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

+ **CRL.M.C. 508/2024 & CRL.M.A. 2001/2024**

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.....Petitioner

Through: Mr. Sudhir Tewatia, Mr.
Vishal, Mr. Prashant
Solanki, Mr. Mehul Gulati
& Mr. Lal Singh Thakur,
Advs.

versus

STATE OF NCT OF DELHI
& ANR.

.....Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State
W/SI Shikshawati, PS-
Dwarka North
W/SI Neelu, PS-
Bindapur, Dwarka
Mr. Mohit Rana, Adv. for
R2

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

26.09.2024

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1. The present petition is filed essentially seeking cancellation of the bail granted to Respondent No.2 by the learned Trial Court, by order dated 13.06.2023, in SC No. 431/2023 arising out of FIR No. 299/2023, registered at Bindapur.

2. Before filing the present proceedings, the petitioner had approached the learned Trial Court by filing an application under Section 439(2) of the Code of Criminal Procedure, 1973 seeking cancellation of bail. The same was dismissed by the Trial Court by order dated 08.12.2023.



3. The petitioner had alleged that when the child victim went to the market for buying groceries on 19.08.2023, the accused and his family members caught hold of her and slapped her. They also asked her to take the case back. It was alleged that the brother of the victim was also assaulted by the accused and his family members. The accused and his family members are further alleged to have trespassed into the house of the victim.

4. The learned Trial Court noted in order dated 08.12.2023 that from the facts as brought before the Court, it could not be concluded that the accused had violated any of the conditions that had been imposed while granting bail and dismissed the application.

5. The status report mentions that the accused is the cousin of the victim. The Police had received a PCR call on 19.08.2023 regarding the incident. It was marked to one SI Shyam Nandan. On inquiry, the Police did not find the accused to be involved in the altercation, however, action under Sections 107/150 of the Code of Criminal Procedure, 1973 had been taken in order to maintain peace.

6. The learned counsel for the petitioner submits that the victim is yet to be examined and she and her family members are under continuous threat and pressure from the accused and his family. He submits that even though a number of complaints have been made in this regard, however, no action has been taken.

7. He submits that it is also alleged that the police officer Shyam Nandan slapped the victim. He submits that a complaint had been made in this regard to the concerned Deputy Commissioner of Police, however, no action has been taken.

8. The learned Additional Public Prosecutor for the State



submits that no material could be found in regard to the complaint given by the petitioner on an earlier occasion against the parents of the accused. He assures that as and when any such complaint is received in future, an appropriate action would be taken forthwith.

9. He further submits that the mobile number of the Beat Officer as well as the concerned Station House Officer has already been provided to the petitioner and her family members and they are at liberty to contact the Beat Officer whenever they apprehend any threat to their life. He further submits that the concerned Officers would be appropriately sensitized as well.

10. He submits that a copy of the complaints in regard to inaction of the police officers that have been annexed as Annexure 13 of the present petition would be forwarded to the concerned Deputy Commissioner of Police and appropriate action would be taken forthwith.

11. Insofar as the bail granted to Respondent No.2 is concerned, the law in relation to the setting aside or cancellation of bail is well settled. The consideration for cancellation of bail stands on different footing than grant of bail. The Hon'ble Apex Court had discussed the grounds for cancellation of bail in exercise of jurisdiction under Section 439 (2) of the Code of Criminal Procedure, 1973 in the case of ***Himanshu Sharma v. State of Madhya Pradesh : 2024 INSC 139***. The relevant portion of the judgment is reproduced hereunder:

“12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or



fraud.....”

(emphasis supplied)

12. The petitioner has sought cancellation of bail on similar grounds as were agitated before the learned Trial Court. The learned Trial Court by order dated 08.12.2023 had noted that the parties are closely related to each other and the quarrel on 19.08.2023 had ensued between them on the issue of breaking of glass of the car. The CCTV footage was perused and it was observed that the broken glass was also visible in the same. It was also noted that the accused was concededly not present at the place of the incident and he had also never visited the house of the complainant.

13. While certain allegations have been raised against the police officer Shyam Nandan who had enquired into the incident, in view of the conceded absence of the accused at the place of the alleged incident, this Court finds no infirmity in the impugned order.

14. Insofar as the allegations levelled against certain police officers are concerned, the petitioner is at liberty to pursue the appropriate remedies for action against the concerned officers.

15. The learned counsel for the accused, on instructions, submits that to allay any apprehensions of threat from accused, the accused will not reside within 5 km radius of the place of residence of the victim.

16. The chargesheet has already been filed in the present case.

17. It is also to be borne in mind that at the pre-conviction stage, there is a presumption of innocence. Detention is not supposed to be punitive or preventive.

18. However, given the nature and gravity of the alleged offences, this Court considers it apposite to further impose the



following conditions on Respondent No.2:

- a. Respondent No.2 shall call the Investigating Officer once every day; and
 - b. Respondent No.2 shall not reside within 5 km radius of the residence of the victim. Respondent No.2 shall also furnish proof of his residence to the Investigating Officer.
19. In view of the aforesaid discussion, this Court finds no reason to cancel the bail granted to Respondent No.2.
20. Needless to say, if any grievance remains, the petitioner is at liberty to file an appropriate petition before the Court in future.
21. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 26, 2024/“SS”