



2024:DHC:381



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 18.01.2024***+ CRL.M.C. 2567/2022
ABC

..... Petitioner
Through: Mr.Sambhu Nath Singh &
Ms.Neetu Rai, Advs. with
petitioner in person.

versus

STATE GOVT.OF N.C.T.DELHI & ORS.

..... Respondent
Through: Mr.Shoaib Haider, APP.
W/SI Himanshi, PS Ranhola.
Mr.Ankit Rana & Mr.Robin
Singh, Advs. for R-2 to R-4.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the order dated 25.02.2020 passed by the learned Metropolitan Magistrate-08, West District, Tis Hazari Court in FIR No. 01/2020 registered with the Police Station Ranhola under Section 376D/506 of the Indian Penal Code (in short, 'IPC'), releasing the respondent nos.2 to 4 on bail.

2. The learned counsel for the petitioner submits that the above order has been obtained by the respondent nos.2 to 4 by practicing fraud on the Court of the learned Metropolitan



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Magistrate. He submits that by an order dated 27.01.2020 passed by this Court in Bail Appln. 215/2020, interim protection of only 'no coercive steps be taken against the respondent nos.2 to 4' was passed. Notice was directed to be issued to the petitioner herein, while the respondent no.2 was directed to join the investigation. The respondent nos.2 to 4, however, misled the learned Metropolitan Magistrate into believing that they had already been granted interim bail by this Court, and on that basis, obtained the Impugned Order dated 25.02.2020, releasing them on regular bail.

3. Placing reliance on the judgments of the Supreme Court in **Rukmani Mahato v. State of Jharkhand**, (2017) 15 SCC 574, the learned counsel for the petitioner submits that as regular bail has been obtained by practicing fraud, the same deserves to be canceled only on this ground. He also places reliance on the judgment of the High Court of Patna in **Sunil Rai v. State of Bihar**, MANU/BH/0107/2021, and of the Supreme Court in **A.V. Papayya Sastry and Ors. v. Government of A.P. and Ors.**, (2007) 4 SCC 221, to submit that any order obtained by fraud is a nullity and cannot be given effect.

4. The learned counsel for the petitioner placing reliance on the judgment of the Supreme Court in **Y v. State of Rajasthan and Another**, 2022 SCC OnLine SC 458 submits that the allegation against the accused, that is, respondent nos.2 to 4, are grave and they have been charged of having committed a



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heinous crime. They could not have been, therefore, enlarged on bail and, in any case, not without hearing the petitioner herein, who is the complainant and the victim.

5. On the other hand, the learned counsel for respondent nos.2 to 4 submits that respondent nos.2 to 4 in no manner misled the learned Metropolitan Magistrate into passing the Impugned Order enlarging them on bail. He submits that the said order does not state that it is the respondent nos.2 to 4 who informed the Court of them having been released on *interim bail*. He submits that it appears that as the prosecution, in the Charge-Sheet, had stated that it is being filed with the accused not being in custody, the Court might have understood it to mean that the accused are on interim bail.

6. He further submits that they never took advantage of this order, but were granted anticipatory bail by this Court vide its order dated 25.02.2020 passed in Bail Appl. Nos.215/2020, 310/2020 and 319/2020. He submits that the respondent nos.2 to 4, in case they wanted to misuse the process of the Court, would have in fact proceeded to withdraw these applications rather than be satisfied by only an order of anticipatory bail. He submits that if the respondent nos.2 to 4 wanted to play fraud on this Court, they would have also informed this Court that they have already been released on regular bail by the learned Metropolitan Magistrate. The fact that they did not inform this Court is because they were also not fully aware of the Impugned Order passed by the learned Metropolitan Magistrate.



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7. He further submits that the complaint in question is based only on a matrimonial dispute and, therefore, keeping in account the facts and circumstances of the case, this Court had been pleased to grant anticipatory bail to the respondent nos.2 to 4. He submits that the petitioner was well aware of the order dated 25.02.2020 passed by this Court, however, chose not to challenge the same or seek recall thereof for a period of more than two years. The present petition has been filed only at the fag end of the trial only to harass the respondent nos.2 to 4.

8. The learned APP submits that without entering into the controversy that has been raised by the submission of the petitioner and respondent nos.2 to 4, in any case, the Impugned Order has been passed by the learned Metropolitan Magistrate without jurisdiction. He submits that the charge-sheet was filed by the prosecution on 22.02.2020. The learned Metropolitan Magistrate should have committed the trial to the learned Sessions Court in view of the charges involved. It is only the Sessions Court that could thereafter have considered the application of the accused for being enlarged on bail.

9. I have considered the submissions made by the learned counsels for the parties.

10. As is evident from the above submissions, the respondent nos.2 was granted interim protection by this Court vide orders dated 27.01.2020. The same was only in the form of no coercive action be taken against him, subject to the condition that he joins the investigation. It also appears that on 22.02.2020, the



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State filed the charge-sheet against the respondent nos.2 to 4. This is also reflected in the Impugned Order dated 25.02.2020, which records as:-

“Present charge-sheet has been filed by the IO without arrest of the accused persons.”

11. It appears that the learned Metropolitan Magistrate based on a misapprehension that this Court has already granted interim bail to the respondent nos.2 to 4, proceeded to enlarge the respondent nos. 2 to 4 on bail. This was clearly an erroneous view of the learned Metropolitan Magistrate. In any case, as submitted by the learned APP, the Court had no jurisdiction to release the respondent nos.2 to 4 on regular bail once the charge-sheet was filed for an offence under Section 376D of the IPC.

12. Be that as it may, this Court without in any manner being influenced by the above order, passed an order dated 25.02.2020, granting anticipatory bail to the respondent nos.2 to 4. The petitioner in the present petition admits that on the very same day, the petitioner became aware of the protection granted to respondent nos.2 to 4, however, chose to remain silent on the same, and filed the present petition only on or around 30.05.2022, that is, more than two years thereafter. The respondent nos.2 to 4 have remained on bail during the interregnum and the trial has proceeded. There is no allegation of them having misused or abused the interim protection granted to them.



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13. In the above peculiar facts, and keeping in view the judgment of the Supreme Court in ***Rukmani Mahato*** (supra), I, therefore, deem it appropriate to extend the protection granted to respondent nos.2 to 4 for a period of four weeks from today. The respondent nos.2 to 4 shall be at liberty to file a fresh application before the learned Trial Court seeking release on regular bail, and such application shall be considered by the learned Trial Court remaining uninfluenced by the order dated 25.02.2020 passed by the learned Metropolitan Magistrate and by keeping in view the subsequent orders and developments.
14. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

JANUARY 18, 2024/rv/am

Click here to check corrigendum, if any