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

+ **CRL.M.C. 2591/2024**

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..... Petitioner

Through: Mr. Kaushal Kumar and Mr. Pankaj
Mohan, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for State
with Mr. Bhanu Pratap Singh, Adv.
W/SI Sanju, PS North Rohini.
Mr. Vikram Singh Jakhar and Mr.
Pilak Kathpalia, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

02.04.2024

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1. Petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the complainant for cancellation of anticipatory bail granted to accused/respondent no. 2 Krishan Kant vide order dated 18.01.2024 passed by learned ASJ (Special FTC) in FIR No. 005/2024 under Sections 376/506 IPC registered at P.S. North Rohini.
2. Issue notice. Learned APP for the State and learned counsel for respondent No.2 appear on advance notice and accept notice.
3. Learned counsel for complainant/petitioner submits that the learned ASJ undertook a meticulous examination of the evidence at the initial stage of investigation and the anticipatory bail was granted without taking into



consideration the seriousness of the nature of offence. It is urged that since the employer/accused was in a dominating position, there has been a delay of about 08 days in lodging of the complaint. Learned counsel further contends that another video clipping, which has surfaced after the incident, reveals that the accused/respondent no. 2 has expressed remorse over the incident.

4. On the other hand, the learned counsel for accused/respondent no. 2 vehemently opposes the petition and points out that there is no explanation for delay in lodging of the complaint, which is crucial for consideration. It is pointed out that the CCTV footage has already been taken into possession and examined by the investigating agency, which confirms the presence of the complainant with the rival of the accused/employer of the complainant.

5. Learned APP for the State confirms that the respondent no. 2 has duly joined the investigation and the CCTV footage, which was been handed over by the accused, has been taken into possession and is under verification.

6. I have given considered thought to the contentions raised.

Hon'ble Apex Court in *Subodh Kumar Yadav vs. State of Bihar*, (2009) 14 SCC 638, observed that if a Superior Court finds that the Sub-ordinate Court has erred in its decision for granting bail by considering irrelevant material, or non-application of mind, or fails to take note of any statutory bar to grant bail or if there was improper conduct of proceedings i.e. failure to hear the prosecution/complainant where required, the bail may be cancelled.

Thus, where the grant of bail is not appropriate in the first place given the serious nature of charge against the accused or serious discrepancies are found in the order granting bail, thereby causing prejudice to justice or where irrelevant material has been taken into consideration while granting bail, the



bail order may be cancelled. Obviously, cogent and overwhelming circumstances are necessary for cancellation of bail.

However, the concept of setting aside an unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused has mis-conducted himself on account of some supervening circumstances warranting such cancellation.

7. A bare perusal of impugned order reflects that the discretion of bail has been exercised by the learned ASJ considering the fact that the complainant on the said date of incident was seen with the business rival of the accused. It was also observed that the matter had been only reported on 04.01.2024, though the second alleged incident had happened on 27.12.2023.

Considering the delay of about 08 days in reporting the incident and fact and circumstances of the case, it cannot be said that the order passed by learned Additional Sessions Judge is unjustified, perverse or illegal. Since the accused/respondent no. 2 has already joined the investigation, no grounds for cancellation of anticipatory bail are made out.

Application is accordingly dismissed.

A copy of this order be forwarded to learned Trial Court for information.

Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

ANOOP KUMAR MENDIRATTA, J.

APRIL 02, 2024/akc