations were leveled against the respondent no. 2, thereby indicating absence of his active role in commission of the offence.

27. It is contended by the petitioner that the respondent no. 2, being an Assistant Sub-Inspector in CBI, has the tendency to influence the witnesses and tamper with the evidence, however, as per the submissions advanced on behalf of the State, the evidence in the instant case has already been collected and is on record, including the CCTV footage as well as the CDR's of the respondent no. 2 and the petitioner. It is further noted that the investigation in the instant case is completed and in furtherance of the same, chargesheet and supplementary chargesheet have already been filed.

28. Therefore, with the evidence being on record as well as the completion of the investigation and filing of the chargesheets, there arises no reason to believe that the respondent no. 2 has the tendency to tamper with the evidence. Therefore, no supervening circumstances arise in the instant case for cancellation of bail.

29. Moreover, it is trite law that once the bail is granted, the accused cannot be deprived of such liberty in a mechanical and perverse manner until and unless the terms and conditions of the bail are breach or any extraneous circumstances arises.

30. It is observed that the learned ASJ has passed a reasoned impugned order while granting bail to the respondent no. 2, recording that the no



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specific allegations were leveled against him with regard to the physical torture and demand of the ransom, as alleged in the aforesaid FIR.

31. In light of the foregoing discussion as well as the law laid down by the Hon'ble Supreme Court and absence of any supervening circumstances arising from the same, this Court does not find any merit in the instant petition and therefore, is not inclined to allow the instant petition seeking cancellation of bail granted to the respondent no. 2.

32. Accordingly, the instant petition stands dismissed, along with pending applications, if any.

33. It is made clear that the observations made herein, touching upon the merits of the case, are purely for the purpose of deciding the question of cancellation of bail, which shall not be construed as an expression of final observations on the merits of the present case.

34. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**NOVEMBER 13, 2024**

Rk/mk/av

*Click here to check corrigendum, if any*