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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 4302/2023

MADHULIKA

.....Petitioner

Through: Mr. Shreeyash V. Lalit, Mr. Girish Chander, Ms. Runjhun Garg and Mr. Angad Patel, Advocates.

versus

STATE & ANR

.....Respondents

Through: Mr. Laksh Khanna, APP for State with SI Saurabh.
Mr. Yogendra Kumar Verma, Mr. S.K. Sharma, Mr. Vijender Kumar Verma and Mr. Jayash Kain, Advocates for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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12.09.2024

1. The present petition is filed seeking setting aside of order dated 20.03.2023 passed by the Additional Sessions Judge (South)-05, Saket Courts, Delhi whereby the respondent Nos. 2 has been granted regular bail in the proceedings arising out of FIR No. 472/2022 registered under Sections 420/467/471/494/495/406/506/34IPC at P.S. Malviya Nagar, Delhi.
2. Learned Counsel for the petitioner, on instructions, submits that the impugned order is erroneous, based on extraneous considerations and fails to take into account the seriousness of the offence. It is contended that in the present case, the respondent is alleged to have committed offence of cheating and bigamy by forging a decree of the court of law. It is submitted that the Ld. ASJ has failed to take into account the documents filed by the

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petitioner and did not consider the allegations in the chargesheet before passing the impugned order. It is further added that the impugned order does not take into account the conduct of the respondent No.2 where he has habitually tried to manipulate court record by further filing a petition under Section 9 of the Hindu Marriage Act, 1955 in Saket Court falsely claiming himself to be divorcee before marrying the petitioner. Subsequently on this pretext, the respondent No.2 even obtained Rs 10 lacs and a blank signed cheque from the petitioner for booking a commercial property in March, 2020. Besides above, it is also contended that the respondent No.2 has indulged in forum shopping as he has filed multiple divorce petitions against his first wife and further threatened her by lodging a false and frivolous FIR 168/2020 dated 16.11.2020 at PS- Sukhpura, District Balia, UP. In support of his submissions, learned counsel for the petitioner has placed reliance on Naveen Singh v. State of UP &Anr. reported as **(2021) 6 SCC 191**.

3. Ld. APP for the State has handed over a status report along with other documents and stated that the petitioner has produced a forged decree of the Principal Judge, Family Court, Ghaziabad dated 06.02.2020 and has falsely presented himself to be a divorcee, an offence which is ought to be considered as grave and serious by this Court.

4. Learned counsel for the respondent No.2 defends the impugned order and submits that the same does not suffer from any infirmity and that the Sessions Court has rightly admitted the respondent to regular bail.

5. I have heard the counsels for the parties and perused the material available on record.

6. At this juncture, it is pertinent to take note of the legal position with regards to the circumstances when bail can be cancelled. In Prasanta Kumar



Sarkar v. Ashis Chatterjee, reported as **(2010) 14 SCC 496**, the Supreme Court observed:

“9. ... It is trite that this Court does not, normally, interfere with an order 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... ”*

7. In Mahipal v. Rajesh Kumar alias Polia, reported as **(2020) 2 SCC 118**, it is observed as under:

“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...'

8. It is to be noted that the allegations in the present FIR pertain not only to the offence of cheating and bigamy, but also include those involving the forgery of a court order/decreed which is a much graver offence carrying maximum punishment of 10 years and even imprisonment for life as per Section 467 read with Section 471 IPC.

9. A perusal of the documents placed on record on behalf of the State would show that a communication dated 16.03.2022 was sent by the concerned IO to the learned Principal Judge, Family Court, Ghaziabad seeking verification of the court order granting ex-parte divorce in case bearing HMA No.1355/1498/2019. In its reply to the aforesaid communication, the Family Court verified that the order is forged as the same was allegedly passed on 06.02.2020 by Ms. Kiran Bala whereas the said presiding officer already stood transferred to Meerut Division on 03.08.2019. Further, the reply records that the grant of an ex-parte divorce under Section 13B (1)(i) of the HMA, 1955 is not possible as the said provision only provides for divorce through mutual consent of both the parties. A copy of the original court order dated 31.08.2021 passed in HMA No. 1498/2019 has also been placed on record wherein the application of the accused under Section 13(1)(i-a) of HMA, 1955 seeking divorce stands dismissed.

10. A perusal of the decision in Naveen Singh (supra) would show that the same was rendered in the case of a challenge to the regular bail where the issue was also centered around forging of court records. While observing that forging and using court records is a much graver offence, the Supreme



Court further observed as under:

“Apart from that forging and/or manipulating the court record and getting benefit of such forged/manipulated court record is a very serious offence. If the Court record is manipulated and/or forged, it will hamper the administration of justice. Forging/manipulating the Court record and taking the benefit of the same stands on altogether a different footing than forging/manipulating other documents between two individuals. Therefore, the High Court ought to have been more cautious/serious in granting the bail to a person who is alleged to have forged/manipulated the court record and taken the benefit of such manipulated and forged court record more particularly when he has been chargesheeted having found prima facie case and the charge has been framed.”

11. A further perusal of the above-noted case also shows that the Apex Court despite noting the fact that the charges had been framed and that the applicant had been out on bail for nearly 10 months, proceeded to cancel the bail citing the gravity of the offence which has been alleged against the applicant.

12. In the considered opinion of this Court, the Sessions Court while passing the impugned order has failed to take into account or address the seriousness of the allegation where the respondent is stated to have forged a decree of divorce and induced the petitioner to marry him by claiming himself to be a divorcee. Keeping in mind the afore-noted facts and the material which has been placed on record, the Sessions Court while granting bail has failed to take into account and has undermined the seriousness of the allegations against the respondent. Seriousness of the offence is one of the relevant considerations while considering the grant of bail, especially when a prime facie case stands established, as seen in the present case.



13. In view of the aforesaid reasons, the impugned order dated 20.03.2023 passed by the Additional Sessions Judge releasing the accused on bail is unsustainable and deserves to be set aside. The respondent is directed to surrender forthwith as a consequence of the cancellation of bail.

14. The petition is allowed and disposed of in the above terms.

MANOJ KUMAR OHRI, J

SEPTEMBER 12, 2024/js