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

+ **CRL.M.C. 2831/2022**

RAJ BALA

..... Petitioner

Through: Mr.Girindra K. Pathak, Advocate
alongwith petitioner

versus

STATE OF NCT OF DELHI AND ORS.

..... Respondents

Through: Appearance not given

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

15.03.2024

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1. The instant petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") has been filed on behalf of petitioner seeking the following relief:-

"(a) To set-aside the Order dated 16.03.2022 passed by the Hon'ble HC of Delhi and Order dated 02.04.2022 passed by the Ld. ASJ, Dwarka and the Bail granted to Respondents No. 2 & 3 be cancelled..."

2. Learned counsel for the petitioner submitted that the impugned bail orders were passed without giving notice to the petitioner and same is against the settled position of law that the victim has a right to be heard at the stage of adjudication of the bail application of an accused.

3. It is submitted that the respondents are habitual offenders and have committed a heinous crime of murdering petitioner's daughter.



4. In view of the aforesaid submissions, learned counsel for the petitioner prayed that the instant petition may be allowed and the relief as sought by the petitioner may be granted.

5. *Per Contra*, learned counsel for the respondent opposed the petition contending that the instant petition is without any merits and may be dismissed by this Court. It is submitted that the impugned orders were passed by the Courts after taking into consideration the material on record and applying judicial mind to it.

6. Heard the learned counsels for the parties and perused the material on record.

7. The instant petition has been filed seeking setting aside of the bail order dated 16th March 2022 passed by this Court as well as bail order dated 2nd April 2022 passed by the learned ASJ, Delhi District Court, Dwarka which granted bail to the respondent no. 2 and respondent no. 3 respectively.

8. Before adjudicating the instant petition on merit, this Court will first reiterate the settled position of law pertaining to cancellation of bail.

9. It is a settled position of law that an aggrieved party cannot prefer petition against an order granting bail unless the grounds for cancellation are not based on supervening events or facts which come to the notice of the Court later on, in such circumstances the Court may review its own orders and in the absence of any such circumstances, under Section 362 of the CrPC the Court is barred from reviewing its own order.

10. The Hon'ble Supreme Court has elucidated the aforesaid settled position of law in the judgment of ***Deepak Yadav v. State of U.P., (2022) 8 SCC 559***. The relevant extract of the judgment is reproduced herein below:



“C. Cancellation of bail

31. *This Court has reiterated in several instances that 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 trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).*

32. *A two-Judge Bench of this Court in Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] laid down the grounds for cancellation of bail which are:*

(i) interference or attempt to interfere with the due course of administration of justice;

(ii) evasion or attempt to evade the due course of justice;

(iii) abuse of the concession granted to the accused in any manner;

(iv) possibility of the accused absconding;

(v) likelihood of/actual misuse of bail;

(vi) likelihood of the accused tampering with the evidence or threatening witnesses.

33. *It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:*

33.1. *Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*

33.2. *Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.*



33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

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36. A two-Judge Bench of this Court in Prakash Kadam v. Ramprasad Vishwanath Gupta [Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848] held that : (SCC p. 195, paras 18-19)

“18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. ...

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.”

11. The Hon’ble Supreme Court in the aforesaid judgment held that the Court may cancel the grant of bail on the grounds that the Court granting bail takes into irrelevant material and ignored relevant material on record, bail is granted on grounds which are not tenable, there are discrepancies in the bail order, etc.



12. In the instant petition, upon perusal of this Court's order dated 16th March 2022, it is evident that this Court granted bail to respondent no.2 on the grounds that he was in jail since 13th September 2015 and it is an admitted fact that there are no criminal antecedents against them.

13. Moreover, upon perusal of learned Trial Court's order dated 2nd April 2022, it is evident that the respondent no. 3 was granted bail by the learned Court below on the ground that the co- accused has been granted bail by this Court hence, on ground of parity respondent no. 3 was granted bail.

14. In view of the aforesaid discussion, this Court is of the view that there are no supervening events which occurred after the grant of the bail which merits cancellation of the bail as well as the grounds for grant of the bail are tenable. Furthermore, the impugned bail orders have been passed after taking into consideration the entire material on record.

15. This Court does not find any merit in the instant petition accordingly, the instant petition is dismissed.

CHANDRA DHARI SINGH, J

MARCH 15, 2024

dy/db

Click here to check corrigendum, if any