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

+ **CRL.M.C. 2056/2022**

SUNIL RASTOGI

.....Petitioner

Through: **Mr. Vivek Aggarwal, Advocate**

versus

STATE & ANR.

.....Respondents

Through: **Mr. Aman Usman, APP for the State with Mr. Darpan Balyan, Mr. Gaurav Wadhwa, Mr. Sarthak Mann, Mr. Rishab Sharma, Mr. Kartikey Nayyar, Mr. Harkeerat, Ms. Pooja Gupta, Advocates.**

SI Mukesh Chauhan, PS EOW, Mandir Marg

Mr. Ramesh Gupta, Senior Advocate with Mr. Shailendra Singh, Mr. M. Begum, Mr. Ishaan Jain and Mr. Harsh Choudhary, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

06.09.2024

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1. Petitioner has approached this Court challenging the Order dated 13.04.2022, passed by the learned ASJ, Saket Courts, in Criminal Revision Petition No.142/2022, by which the learned ASJ has upheld the Order dated 15.02.2020 and 21.12.2021, passed by the learned CMM, Saket Courts. Vide Order dated 15.02.2020, Respondent No.2 was granted bail and vide Order dated 21.12.2021, the learned CMM has dismissed the application filed by the Petitioner herein seeking cancellation of the bail granted to the



Respondent No.2 herein.

2. Material on record discloses that the Respondent No.2 herein is accused in FIR No.166/2012, dated 04.12.2012, registered at Police Station EoW for offences under Sections 406/420/120B IPC.

3. Material on record discloses that vide Order dated 15.02.2020, the Respondent No.2 was granted bail after it was agreed between the parties that the Respondent No.2 will pay Rs.70 lakhs to the Petitioner herein in the following manner:

“Today the following terms have been mutually agreed between the parties which are as follows:-

1. Total amount of Rs 70 lakhs will be paid by the accused Chanderkant Soni to the complainant named Sunil Kumar Rastogi for the conditions, of regular bail within six months from today i.e. till 31.08.2020 and the amount will be paid in the following manner.

2. Amount of Rs 4 lakhs by way of Demand Draft shall be paid today i.e. 15.02.2020 by accused CK Soni to the complainant Sunil Kumar Rastogi.

3. Amount of Rs. 31 lakhs will be paid within three months which has been paid today by accused C.K Soni to the complainant Sunil Kumar Rastogi i.e on or before 31.05.2020.

4. The remaining amount of Rs. 35 lakh will be paid by accused C.K Soni to the complainant Sunil Kumar Rastogi i.e on or before 31.08.2020.”

4. Contending that the entire amount, as stipulated in the abovementioned Order, has not been paid by the Respondent No.2, the Petitioner herein/Complainant filed an application seeking cancellation of



bail granted to Respondent No.2 herein. The said application was rejected vide Order dated 21.12.2021 on the ground that payment of the abovementioned amount was not a condition precedent for grant of bail and bail was granted to the Respondent No.2 considering the fact that Respondent No.2 had not interfered with the investigation, nor had he tampered with any evidence or attempted to influence any witnesses. The said Order was challenged by the Petitioner by filing a Criminal Revision Petition and the said Revision Petition has been dismissed vide Order dated 13.04.2022. It is this Order which is under challenge in the present Petition.

5. It is stated by the learned Counsel for the Petitioner that since bail was granted to the Petitioner on certain conditions, on non-fulfillment of those conditions by the Respondent No.2, the bail ought to have been cancelled.

6. Per contra, learned Senior Counsel appearing for Respondent No.2 states that bail was not subject to payment of the amount by the Respondent No.2. He states that bail was granted to the Respondent No.2 because he had not interfered with the investigation, nor had he tampered with any evidence or attempted to influence any witnesses. He, therefore, states that the bail granted by the Trial Court to the Petitioner was on merits.

7. Status Report has been filed and the relevant portion of the Status Report reads as under:

“1. Most respectfully, it is submitted that this Hon 'ble court, vide order dated 15.09.2022, had directed to verify the payment returned by the accused Chandra Kant Kanchan Lal Soni to the complainant Sh. Sunil Rastogi.

2. That in pursuance of the said order, the payments have been verified and it is revealed that the payments



were received by the complainant Sh. Sunil Rastogi from the accused Chandra Kant Kanchan Lal Soni as under:-

Sl.No.	Mode of Payments	Where Received	Amount
1.	Payments by Cheques	In the account of Shakumbhari Straw Product ltd. (complainant company)	Rs.58,00,000/-
2.	Payments by RTGS	In the account of Shakumbhari Straw Product ltd. (complainant company)	Rs.20,00,000/-
3.	Payments by DD and IMPS	In the HDFC Bank account of Complainant Sh Sunil Rustagi	Rs.44,00,000/-
Total			1,22,00,000/-

3. That in respect of payment of Rs.50 lakhs made by cash (teletransfer) to the complainant as claimed by the accused person, a notice was sent to the Madhavlal Mangalal, 4748, Laxmi Bazar Ist Floor, Cloth Market, Fatehpuri, Delhi, wherein Sh. Devesh Parekh has replied that they have never entered into such huge cash transactions as per their past history. Further, complainant Sh. Sunil Rustgi has also denied this payment received by him.

4. That on 04.08.11, the payment of Rs. 47 lakh was diverted/ siphoned into the account of co-accused Sanjay Bachchan by the accused Chandra Kant Kanchan Lal Soni from his account no. 013010101164411, Axis Bank, Race Course Circle,



Vadodara, Gujarat. The said amount was never received back by the complainant Sh. Sunil Rastogi.”

8. Heard the Counsels for the Parties and perused the material on record.

9. Undoubtedly, the Order dated 15.02.2020 reflects that the bail was granted to the Respondent No.2 after a mutual agreement was arrived at between the parties that the Respondent No.2 will pay a sum of Rs.70,00,000/- to the Petitioner herein in the manner prescribed in the said Order. It is the contention of the Petitioner herein that the Respondent No.2 has not fully complied with the said agreement and there are disputes regarding payment of money.

10. Be that as it may. While deciding an application for cancellation of bail, it was for the Trial Court to consider as to whether the Respondent No.2 was entitled for grant of bail on merits as well or not.

11. The Respondent No.2 has partly complied with the terms of payment. It is well settled that bail is neither preventive nor punitive. The contention of the learned Counsel for the Petitioner, that the bail ought to have been cancelled as the Respondent No.2 has not complied with the terms of grant of bail and, therefore, the liberty of the Respondent No.2 shall be curtailed, has to be considered on merits before cancelling the Order granting bail.

12. In view of the above, this Court is inclined to set aside the impugned Order and remand the matter back to the Trial Court to consider the application of the Petitioner for cancellation of bail granted to Respondent No.2 herein. However, this Court is not inclined to direct the Petitioner to surrender at this juncture. The Trial Court is requested to consider the application of the Petitioner once again on merits keeping in mind the fact



that the Respondent No.2 has already complied with a portion of the agreed terms. The Trial Court shall also keep in mind the fact that the Respondent No.2 has already undergone three months of incarceration and charge-sheet has been filed.

13. List on 25.09.2024 before the Trial Court.

14. The Petition is disposed of, along with the pending applications, if any.

15. It is made clear that this Court has not made any observations on the merits of the case and it is open for both the sides to raise their contentions, including the contentions raised in the present Petition, before the Trial Court.

SUBRAMONIUM PRASAD, J

SEPTEMBER 6, 2024

Rahul