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

(13) CRL.M.C. 3213/2021

STATE

..... Petitioner

Through: Mr.Aman Usman, APP.
Insp. Shiv Prakash, PS Alipur.

versus

RISHABH

..... Respondent

Through: Mr.Jatan Singh & Mr.Tushar
Lamba, Adv.

(14)+ CRL.M.C. 405/2022

NANCY MAAN

..... Petitioner

Through: Mr.Manmohan Kumar,
Mr.Gurtinder Singh,
Ms.Sangita & Mr.Y.R. Sharma,
Adv.

versus

STATE (THROUGH), COMMISSIONER OF POLICE,
GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Aman Usman, APP.
Insp. Shiv Prakash, PS Alipur.
Mr.Jatan Singh & Mr.Tushar
Lamba, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **29.04.2024**

1. These petitions have been filed challenging the order dated 04.03.2021 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-04, North-District, Rohini Courts, Delhi (hereinafter referred to as the 'Trial Court') in Sessions



Case No. 276/2020 (arising out of FIR No.287/2020 registered at Police Station: Alipur, Delhi for offence under Sections 302/308/325/506/120-B/34 of the Indian Penal Code, 1860) titled as ***State v. Pushpender Deshwal @ Pushpender***, granting bail to the respondent herein (Pushpender Deshwal @ Pushpender).

2. The learned APP and the learned counsel for the complainant submit that the charges against the respondent are grave and the learned Trial Court, in the Impugned Order, has conducted a mini trial for releasing the respondent on bail. They submit that the Impugned Order, therefore, suffers from illegality. They further submit that the entire defence of the respondent has been considered by the learned Trial Court when the charge-sheet was yet to be filed.

3. The learned counsel for the respondent submits that though the charge-sheet was filed, charges under Section 302 of the IPC has not been framed against the respondent. He further submits that other accused persons, including the main accused- Gaurav, are also on bail. He further submits that a total of 18 witnesses already stand examined before the learned Trial Court and there is no allegation of the respondent having misused the liberty granted to him.

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 clarified that bail granted to an accused can be cancelled either due to the supervening circumstance justifying such cancellation, or where bail has been granted on irrelevant circumstances. I may quote from the judgment, 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. Applying the above principles, in the peculiar facts of the present case, where the charge against the respondent under Section 302 IPC has not been framed; the long passage of time while the respondent has remained on bail; there being no allegation of the respondent having misused the liberty granted to him by the Impugned Order; and the trial having proceeded further, I do not deem it appropriate to exercise my jurisdiction under Section 482 Cr.P.C. in the facts of the present case.

7. The petitions are accordingly dismissed.

8. It is, however, made clear that any observation made in the Impugned Order or in the present order shall have no influence on the trial of the case.

NAVIN CHAWLA, J

APRIL 29, 2024/rv/ss

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