



2024:DHC:3352



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

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Date of Decision: 12th March, 2024+ **CRL.M.C. 2000/2024**

DHARMENDER KUMAR GARG Petitioner

Through: Mr. Osama Suhail &
Ms. Antana Chaudhury &
Mr. Samama Suhail, Advocates

versus

STATE (GOVT OF NCT
OF DELHI) & ANR.

..... Respondents

Through: Mr. Pradeep Gahalot, APP for
the State with Insp. Sandeep,
PS Ranhola & SI Manish, PS
Sonia Vihar.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)****CRL.M.A. 7717/2024 (exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, challenging the order dated 23.08.2023, passed by the learned Additional Sessions Judge ('ASJ'), Tis Hazari Courts, Delhi in SC No. 696/2022, (hereafter '**the impugned order**') in FIR No. 440/2022 dated 12.05.2022, registered at Police Station Ranhola

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for offences under Sections 304B/498A/34 of the Indian Penal Code,1860 (IPC).

4. The learned ASJ by the impugned order had granted regular bail to Respondent No.2 in the present case on the ground that she was 51 years of age at that time and the material witnesses had already been examined. The learned ASJ also noted that Respondent No. 2 had remained in custody for a considerable time and that the trial is likely to take its own time.

5. The FIR was registered on the complaint lodged by the father of the deceased/ applicant alleging that Respondent No.2 and her husband started taunting the deceased for dowry soon after the marriage of the deceased with their son. It is alleged that the deceased had told her mother that Respondent No.2 and her son had together made further demands for dowry from the deceased. It is alleged that Respondent No.2 had thrown hot tea on the deceased at one instance. It is also alleged that on the date of alleged incident, Respondent No.2 and her son had demanded ₹5 lakhs from the deceased. It is also alleged that one of the sons of the complainant was asked by the son of Respondent No.2 to come to their house, where it was found that the deceased was hanging from the fan, and the Respondent No.2 was also present at the spot of the alleged incident. Respondent No.2 was arrested on 12.09.2022.

6. The impugned order was passed by the learned Trial Court on 23.08.2023, and the petition seeking setting aside of the same has now been filed in the month of March, 2024.



7. The petitioner, who is mother-in-law of the deceased has challenged the impugned order essentially arguing that that the learned ASJ has committed gross error of law and ignored crucial evidence on record.

8. The learned counsel for the petitioner submits that the order granting bail in a serious offence, is unjustified, illegal and perverse and the same is liable to be set aside.

9. The learned Trial Court while passing the impugned order observed that Respondent No. 2 is a 51 years old woman suffering from severe health issues and is in custody since 12.09.2022 and as on the date of passing of the impugned order, only 6 out of 22 witnesses had been examined and the trial is expected to take some time. The learned ASJ also noted that the charge sheet has already been filed and no purpose would be served by keeping Respondent No. 2 in further custody.

10. The short question that falls for consideration by this court, is whether the High Court ought to exercise its discretionary power under Section 482 of the CrPC and revoke/set-aside the bail granted to the respondents by the learned Trial Court by order dated 23.08.2023 on the ground that the learned ASJ has allegedly disregarded the crucial evidence on record and thereby, committed gross error of law.

11. No doubt, in the present case the offence with which Respondent No.2 is charged with is serious in nature, but every accused is presumed innocent until proven guilty beyond reasonable doubt.



12. It is trite law that an order granting bail ought not to be disturbed by a superior court unless there are strong reasons to do so. The party seeking setting aside of an order granting bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper.

13. The law in relation to the setting aside or cancellation of bail and the interference of the High Court with the order passed by the Trial Court granting bail is well settled. The consideration for cancellation of bail stands on different footing than interfering/setting aside the order granting bail while assessing its correctness.

14. The Hon'ble Apex Court in ***Mahipal vs. Rajesh Kumar @ Polia and Anr : (2020) 2 SCC 118***, has opined as under :

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. The principles that guide this Court in assessing the



correctness of an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] . In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held : (SCC pp. 499-500, paras 9-10)

“9. ... It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] 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.*

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

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...”

15. The learned ASJ, in the present case, passed a well-reasoned order. It perused the contents of the FIR and examined the graveness of the allegations and supporting material and while taking note of the fact that the trial in the present case will take considerable time and that Respondent No.2 is in her old age granted bail to her.

16. Respondent No.2 is a resident of Delhi residing with her family members since a considerable period of time. As rightly noted by the learned Trial Court, the chances of her absconding on being released on bail, are bleak.

17. As noted above, the learned Trial Court while granting bail to Respondent No. 2 specifically noted that Respondent No. 2 is in custody since 12.09.2022. It is not disputed that the charge sheet in the present case has already been filed. The prime witnesses have already been examined. The learned Trial Court also noted that the trial is likely to take considerable period of time.

18. Moreover, Respondent No. 2, being a woman, is undeniably entitled to special consideration while dealing with the question of bail, in terms of the proviso to Section 437 (1) of the CrPC.

19. It is to be borne in mind that at the pre-conviction stage, there is a presumption of innocence. Detention is not supposed to be punitive or preventive.

20. A perusal of the impugned order and the material on record



does not suggest that the learned ASJ has taken into account the irrelevant material or has overlooked the record. The order cannot be called perverse or illegal. There is also nothing on the record to suggest that the petitioners have flouted the condition of bail in any manner.

21. Respondent No.2, the mother-in-law of the deceased was implicated in the present case following the registration of the FIR by the petitioner consequent to the suicide of the deceased on 11.05.2022. The learned ASJ, while granting bail to Respondent No.2, observed that she is a 51 year old widow suffering from health complications. Furthermore, it was noted that she has clean antecedents. It was also considered that the material witnesses have been examined. Given that Respondent No.2 had already spent a considerable amount of time in custody, the learned ASJ deemed appropriate to grant bail.

22. It is settled that where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail. It is trite that the test is whether the order granting bail is perverse, illegal or unjustified. Further, it cannot be lost sight that cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

23. The impugned order granting bail was passed way back in the year 2023. It is not alleged that any of the conditions imposed in the impugned order has been violated by the respondents. It is also not alleged that Respondent No.2 has tampered with any evidence, or has



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threatened or contacted the witnesses in any manner, or that he has not appeared before the learned Trial Court or have left the country. Admittedly, flouting of such conditions is not the case of the petitioner.

24. In view of the above, this Court finds no infirmity with the impugned order and the present petition is, accordingly, dismissed.

AMIT MAHAJAN, J

MARCH 12, 2024
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