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

Date of decision: 23rd AUGUST, 2024

IN THE MATTER OF:

+ **CRL.M.C. 979/2022 & CRL.M.A. 12867/2022, CRL.M.A. 24759/2024**

XXXX

.....Petitioner

Through: Ms. Nandita Rao, Mr. Jai Shankar,
Mr. Amit Kumar Dubey, Ms. Nandini
Rao, Mr. Manoj Kumar Makhija, Mr.
Mayank besoya, Mr. Ashish Kumar,
Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for
the State.
Mr. Deep Chand, Mr. Prem Kumar
and Mr. Susheela Prajapat, Advocates
for Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Petitioner has approached this Court seeking cancellation of bail granted to the Respondent No.2 herein vide Order dated 17.12.2021, passed by the learned Additional Sessions Judge – 02, NDPS, Rohini Courts, in FIR No.578/2021, dated 26.11.2021, registered at Police Station Ashok Vihar, for offences under Sections 376/120B/384/506/34 IPC and Section 66E of the Information Technology Act, 2008.
2. Facts, in brief, leading to the present Petition are that the present FIR was registered on the complaint of the Petitioner herein who stated that in



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2015-2016, when she was residing in Churu, Rajasthan, Respondent No.2 herein took her to a hotel with a promise that he has contracts with many people who would help her in getting a job. It is stated that in the hotel, the Respondent No.2 herein offered tea laced with sedatives to the Petitioner herein. It is stated that when the Petitioner herein became unconscious, the Respondent No.2 made an objectionable video of the Petitioner herein and started blackmailing the Petitioner on the basis of the said video and established physical relations with the Petitioner herein many times. It is stated that when the Petitioner herein refused to establish physical relations with the Respondent No.2 herein, he threatened her that he will make the said video viral. It is stated that the Petitioner. It is stated that the Petitioner herein came to Delhi and got a job with Delhi Police. It is stated that in September, 2020, the Respondent No.2 came to Delhi and threatened the Petitioner herein that he will make the video of the Petitioner herein viral if she refuses to establish physical relations with him. It is stated that Respondent No.2 took the Petitioner to a rented accommodation and established physical relations with her on the basis of the said objectionable video. It is stated that the Petitioner changed her address and her phone number to get rid of the Respondent No.2. It is stated that when the Respondent No.2 was not able to contact the Petitioner, he made the video viral in the hometown of the Petitioner herein. It is stated that the Petitioner herein came to know about the viral video from her relatives in Churu, Rajasthan. It is stated that the Petitioner gave a written complaint to the Police and FIR No.578/2021, dated 26.11.2021 was registered at Police Station Ashok Vihar, for offences under Sections 376/34 IPC.

3. Statement of the Petitioner under Section 164 Cr.P.C was recorded.



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Respondent No.2 was arrested on 27.11.2021. Sections 120B/384/506 IPC and Section 66E of the Information Technology Act, 2008 was added in the FIR. It is stated that the mobile phone of the Respondent No.2 was seized and sent to the FSL for examination. Investigation was conducted.

4. Respondent No.2 was granted bail *vide* Order dated 17.12.2021. It is this Order which is under challenge in the present Petition.

5. Before the Trial Court, it was contended by the learned Counsel for Respondent No.2 that the Petitioner herein, who is working with the Delhi Police as a Constable, has used her position in the Delhi Police to lodge an FIR against the Respondent No.2 in Delhi while the alleged incident has taken place in Churu, Rajasthan and, therefore, the FIR ought not to have been registered in Delhi. While granting bail to the Respondent No.2, the Trial Court observed that since the mobile phone containing the alleged video of the Petitioner has been seized by the Police and since both, the Petitioner and the Respondent No.2, are married and are residing in the same locality in Rajasthan and are well-known to each other, the chances of the Respondent No.2 threatening the Petitioner or tampering with evidence are very remote.

6. Material on record discloses that the Respondent No.2 has also filed an application under Section 156(3) of the Cr.P.C against the Petitioner herein stating that the Petitioner is putting pressure on him to withdraw the case. The said application was rejected *vide* Order dated 23.08.2023 and has not been challenged by the Petitioner.

7. It is stated by the learned Counsel for the Petitioner that the learned Additional Sessions Judge has erred in granting bail to the Respondent No.2 herein inasmuch as he has not considered the seriousness of the offence. He



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further states that the Respondent No.2 is trying to put pressure on the Petitioner to withdraw the case by trying to implicate the Petitioner in other cases. He, therefore, states that the bail granted to the Respondent No.2 be cancelled.

8. *Per contra*, learned Counsel appearing for Respondent No.2 contends that the Respondent No.2 was granted bail on 17.12.2021. He states that trial has now progressed substantially, and therefore, no useful purpose would be served in cancelling the bail granted to the Respondent No.2. He also states that it is yet to be proved that the Respondent No.2 has committed the offence on the Petitioner or not.

9. Heard the Counsels for the parties and perused the material on record.

10. It is well settled that an application challenging the Order granting bail and an application seeking cancellation of bail are entirely different. It is also well settled that bail once granted ought not to be interfered with unless there are supervening circumstances and overwhelming evidence to show that bail ought not to have been given to the accused. The grounds for cancellation of bail have been succinctly laid down by the Apex Court and the same are as under:

- a. Bail can be cancelled when there is an interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner.
- b. When the factors for grant of bail have not been considered by the Court granting bail.
- c. Where irrelevant considerations have been taken into account while granting bail.



11. The Apex Court in X v. State of Telangana, (2018) 16 SCC 511, while dealing with a case where bail had been granted to the accused therein in a 376 IPC case, has observed as under:

“14. In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In advertent to the distinction, a Bench of two learned Judges of this Court in Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] observed that : (SCC pp. 350-51, para 4)

*“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. **However, 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 the trial.**”*



15. These principles have been reiterated by another two-Judge Bench decision in *CBI v. Subramani Gopalakrishnan* [*CBI v. Subramani Gopalakrishnan*, (2011) 5 SCC 296 : (2011) 2 SCC (Cri) 618] and more recently in *Dataram Singh v. State of U.P.* [*Dataram Singh v. State of U.P.*, (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675 : (2018) 2 Scale 285] : (*Subramani case* [*CBI v. Subramani Gopalakrishnan*, (2011) 5 SCC 296 : (2011) 2 SCC (Cri) 618] , SCC pp. 303-04, para 23)

“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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 the trial.”

(emphasis supplied)

12. Applying the law laid down by the Apex Court to the facts of the present case, this Court is of the opinion that the reasoning given by the Trial Court while granting bail to the Respondent No.2 herein that since the



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mobile phone containing the alleged video of the Petitioner has been seized by the Police and since both, the Petitioner and the Respondent No.2, are married and are residing in the same locality in Rajasthan and are well-known to each other, the chances of the Respondent No.2 threatening the Petitioner or tampering with evidence are very remote, does not require any interference. Moreover, no supervening circumstance has been made out to warrant the cancellation of the bail and there is no cogent material to indicate that the Respondent No.2 has misused the liberty granted by the Trial Court.

13. Looking at the facts of this case, this Court is of the opinion that sufficient conditions have been imposed by the Trial Court to ensure that there is no tampering evidence. Further, the Petitioner herself is in Delhi Police and nothing has been shown to indicate that the Respondent No.2 is in a position to give any threat to the Petitioner herein. The fact that the Respondent No.2 has filed an application under Section 156(3) against the Respondent No.2 and the same has been dismissed, cannot be an indicator that the Respondent No.2 is trying to put pressure on the Petitioner to withdraw the present FIR. In the facts of the present case, recourse to a legal process by the Respondent No.2 cannot be said to be an attempt to threaten the witnesses and complainant.

14. In view of the above, the Petition is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

AUGUST 23, 2024

Rahul