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

+ **CRL.M.C. 2346/2019**

KANCHAN DEVI

..... Petitioner

Through: Mr. Gautam Khazanchi &  
Mr. Vaibhav Dube, Advs.

versus

STATE OF NCT OF DELHI & ANR ..... Respondents

Through: Mr. Mukesh Kumar, APP  
for the State along with  
Adv. Keshav Kumar Jha  
& Adv. Neha Gupta.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

**02.05.2024**

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1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') read with Section 439(2) of the CrPC, challenging the order dated 24.04.2019 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('ASJ') (Shahdara), Karkardooma Courts, Delhi, in FIR No. 204/2018 dated 08.10.2018, registered at Police Station Economic Offences Wing, for offences under Sections 406/420/34 of the Indian Penal Code, 1860 ('IPC').

2. The learned ASJ, by the impugned order, had admitted Respondent No. 2 on bail in FIR No. 204/2018. The learned ASJ, in the impugned order, noted that the evidence collected reveals that the husband of Respondent No. 2 had started the '**Lucky Scheme**' by collecting ₹1,000/- per month from the members of the public. The husband of Respondent No. 2, at that point in time, was in judicial custody. The learned ASJ had observed that none of the complainants had disclosed in the FIR how much

**CRL.M.C. 2346/2019**

**Page 1 of 7**



amount was paid by them and observed that nothing had been recovered from the possession of Respondent No.2 during the course of her arrest.

3. The learned counsel for the petitioner submits that the learned ASJ passed the impugned order without appreciating the totality of the facts.

4. He submits that more than 60 persons were cheated for a total sum of more than ₹3 crores and Respondent No. 2 was released on bail only after 14 days of judicial custody.

5. He submits that the learned ASJ failed to appreciate that Respondent No.2 played an active role in the commission of the offence and had incorrectly observed that the scheme was being run by the husband of Respondent No.2 and he had collected the money. He submits that it was Respondent No.2 who used to handle all the activities of the 'Lucky Scheme' and she allegedly induced all the ladies/ housewives of the area to join the scheme.

6. He further submits that the learned ASJ erroneously observed that the FIR does not disclose the amount paid by any complainants, even though, the FIR specifically mentions that it was found during preliminary enquiry that Respondent No.2 and her husband had induced many persons to part with huge amounts to the tune of ₹3.30 crores.

7. He submits that the impugned order also erroneously records that the chargesheet had been filed, even though it wasn't.

8. 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 respondent by the impugned order.

**CRL.M.C. 2346/2019**

**Page 2 of 7**



9. No doubt, in the present case the offence with which Respondent No.2 is charged with is serious in nature given the number of aggrieved victims, but every accused is presumed innocent until proven guilty beyond reasonable doubt.

10. 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.

11. 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.

12. 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.*

CRL.M.C. 2346/2019

Page 3 of 7



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.

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10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail,

CRL.M.C. 2346/2019

Page 4 of 7



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.

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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...

13. The learned ASJ, in the present case, passed a well-reasoned order. It is pertinent to note that the learned ASJ had taken into consideration the allegation that Respondent No.2  
CRL.M.C. 2346/2019

Page 5 of 7



along with her husband had taken money from 60-70 persons by pretending to be helpless and handed over post-dated cheques to them.

14. It is contended that the learned ASJ erroneously observed that the complainants had not mentioned how much amount had been cheated from them and did not consider that preliminary enquiry showed that the accused persons had cheated more than 60 persons for a sum of more than than ₹3 crores. A bare perusal of the FIR makes it clear that while the FIR mentions that the accused persons had cheated the victims of approximately ₹3.30 crores, however, evidently, the complainants had not specifically disclosed as to what amount was cheated from them respectively in the FIR.

15. In the opinion of this Court, the main rationale behind the grant of bail to Respondent No.2 was that nothing had been recovered from her during the course of investigation. The observation that the learned ASJ had perused the chargesheet when the same hadn't been filed till then, in the opinion of this Court, is merely an inadvertent error and not fatal to the impugned order.

16. It is not disputed that the charge sheet in the present case has since been filed.

17. It is pointed out that the husband of Respondent No. 2 has since been released on bail by order dated 14.05.2019. It is also not in dispute that the order granting bail to the husband of Respondent No. 2 has not been challenged by the petitioner or the State and the order has since attained finality.

18. It is also relevant to note that the order was passed way back in the year 2019. It is not the case of the prosecution that Respondent No. 2, at any stage, during the pendency of the  
**CRL.M.C. 2346/2019**

**Page 6 of 7**



proceedings, has misused the liberty granted to her or flouted any of the conditions of the bail. It is further not the case of the prosecution that the evidence in any manner has been tampered with by Respondent No.2

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. 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.

21. In such circumstances, considering the aforesaid discussion, this Court finds no infirmity with the impugned order and the present petition is, accordingly, dismissed.

22. It is submitted by the learned counsel for the petitioner that despite the chargesheet being filed way back in the year 2019, the trial has not proceeded. Even the arguments on the charge have not taken place.

23. The present matter involves a number of investors having been cheated. The trial has to be taken to its logical conclusion. In view of the same, the learned Trial Court is requested to expediate the matter and hear the arguments on charge without further delay.

**AMIT MAHAJAN, J**

**MAY 2, 2024**

*'KD'/'SK'*