



2024:DHC:7982



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

Date of decision: 08th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 2341/2022**

MS MADHU @ PRAGATI

.....Petitioner

Through: Mr. L.S. Solanki and Dr. Anu Solanki, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI & ANR.Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for the State.

Mr. Anil Basoya and Mr. Akash Gahlot, Advocates for R-2.

SI Richa (D-6863), PS Fatehpur Beri

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has filed this present petition seeking cancellation of bail granted to Respondent No. 2 vide Order dated 30.12.2020 passed by the Ld. ASJ, South District, Saket Courts, New Delhi in FIR No. 386/2020 dated 06.10.2020 registered at Police Station Fatehpur Beri for offences under 323, 328, 376, 506 & 34 IPC. The Petitioner also seeks recall of Order dated 11.04.2022 whereby the Ld. ASJ, South District, Saket Courts, New Delhi dismissed the application under Section 439(2) CrPC for cancellation of bail granted to Respondent No. 2, filed by the Petitioner.

2. Shorn of unnecessary details, the facts of the case reveal that on 06.10.2020 a complaint was given by the Petitioner herein on which FIR No. 386/2020 dated 06.10.2020 was registered at Police Station Fatehpur Beri for offences under Section 323, 328, 376, 506 & 34 IPC.



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3. In the complaint, the Prosecutrix has alleged that she was married to Sunil S/o Sh. Satpal on 13.05.2011 who works for BSES as a driver. It is stated that the uncle of her husband, Balraj, who is Respondent No. 2 herein, was the dominant figure of the family and used to look inappropriately at the Petitioner on the pretext of getting her house settled.

4. It is stated that on the intervening night of 13.04.2020, around 11PM, Respondent No. 2 entered the Petitioners' room with a glass of milk in his hand. No one else was in the house at that time as her parents-in-law were in the field harvesting wheat and her husband was in the BSES Office on night duty. It is stated that the Petitioner informed Respondent No. 2 that no one is at home but Respondent No. 2 came inside and told her that he wants to talk to the Petitioner about getting her house settled and offered her the glass of milk which the Petitioner refused to drink. On her refusal, Respondent No. 2 started shouting and hitting the Petitioner and forcefully handed over the glass to her, and then the Petitioner drank the milk in fear.

5. It is stated that on drinking the milk, the head of the Petitioner started spinning and her hands and feet got numb. The Respondent No. 2 then pushed the Petitioner on the bed, removed her clothes, and further covered her mouth with his hand and raped her. On gaining consciousness, the Petitioner saw Respondent No. 2 putting his clothes on. The Petitioner again tried to shout seeking for help but the Respondent No. 2 covered her mouth, slapped her and threatened her that if she tells anyone about anything then he would spoil her house and also kill the Petitioners' daughter.

6. It is further stated that when Petitioners' in-laws came home, she told her mother-in-law about everything that happened. On hearing about the incident, her mother-in-law slapped her and asked her not to tell anyone



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about this. Petitioner also narrated the incident to her husband, who abused her and further threatened her that if she tells anyone about this, he will desert her and leave her at her parental home. Consequently, the Petitioner moved to her parental home but Respondent No. 2 still used to harass and threaten the Petitioner.

7. On the said allegations in the complaint, the instant FIR was registered. Medical Examination of the Petitioner was conducted vide MLC No. 7816/2020 and the statement of the Petitioner was taken under Section 164 CrPC wherein the Complainant has reiterated the allegations made in the FIR.

8. It is stated that on 14.10.2020, the Respondent No.2 approached the Trial Court for grant of bail in the event of arrest and the Trial Court granted interim protection to Respondent No.2 with a direction to join investigation. Subsequently, the Respondent No. 2 joined the investigation and was interrogated and the husband of the Petitioner was also interrogated. The Respondent No. 2 was taken into custody on 24.12.2020.

9. It is stated that the Respondent No. 2 approached the Trial Court by filing an Application for grant of regular bail. The Ld. ASJ vide Order dated 30.12.2020 has taken a view that as the FIR has been registered after a delay of more than 6 months from the incident, there is a matrimonial dispute between the Petitioner and her husband, that since the date of incident, the Petitioner is living at her parental home and, the fact that Respondent No. 2 has already joined investigation and was in custody for 7 days, the Respondent No.2 shall be released on bail.

10. Aggrieved by this Order, the Petitioner filed an application under Section 439(2) read with 437(5) CrPC for cancellation of the regular bail



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granted to Respondent No. 2. Vide Order dated 11.04.2022, the Ld. ASJ dismissed the said application stating that the Trial Court while granting bail has considered all the grounds and allegations in the FIR, and there is no substantial material to show that the Respondent No. 2 has violated the conditions of the bail that was granted. The Ld. ASJ has further taken into consideration the fact that the investigation is complete, charges have been framed and evidence is being conducted and thus, the order granting bail to respondent No. 2 does not warrant interference.

11. Learned Counsel for the Petitioner states that the investigation has not been carried out properly by the Police. He also contends that the learned ASJ while granting bail to Respondent No. 2 ignored the fact that the offences alleged against him are serious and grave in nature and bail ought not to have been granted. It is further stated that the Order granting interim protection dated 14.10.2020 and the Order granting regular bail dated 30.12.2020 to Respondent No. 2 are non-speaking orders and are liable to be set-aside.

12. *Per contra*, learned Counsel for Respondent No.2 contends that cogent reasons have been given by the learned Trial Court as to why bail has been granted. He states that chargesheet has been filed. He also states that the Respondent No. 2 has not violated any of the conditions of bail granted to him. It is further stated that there is a matrimonial dispute going on between the Petitioner and her husband.

13. Heard learned Counsel for the parties and perused the material on record.

14. Material on record discloses that investigation is complete, chargesheet has been filed, charges have been framed and the Petitioner has



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been examined

15. The parameters for cancellation of bail already granted to the accused have been laid down by the Hon'ble Supreme Court by a catena of judgments. In Dolat Ram v. State of Haryana, (1995) 1 SCC 349, the Apex Court has observed as under:

“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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

16. Similarly, in CBI v. Subramani Gopalakrishnan & Anr., (2011) 5 SCC 296, the Apex Court has observed as under:-

“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal



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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.”

17. This Court is not inclined to delve into the merits of the case. This Court is of the opinion that the order granting bail to Respondent No.2 herein is on the basis of cogent reasons given by the Trial Court and all the relevant facts have been taken into account by the Trial Court while granting bail to the Respondent No.2. It cannot be said that bail has been granted to Respondent No.2 on irrelevant grounds. Chargesheet has been filed and no useful purpose would be served in keeping Respondent No.2 in custody.

18. In view of the above, this Court is not inclined to interfere with the order passed by the Trial Court.

19. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

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