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

% ***Date of decision: 8th August, 2024***

+ **CRL.M.C. 1777/2020**

RAJENDER KUMAR GOYAL

.....Petitioner

Through: Mr. Anwesh Madhukar, Advocate (DHCLSC) through VC with Ms. Prachi Nirwan and Mr. Devesh Khanagwal, Advocates.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Ms. Richa Dhawan, APP for the State with Inspector Harpal Singh, PS Defence Colony and SI Bharat Singh, PS Uttam Nagar.
Mr. Bharat Bhushan Gupta and Mr. Gaurav Singh, Advocates for R2 & R2 with R2 and R3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Petition under Section 439(2) of CrPC read with Section 482 of CrPC, has been filed on behalf of the Petitioner seeking cancellation of bail granted to respondent no. 2/ Sh. Rahul Singhal and respondent no. 3/ Sh. Ram Sahay by the learned ASJ, Dwarka Courts *vide* Order dated 17.06.2019 in FIR No. 272/2019, registered at Police Station Uttam Nagar.
2. It is submitted that the conditional bail was granted to the Respondent



No. 2 and 3 *vide* Order dated 17.06.2019 whereby the accused was directed to not sell the property *i.e.* House bearing No. WZ-14A, Om Vihar Phase-1, Uttam Nagar and Shop No. 15, Om Vihar Phase-1, Uttam Nagar, Delhi and to transfer 2/6th share in each of the properties mentioned therein, in the name of minor child, Yash, within two months. It was further directed that the respondent shall deposit a sum of Rs.5,00,000/- in FDR, in the name of minor child Yash with maternal Uncle Pankaj Goel as nominee, shall be done within one month. It was further directed that the interest accruing in the FDR on monthly basis, shall be used in the welfare of the child.

3. It is claimed that these conditions, which were imposed while granting the bail, have not been complied with.

4. **Learned APP and the Ld. Counsel for the Respondent Nos.2 and 3**, however, submit that all the conditions of Bail have been duly complied with. The FDR has already been created and a copy of the same has been placed on record. It is further submitted that the transfer of the share in the property, has also been effected through the Relinquishment Deeds which have been placed on record.

5. **Submissions heard and record perused.**

6. Before considering the merits of the case, it is pertinent to refer to the decision in Prasanta Kumar Sarkar vs. Ashis Chatterjee, (2010) 14 SCC 496, wherein the Apex Court laid down the factors which may be considered for grant of bail which read as under: -

“9. We are of the opinion that the impugned order is clearly unsustainable. 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, behavior, 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, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.....”

7. Recently, a 3-Judge Bench of the Apex Court in Jagjeet Singh & Ors. vs. Ashish Mishra @ Monu & Anr., Criminal Appeal No. 632/2022, has reiterated that the aforementioned factors have to be considered for granting bail under Section 439 of Cr.P.C., 1973 and it was also clarified that High court or a Sessions Court is bestowed with the considerable discretion under Section 439 of Cr.P.C., 1973 but this discretion is not unfettered and well-established principles for grant of bail must be followed.

8. In Ms. Y vs. State of Rajasthan and Anr., Criminal Appeal No.



649/2022 decided on 19.04.2022, the Apex Court further explained that the factors for exercise of discretionary power under Section 439 of Cr.P.C., 1973 in granting bail is different from deciding whether circumstances subsequent to the grant of bail have made it necessary to cancel it. The first situation requires the Court to analyse whether the order granting bail was illegal, perverse and unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred, which warrant cancellation.

9. To appreciate the contentions raised in the present petition, it would be pertinent to reproduce the first Bail Order dated 17.06.2019 passed by the learned Additional Sessions Judge granting bail to the respondent Nos. 2 and 3, relevant part of which reads as under: -

“ 17.06.2019

Fresh Bail applications U/Sec.439 CrP.C. received from Facilitation

Centre being Vacation Judge.

Present: Sh. Dushyant Siwatchi, Addl. PP for the State.

Sh. Kapil Choudhary, Ld. Counsel for the applicants/Accused persons namely Rahul and Ram Shaya @ Sahai

IO/Inspector Raman Kumar Singh

Complainant namely Rajender Kumar Goel in person along with Ld. Counsel Sh. Manoj Khatri.

These are two bail applications U/Sec. 439 Cr.P.C.. The brief facts of the case is that deceased Preeti committed suicide on 27.04.2019 and her marriage solemnized with applicant Rahul on 23.11.2015. The other applicant namely Ram Shaya @ Sahai is father-in-law of deceased.

Arguments heard.

At this stage it is submitted by the Ld. Counsel for the complainant that he has no objection to the bail but welfare of



the minor child should be taken care of and for securing the welfare of the child 2/6 share in each of the properties i.e. House bearing No. WZ-14A, Om Vihar Phase-1, Uttam Nagar, Delhi be transferred in the name of minor child by both the accused persons.

It is further submitted by the Ld. Counsel for the complainant that an FDR of suitable amount be made by the accused person in the name of minor child.

Ld. Counsel for the accused persons has not raised any objection for the same and he further stated that accused persons will not claim the custody of minor child namely Yash. Signature of the counsel for the accused obtained on the order sheet.

In view of the facts and circumstances of the case and after considering the suicide note and complaint, it is found that there are no allegations of dowry of demand. It is also observed that when Preeti committed suicide applicants were residing separately at Jhajjar (Haryana) and deceased entered in the matrimonial home after breaking the locks.

In the view of the facts and submissions made by the parties, it is directed that applicants/accused persons will not sell the aforesaid properties and will transfer 2/6 share in each of the properties i.e. House bearing No. WZ-14A, Om Vihar Phase-1, Uttam Nagar and Shop No. 15, Om Vihar Phase-1, Uttam Nagar, Delhi in the name of minor child namely Yash within two months.

It is further directed that applicants/accused persons will deposit the FDR in the sum of Rs. 5,00,000/- (Five lakhs) in the name of minor child namely Yash and nominee will be maternal Uncle namely Pankaj Goel within one month. It is further directed that the interest accrued in the FDR on monthly basis will be used in the welfare of the child. Signature of the counsel for the complainant namely Sh. Manoj Khatri along with complainant Rajender Kumar Goel be obtained from the order sheet.

Considering the overall facts and circumstances, the bail of the accused Ram Shyaya @ Sahai and Rahul are allowed on



furnishing bail bond in the sum of Rs. 35,000/- each with one surety in the like amount to the satisfaction of Ld. M.M./Duty M.M.

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*Vacation Juge/ASJ
Dwarka Courts, New Delhi/17.06.2019''*

10. The first aspect which is evident from the bail Order is that it had been granted because it was found that there were no allegations of dowry demand and while the deceased had committed the suicide, the applicants/respondent Nos. 2 and 3 were residing separately at Jhajjar, Haryana and the deceased had entered into the matrimonial home after breaking the locks. These were the circumstances which essentially prevailed for grant of bail.

11. However, considering that it was a matrimonial dispute, the Court further proceeded to direct the creation of an FDR of Rs. 5,00,000/- in the name of the child, namely, Yash who was in the custody of the maternal side of the family and the Court also directed not to sell the properties i.e., House bearing No. WZ-14A, Om Vihar Phase-1, Uttam Nagar and Shop No. 15, Om Vihar Phase-1, Uttam Nagar, Delhi and the respondent Nos. 2 and 3 were further directed to transfer 2/6th share in each of the two properties in the name of the child within two months.

12. *These conditions so imposed while granting bail make it significant to consider whether the said two conditions could have been imposed at the time of granting bail.*

13. The Apex Court in the case of Dharmesh Alias Dharmendra Alias Dharmo Jagdishbah Alias Jagabhai Bhagubhai Ratadia and Another vs.



State of Gujarat, (2021) 7 SCC 198, while considering the conditions of imposition of payment of compensation at the time of grant of bail observed that the provision for grant of compensation under Section 357 of Cr.P.C., 1973 provides the manner of grant of compensation at the time of imposition of sentence. No such compensation can be determined at the stage of grant of bail. Therefore, such conditions must not be imposed, at the time of bail.

14. Similarly, in the matter of Sudeep Chatterjee vs. The State of Bihar & Anr., Criminal Appeal arising out of SLP (Crl.) No 2011/2024, the Apex Court while granting pre-arrest bail invoked the maxim i.e., “*Lex non cogit ad impossibilia*” meaning that *the law does not compel a man to do what he cannot possibly perform*. It was further observed that an over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 Cr.P.C. must be saved, not jettisoned.

15. A reference may also be made to the observations of Constitutional Bench of the Apex Court in Shri Gurbakash Singh Sibbia & Ors. vs. State of Punjab, (1980) 2 SCC 565, wherein it was observed that imposition of unnecessary restrictions on the scope of Section 438 of Cr.P.C., 1973, especially when no such restrictions have been contemplated by the legislature, would impact the personal liberty of the individual.

16. In Parvez Noordin Lokhandwalla vs. State of Maharashtra & Anr., (2020) 10 SCC 77, the Apex Court noted that the right to dignity and protection must not be made illusory by imposition of conditions which are disproportionate to the need to secure the presence of the accused, the



proper course of investigation and eventually to ensure a fair trial.

17. In the case of Sudeep Chatterjee (supra), the Apex Court, while considering the conditions imposed in Section 438 of Cr.P.C., 1973 bail, wherein the petitioner undertook to fulfill all physical as well as financial requirements of the complainant, noted that imposing of such conditions can only be described as an absolutely improbable and impracticable condition and would be counter-productive.

18. In Talat Sanvi vs. State of Jharkhand and Another, 2023 SCC OnLine SC 103, it was again noted that question of grant of compensation to a victim cannot be determined at the stage of grant of bail.

19. From the conspectus of the aforesaid judgments, it is evident that the conditions that can be imposed at the time of grant of bail are to ensure that the accused joins the investigations and his presence during the trial is secured which eventually would ensure fair trial.

20. In the present case, the aforesaid two conditions imposed *vide* Order dated 17.06.2019 cannot be, in any way, interpreted as the conditions for bail. The complainant party had expressed the concerns about the custody and welfare of the child on which the respondent Nos. 2 and 3 herein agreed that the custody of the child may be kept with the maternal side. The Court addressing the concerns of the complainant about the welfare of the child, directed the respondent Nos. 2 and 3 herein that 2/6th share in the properties i.e., House bearing No.WZ-14A, Om Vihar Phase-1, Uttam Nagar and Shop No. 15, Om Vihar Phase-1, Uttam Nagar, Delhi and the respondent Nos. 2 and 3 were further directed to transfer 2/6th share in each of the two properties in the name of the child within two months.

21. These conditions, as discussed above, do not pertain to the objective



of the bail and could not have been imposed. Therefore, its alleged non-compliance cannot be taken as a ground of cancellation of the bail of the respondent Nos. 2 and 3.

22. Be as it may, the respondent Nos. 2 and 3 have submitted that they have already created the FDR and have also relinquished their share in the said two properties and the Relinquishment Deeds have also been filed on record.

23. The learned Additional Sessions Judge has also observed in its Order dated 22.02.2020 that due compliance has been made of the conditions imposed on the respondent Nos. 2 and 3.

24. In view of above, there is no merit in the present petition which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 8, 2024/RS