



2024:DHC:6896



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 30th August, 2024

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CRL.M.C. 2362/2024

MANUJA SHARMA THRU SPA

.....Petitioner

Through: Mr. Amit Dubey, Adv.

versus

STATE OF NCT OF DELHI & ANR.Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
along with Mr. Karan
Khurana, Hari Shankar
Sharma, Mr. Ashutosh
Kumar & Mr. Deepak
Grover, Advs.

SI Kavish Rana, IO, PS
Laxmi Nagar.

Mr. Rishi Jaiswal & Mr.
Kunal Singh, Advs. for R-
2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed under Section 482 read with Section 439(2) of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 20.02.2024 (hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge-03 ('ASJ'), East, Karkardooma Courts, Delhi in Bail Application No. 1782/2023 in FIR No. 670/2023 registered at Police Station Laxmi Nagar for offences under Sections 420/467 of the Indian Penal Code, 1860 (hereinafter '**the impugned**



order’).

2. Briefly stated, the case of the prosecution is that Respondent No.2, who is the real brother of the petitioner allegedly, executed false and fabricated relinquishment deed dated 05.05.2022 by using her forged signatures and cropped photograph in respect of the property bearing no. property C-2/42, Block-C-2, New Ashok Nagar, Delhi-110096 (**‘subject property’**).

3. During investigation, Respondent No.2 was granted pre-arrest bail by order dated 20.02.2024 passed by the learned Trial Court.

4. The learned ASJ, by the impugned order, had admitted Respondent No.2 on pre- arrest bail in FIR No. 670/2023.

5. The learned counsel for the petitioner submits that the FIR was registered on a complaint that the signatures of the applicant who is also the sister of the accused person has been misused and the documents have been forged. The accused forged the relinquishment deed in relation to the subject property.

6. He submits that the said property was jointly owned by the applicant and the accused person. He submits that the relinquishment deed was shown to have been registered on 05.05.2022, and on the said date the petitioner was admittedly not in India. He further submits that the Sub- Registrar is hand in glove with the accused person.

7. He submits that the bail has been granted to the accused on a statement given by the Sub-Registrar stating that the applicant on an earlier occasion had come for registration of the



relinquishment deed. Since, the server was down at that time, the document was registered belatedly. He submits that such procedure is unheard of.

8. At the outset, learned counsel for Respondent no. 2 submits that the respondent is innocent and not involved in the alleged crime. It is stated that he has been falsely implicated by the police. He submits that there is absolutely no evidence to incriminate Respondent No. 2 in the present case.

9. 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. 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..”

(emphasis supplied)

10. The law is well settled through catena of judgments by the Hon’ble Apex Court that the considerations for granting bail and for its cancellation are fundamentally different. Bail granted to an accused can only be cancelled if the Court is convinced that, after release, the accused has either (a) misused the liberty granted, (b)



flouted the conditions of the bail order, (c) the bail was granted in contravention of statutory provisions limiting the Court's authority to grant bail, or (d) the bail was obtained through misrepresentation or fraud. In the present case, none of these situations existed.

11. From perusal of the contentions raised by the petitioner, it becomes quite clear that cancellation of the bail has been sought on the premise that the facts and merits of the case were such that grant of pre-arrest bail was not at all justified.

12. The learned ASJ, after perusing the record and statement of the Sub- Registrar – who stated that Respondent No.2 and the petitioner had visited the office of the Registrar for the execution of the relinquishment deed on 25.04.2022, however, the same could not be registered due to dysfunctional server. He further stated that the petitioner/complainant had submitted the signed papers for the purpose of the execution of the said deed and it was executed on 05.05.2022 at the instruction of the complainant, when the server became functional. Therefore, custodial interrogation of the Respondent No.2 was not required as the investigation had already been complete.

13. The petitioner and the accused are real sister and brother. Certain WhatsApp Chats have been relied upon by the petitioner to contend that they were communicating in regard to properties. The petitioner is also stated to have filed a civil suit seeking cancellation of the relinquishment deed in question. The suit filed by the petitioner is pending consideration before this Court. The Respondent No. 2 has also filed a Written Statement denying



that the relinquishment deed was executed fraudulently. Whether the Respondent No. 2 has committed the act of forgery would be a matter of trial and when the statement has been recorded of the Registrar concerned, the same cannot be presumed at this.

14. In **Deepak Yadav v. State of U.P. : (2022) 8 SCC 559**, the Hon'ble Apex Court has emphasised that bail once granted, should not be cancelled in a mechanical manner. Cancellation of bail must be on very cogent and overwhelming circumstances. In the present case, I do not see any such ground being made out against the Respondent No. 2.

15. As is quite clear from the law on this point, the bail once granted can only be cancelled where subsequent to the grant of bail, the accused has misconducted himself or has misused the liberty or protection available to him or on the ground that some new fact has surfaced having important bearing on the case or where the order is arbitrary or perverse or without jurisdiction or is bad in law for some reason of like nature. The freedom made available by grant of bail cannot be taken away on inadequate grounds or mere assertions or allegation, the veracity whereof remains to be tested. The liberty, even though on bail is an important fundamental right, cannot be taken away except by procedure established by law.

16. It is not the case of the petitioner that post the grant of pre-arrest bail Respondent No.2, has, in any manner impeded the cause of justice.

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



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be punitive or preventive.

18. In view of the above, I find no reason to interfere with the impugned order and the present petition is dismissed.

19. It is made clear that the observations made by the learned ASJ or in the present order are only made for the purpose of deciding the application for bail and be not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

AMIT MAHAJAN, J

AUGUST 30, 2024