



2024:DHC:9281



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of order: 13th November, 2024**+ **CRL.M.C. 754/2023****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



2024:DHC:9281



learned Additional Sessions Judge-06, New Delhi District, Patiala House Courts, Delhi (hereinafter as the “ASJ”) vide order dated 11th January, 2023.

2. The brief facts of the case, as per the petitioner, are that on 26th June, 2022, the petitioner was forcefully apprehended from his house on gun point by respondent no. 2, who is an accused in the aforesaid FIR. It is stated that the petitioner was beaten mercilessly by the respondent no. 2 and his associates, demanding a ransom of Rs. 1,00,000/-, which was arranged by the petitioner and duly transferred to the respondent no. 2’s account.

3. It is stated that the petitioner was taken onto a building’s terrace and was allegedly tied to a cot, when the father of the respondent no. 2, who is also an accused in the instant FIR, came to the spot. Thereafter, it is stated that the petitioner was being taken to Meerut in a car by the respondent no. 2 and the co-accused/father, 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 learned ASJ and vide order dated 11th January, 2023 (hereinafter as the “impugned order”), the respondent no. 2 was granted regular bail.

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

6. Learned counsel appearing on behalf of the petitioner submitted that the learned ASJ erred in passing the impugned order without considering the



2024:DHC:9281



facts and circumstances of the case and the gravity of offences leveled against the respondent no. 2.

7. It is submitted that the learned ASJ failed to take into consideration that the respondent no. 2 played an active role in commission of the offence, thereby demanding ransom as well as threatening to kill the petitioner at gun point.

8. It is submitted that the learned ASJ erroneously granted regular bail to the respondent no. 2 while stating that the petitioner had many opportunities to raise an alarm during the commission of the offence, however, the same was not utilized by the petitioner.

9. It is submitted that the father of the respondent no. 2, who is a co-accused, 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.

10. 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.

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

12. 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



2024:DHC:9281



including the CCTV footage and CDR's of the respondent no. 2 and the petitioner have already been taken on record.

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

14. *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 a *prima facie* case for granting the bail was made out for the respondent no. 2. The basis of the same is that the petitioner found himself in situations, wherein he had the opportunity to raise an alarm during the commission of offence and the absence of any specific physical torture in the Medico Legal Report (MLC).

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

16. 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.

17. 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



2024:DHC:9281



tampering with the evidence, hence, his regular bail is not liable to be cancelled.

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

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

20. At this juncture, it is pertinent to note that the respondent no. 2 was granted regular bail vide order dated 11th January, 2023, wherein the learned ASJ observed that during the commission of offence, the vehicle in which the petitioner and the accused persons were going, halted at a petrol station, however, no alarm was raised by the petitioner seeking attention or help from others. Moreover, the MLC did not cite any specific physical torture as alleged by the petitioner and therefore, held that a *prima facie* case has been formed for granting bail to the respondent no. 2.

21. 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, 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.



2024:DHC:9281



22. 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;
23. 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.
24. Adverting to the facts of the instant case, upon perusal of the impugned order, it is observed that the petitioner had opportunities to seek attention and help and further, no specific physical torture has been recorded in the Medico-Legal Report, thereby indicating that a *prima facie* case is established for the grant of bail to the respondent no. 2.



2024:DHC:9281



25. It is contended by the petitioner that the father of 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.

26. 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. Moreover, it is pertinent to note that the respondent no. 2 has been on bail since 11th January, 2023, however, neither of the parties i.e., the petitioner and the State, had contested or given an objection against the misuse of the liberty granted to him vide impugned order. Therefore, no supervening circumstances arise in the instant case for cancellation of bail.

27. 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.

28. It is observed that the learned ASJ has passed a reasoned impugned order while granting bail to the respondent no. 2, recording that the petitioner had the opportunity to seek help when the vehicle halted at the petrol station and that no specific physical torture was recorded in the MLC,



2024:DHC:9281



thereby forming a *prima facie* case for granting of bail to the respondent no. 2.

29. 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.

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

31. 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.

32. 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

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 30.11.2024
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CRL.M.C. 754/2023

Page 8 of 8