



\$~7

\*

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

+

CRL.M.C. 1086/2023

MR. P.L. FOTEDAR

.....Petitioner

Through: Mr. Narendra Kumar Goyal, Adv.

versus

THE STATE (GNCT OF DELHI) THROUGH POLICE

STATION/IO/SHO & ANR.

.....Respondents

Through: Mr.Nawal Kishore Jha, APP for State  
with SI K.P. Singh, PS New Ashok  
Nagar.

Ms. Swati Surbhi, Mr. Ankit Pandey,  
Ms. Chandrika Prasad Mishra and  
Ms. Prashasti Singh, Advs. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**ORDER**

%

**06.09.2024**

**CRL.M.A. 23093/2024 (substitution of LR of the petitioner)**

1. By way of present application, it is stated that the petitioner's son seeks to substitute the petitioner as his legal representative, on account of the death of the petitioner.
2. Learned counsel for the respondent No. 2 states that she has no objection to the same.
3. Accordingly, the application is allowed and disposed of.

**CRL.M.C. 1086/2023 (Cancellation of Bail)**

1. By way of present petition, the petitioner, who is complainant in FIR No. 179/2019 registered under Sections 420/406/120B IPC at P.S. New Ashok Nagar, Delhi, seeks to assail the order dated 16.12.2022 passed by

**CRL.M.C. 1086/2023**

**Page 1 of 7**



learned ACJM, KKD, Delhi vide which the respondent No. 2 has been admitted to bail.

2. Learned counsel for the petitioner submits that in the present case, the respondent No. 2 had earlier approached this Court against the order of dismissal of his bail application by the Sessions Court. Initially, on the voluntary statement made by the respondent No. 2, he was admitted to interim bail. However, subsequently, on the respondent No. 2 refusing to abide by the undertaking given in Court, the bail application came to be dismissed by this Court.

3. A challenge was made to the Supreme Court by way of SLP (Crl.) 8985/2021, which also came to be dismissed on 06.04.2022.

4. It is contended that the impugned order, without recording any change in circumstance and without due application of mind, has admitted the respondent No. 2 to bail.

5. Learned counsel for respondent No. 2, on the other hand, has defended the impugned order by contending that the impugned order records all the relevant facts and circumstances and was passed as the respondent No. 2 had surrendered. She further submits that neither is there any error in the impugned order, nor the respondent No. 2 has violated any of the bail conditions.

6. I have heard learned counsels for the parties and perused the material on record.

7. In the proceedings dated 26.02.2020, this Court observed that the present FIR came to be registered in the context of an allegation that the complainant was induced to invest money for shareholding and directorship in the company, *AES Cybernetics Pvt. Ltd.* and the complainant paid more



than Rs. 45,10,000/- for the same. On the same day, a voluntary statement was also recorded on behalf of the respondent No. 2 that, to show his *bonafide*, he was willing to deposit a sum of Rs. 20,00,000/- with the trial court within a period of four months by the way of three instalments. The first instalment was to be paid within 15 days from the date of passing of the said order and the remaining amount was to be deposited within four months thereof. Thereafter, the respondent No. 2 preferred an application seeking modification of the said order, whereby an extension of time was sought to pay the first instalment. Subsequently, another application came to be filed, seeking a further extension for the payment of the first instalment and a fresh undertaking was given that a sum of Rs. 3,00,000/- would be paid within three months and the remaining amount of Rs. 17,00,000/- would be paid by the way of two instalments of Rs. 8,50,000/- each. It was undertaken that the entire amount would be paid on or before 28.02.2021. Once again, an application seeking further modification/extension of time was filed and in proceedings dated 23.09.2021, it was observed that repeated applications seeking extension of time came to be filed and each time, a fresh undertaking was given by the accused for payment of the sum.

8. Subsequently, the bail application was taken up for consideration on merits and noting the conduct of the respondent No. 2, the bail application was eventually dismissed. The relevant observations are reproduced hereinunder:

*“6. In the Status Report, it has been submitted that the applicant from the very beginning has told lies to the complainant that AES Cybernetics Pvt. Ltd. (hereinafter referred to as 'AESCPL') was incorporated in the year 2010 whereas AESCPL actually came into existence on 24.09.2014*



*with the present applicant and co-accused Anil Chamola as the Directors. It is further stated that the complainant was promised that he would be inducted as a Director in the AESCPL and for which an amount of Rs.20 lacs was paid by him. It is also stated that the complainant has stated that besides the aforesaid amount, an amount of Rs.14.30 lacs was also paid to the applicant and his wife as well as another amount of Rs.7.80 lacs was paid in cash. It is also stated that as per the Minutes of Meeting dated 12.03.2016, it was proposed that the complainant would handle the finance. HR and Administrative activities of AESCPL apart from any other inputs in activities he could make for the business promotion of AESCPL. It was also proposed that the operation of the Bank account would be done by the complainant plus any two Directors for the sake of operational release. However, complainant's signature would be compulsorily there as one of the three Directors. It is also stated the complainant was made to sign blank cheques and despite the aforesaid Minutes, the amount paid by the complainant was withdrawn and siphoned off by the applicant either to his company 'Aryan E Solutions' or in his personal account. It is also stated that the money transferred in the accounts has been withdrawn by the applicant using the ATM. In the Status Report, details of how such transactions were carried out by the applicant have also been mentioned in detail. It is also stated that the applicant is involved in multiple litigations with respect to offence punishable under Section 138 of the N.I. Act.”*

9. As noted above, the aforesaid order came to be challenged before the Supreme Court and the same was dismissed vide order dated 06.04.2022. The respondent No. 2 remained absconding and did not submit himself to the process of the Court. The proceedings under Section 82 Cr.P.C. were initiated and the respondent No. 2 was declared a Proclaimed Offender. He eventually surrendered on 08.12.2022. Thereafter, within 08 days of surrender, his bail application was considered by the impugned order.



Learned ACJM, by merely observing that the investigation is complete and that no purpose would be served by keeping the respondent No. 2 in custody, admitted him to regular bail. Though mentioning, but without taking into consideration the observations of this Court or of the Supreme Court, the respondent No. 2 was granted bail.

10. It is a settled proposition in law that Courts, while granting bail, are required to consider relevant factors such as nature of the accusation, role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk et al.

11. In Prasanta Kumar Sarkar v. Ashis Chatterjee, reported as **(2010) 14 SCC 496**, the Supreme Court observed:

*'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.'*



12. Further, in Mahipal v. Rajesh Kumar alias Polia, reported as (2020) 2 SCC 118, the Supreme Court has opined as under:

*'16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted...'*

13. The principles governing challenge to grant of bail were reiterated by the Supreme Court in Ajwar v. Waseem, reported as 2024 SCC OnLine SC 974, and the same are reproduced hereinunder:

*'27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order...'*

14. Recently, Supreme Court in Manik Madhukar Sarve and Others v. Vitthal Damuji Meher and Others, reported as 2024 SCC OnLine SC 2271, observed as follows:



*‘29. In Jagjeet Singh (supra)<sup>11</sup>, a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr. P.C. is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail...’*

15. From the facts of the case noted hereinabove, it appears that the impugned order has been passed without appreciating the facts as well as the conduct of the respondent No. 2 in evading the process of the Court and being declared a Proclaimed Offender vide order dated 07.03.2022. The impugned order does not reflect due application of judicial mind.

16. Though the FIR relates to offences punishable under Sections 420/406/120B IPC, however, the impugned order is completely in violation of the principles set out for the grant of bail. Consequently, the petition succeeds and the impugned order is set aside.

17. In view of the above, the petition is disposed of.

**MANOJ KUMAR OHRI, J**

**SEPTEMBER 6, 2024/akc**