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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3598/2024 & CRL.M.A. 13788/2024**

HARSANAMJOT SINGH Petitioner

Through: Adv. Sabyasachi Mishra

versus

THE STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. Mukesh Kumar, APP
for the State.
SI Hariom, PS Ranjit
Nagar.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
06.05.2024

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 21.02.2024 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('ASJ'), West District, Tis Hazari Courts, Delhi, in SC No. 729/2020 arising out of FIR No. 508/2022, registered at Police Station Ranjit Nagar, for offence under Section 307 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959. Petitioner seeks cancellation of the bail granted to Respondent No. 2 by the impugned order.

2. The present FIR was registered at the instance of the complainant, namely, Ranjeet Singh (PW2), who is an eye witness to the alleged incident and is a friend of the petitioner/injured victim (PW1). They both exercise at the same gym. It is alleged that the petitioner had quarreled with the girlfriend of Respondent No.2 at the gym, whereafter she had called
CRL.M.C. 3598/2024

Page 1 of 9



Respondent No.2 who had threatened the petitioner. A week later, Respondent No.2 came to the gym and started abusing the petitioner. It is alleged that thereafter the Respondent No. 2 shot the petitioner in his stomach. Thereafter, PW2 took the petitioner to hospital.

3. The learned ASJ, by the impugned order, had admitted Respondent No. 2 on bail in FIR No. 508/2022. The learned ASJ, in the impugned order, observed that while the incident was alleged to have taken place at about 8 PM on 06.07.2022, however, the FIR was registered on 07.07.2022 at around 6AM. It was observed that the delay is relevant as the petitioner, despite being fit to give a statement at the time of hospitalization as per the testimony of PW2 and the doctor (PW4), did not disclose the name of Respondent No.2.

4. It was observed that even though PW2 was acquainted with the applicant, the name of the applicant was not disclosed by him to the doctor either.

5. It was also observed that the alleged incident was witnessed by PW2 and one person, namely, Mohd. Akmal (PW3) who owned the gym.

6. It was further observed that the petitioner, PW2 and PW3 did not make any attempt to inform the police about the incident, despite the fact that some police officials used to frequent the gym themselves and were known to the aforesaid persons.

7. It was further observed that the recovery from Respondent No.2 was not made in the presence of any public witness and Respondent No.2 was not arrested at the instance of the petitioner, PW2 or PW3 and no effort was made to conduct the judicial TIP either. It was also observed that nothing came to fore about the alleged threats received by the witnesses.

CRL.M.C. 3598/2024

Page 2 of 9



8. Finally, the learned ASJ also took into account the fact that the applicant had been in incarceration for more than one and a half years and the trial was likely going to take long as only four out of the sixteen witnesses had been examined.

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

10. He submits that learned ASJ had erroneously observed that the petitioner and PW2 had not named Respondent No.2 at the time of hospitalization without taking into consideration that the petitioner was grievously injured at the time of hospitalization and PW2 had not accompanied him to the hospital. He further submits that the petitioner had clearly stated in his cross examination that he was taken to hospital by an unknown person. The name of PW2 was added in the MLC after he reached to see the petitioner.

11. He submits that the learned ASJ failed to appreciate that the delay in lodging of the FIR was caused due to the investigation being conducted by the police and because PW2 was only able to record his statement after the position of the petitioner stabilised.

12. He submits that it is immaterial that the petitioner, PW2 and PW3 had not informed the police at the first instance despite some police officials being regular visitors of the gym.

13. He further submits that the learned ASJ erroneously delved into the technical aspect of judicial TIP not being conducted instead of appreciating the factual matrix of the present case.

14. He submits that the maximum punishment for the offence involved is imprisonment for life, whereby, merely because trial



will be prolonged does not automatically entitle Respondent No.2 to a favourable order of bail.

15. He submits that the petitioner has clearly mentioned in his statement dated 08.08.2023 that he is receiving threatening calls from various numbers.

16. 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 respondents by the impugned order.

17. No doubt, in the present case the offence with which Respondent No.2 is charged with is serious in nature given the nature of injury, however, every accused is presumed innocent until proven guilty beyond reasonable doubt.

18. 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.

19. 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.

20. 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

CRL.M.C. 3598/2024

Page 4 of 9



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.

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.

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.”

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.

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...”

(emphasis supplied)

21. The learned ASJ, in the present case, passed a well-reasoned order after perusing the material on record. The learned ASJ categorically recorded his satisfaction that *prima facie* a case in favour of Respondent No.2 was made out for grant of bail from the evidence on record.

22. It is argued that the learned ASJ misconstrued the facts and erroneously observed that there was a delay in registration of the FIR, and PW2 and the petitioner failed to name the applicant as the assailant at the time of hospitalisation. It is argued that the learned ASJ did not take into account the nature of injuries suffered by the petitioner and the testimony of PW2 which makes it clear that he had not accompanied the petitioner to the hospital.

23. It is relevant to note that the learned ASJ has observed that the petitioner was fit to tender a statement at the time of hospitalisation on the basis of the testimonies of the doctor (PW4) and the petitioner himself.

24. While it is contended that the testimonies of PW2 and the petitioner make it clear that he was accompanied to hospital by an unknown person, however, a bare perusal of the statement of PW2 on the basis of which the FIR was registered seems to suggest that he took the petitioner to the hospital himself. Thus, evidently, there is some discrepancy on this account as rightly noted by the learned ASJ.



25. It is argued that it is immaterial as to who gives the information, however, as noted by the learned ASJ, it is peculiar that despite witnessing that the petitioner had been shot, PW2 and PW3 did not report the same to the police authority promptly and the information was given by two public persons.

26. Insofar as the gravity of the offence is concerned, it is trite law that the same alone cannot be a ground to deny bail to the accused person.

27. In the opinion of this Court, the learned ASJ rightly appreciated that Respondent No.2 could not be made to suffer in custody indefinitely. It is trite law that period of incarceration is also a relevant factor for grant of bail. Once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail (Ref. *Union of India v. K.A. Najeeb* : AIR 2021 SC 712).

28. While the petitioner has expressed that he has received threatening calls, however, the learned ASJ has explicitly noted that the threat analysis report from the DCP, West indicates nothing concrete regarding the alleged threats. The learned ASJ has also imposed adequate conditions to allay any apprehensions of Respondent No.2 evading trial, tampering with the evidence or influencing/ threatening the witnesses.

29. It is not the case of the prosecution that Respondent No. 2, after being released, has misused the liberty granted to him or flouted any of the conditions of the bail.

30. 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.



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

AMIT MAHAJAN, J

MAY 6, 2024