



2024:DHC:3549



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 30.04.2024*+ **CRL.M.C. 219/2022**

STATE

..... Petitioner

Through: Mr.Aman Usman, APP with SI
Vishan Kumar

versus

ROCKY

..... Respondent

Through: Mr.L.K. Singh, Adv. (through
VC)**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') read with Article 227 of the Constitution of India challenging the Order dated 29.06.2021 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-03, Shahdara-District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Trial Court') in Bail Application Registration No.2030/2021, titled as **State v. Rocky**, releasing the applicant / respondent herein on bail in FIR No.08/2020 registered at Police Station: Crime Branch, for offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act').

2. The learned APP points out that the learned Trial Court has relied upon extraneous circumstances to release the applicant on bail.

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CRL.M.C. 219/2022

Page 1 of 6



2024:DHC:3549



He submits that, therefore, the Impugned Order releasing the applicant on bail cannot be sustained.

3. On the other hand, the learned counsel for the respondent submits that the learned Trial Court has formed a satisfaction under Section 37 of the NDPS Act for releasing the applicant on bail. He submits that the same cannot be faulted and the Court cannot exercise appellate jurisdiction over the same.

4. I have considered the submissions made by the learned counsels for the parties.

5. In **Deepak Yadav v. State of U.P.**, (2022) 8 SCC 559, the Supreme Court has discussed on the law regarding the cancellation of the bail granted to the accused, by observing as under:-

“31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

32. A two-Judge Bench of this Court in Dolat Ram v. State of Haryana (1995) 1 SCC 349 laid down the grounds for cancellation of bail which are:

- (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 the accused absconding;
- (v) likelihood of/actual misuse of bail;
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

33. *It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:*

33.1. *Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*

33.2. *Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.*

33.3. *Where the past criminal record and conduct of the accused is completely ignored while granting bail.*

33.4. *Where bail has been granted on untenable grounds.*

33.5. *Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*

33.6. *Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.*



33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In Neeru Yadav v. State of U.P. (2014) 16 SCC 508, the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed 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 have not been taken note of 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.”

(emphasis supplied)

35. This Court in Mahipal Kumar, held that:

“17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting



bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.”

36. *A two-Judge Bench of this Court in Prakash Kadam v. Ramprasad Vishwanath Gupta 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 very 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.”

6. In the present case, the learned Trial Court has passed a detailed order for his satisfaction that the parameters under Section 37 of the NDPS Act have been made out by the respondent for being released on bail. The respondent has been on bail since 29.06.2021. I am informed by the learned APP, on instructions from the IO, that the trial is still at the stage of framing of charges. Therefore, the trial has,



2024:DHC:3549



even proceeded. It is also not stated that the delay in trial is for any reason which is attributed to the respondent.

7. In view of the above peculiar facts of the present case, I do not deem it appropriate to exercise my powers under Section 439(2) read with Section 482 of the Cr.P.C..

8. The petition is, accordingly, disposed of.

9. Needless to state, any observation made by the learned Trial Court in the Impugned Order will, in no manner, influence the learned Trial Court while adjudicating the Criminal Trial before it.

NAVIN CHAWLA, J

APRIL 30, 2024/ns/ss

Click here to check corrigendum, if any