



2024:DHC:8714



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

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Reserved on: 07.11.2024

Pronounced on: 11.11.2024

+ **CRL.M.C. 4591/2023 & CRL.M.A. 17549/2023**

MS. S

.....Petitioner

Through: Mr. Zishaan Iskandari,
Advocate (through VC).

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Manoj Pant, APP for the
State with W/SI Neelsee, P.S.
Chandni Mahal.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of complainant Ms. S, seeking cancellation of the regular bail granted to the accused by this Court, *vide* order dated 01.06.2023 in Bail Application No. 1915/2023.

2. Learned counsel appearing for the complainant/applicant states that firstly, a notice was not issued to the complainant in this case before deciding the bail application of the accused. Secondly, he



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states that it was not brought to the notice of this Court that another FIR had been registered against the accused under Sections 279/337 of the Indian Penal Code, 1860 ('IPC') as he had tried to hit her. Thirdly, he submits that the previous involvements of the accused in other cases were not informed to this Court. Fourthly, he argues that it was not brought to the notice of this Court that the accused herein had not remained in judicial custody for two years in the present case (as mentioned in the order granting bail), but in other cases which are pending against him. The grievance of the complainant, therefore, is that since this Court was not apprised of the true facts of this case, the bail granted to the accused be cancelled.

3. Learned APP for the State, on the other hand, submits that it is not disputed that the Investigating Officer (IO) had duly informed the complainant about the hearing of the present bail application and the learned counsel for the complainant was aware of it. He also states that the Court must have been apprised of all the facts pertaining to the present case, including the factum of another FIR under Sections 279/337 of IPC registered against the accused on the complaint of the complainant. He also states that the conduct of the accused, post grant of bail be also taken into account while deciding the present application.

4. This Court has heard arguments advanced on behalf of both the parties and has perused the material available on record.

5. In the present case, the accused/respondent no. 2 was granted regular bail by this Court *vide* order dated 01.06.2023. The major



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factors taken into consideration by this Court, as evident from the said order, were – the fact that accused had remained on bail pursuant to HPC Guidelines for years and had surrendered on time as per directions of the Hon'ble Supreme Court, and that the testimony of the victim and her mother had already been recorded before the learned Trial Court.

6. During the course of arguments, the learned counsel for the complainant fairly conceded that he was aware that the hearing in the present bail application was to take place on 01.06.2023 since the IO had informed the victim about the same, and the learned counsel had, in fact, joined the court proceedings through Video Conferencing, but he was not able to present his arguments due to some technical difficulties. It is thus clear that the complainant had notice of the hearing of the present bail application, which as per practice, is given to the complainant. Therefore, the contention that the accused's bail application was decided without giving notice to the complainant is unmerited since the complainant and her counsel remained absent despite service of due notice by the IO.

7. The learned counsel for the complainant also did not dispute that on the date when the bail was granted to the accused, the complainant as well as her mother had already been examined. He also did not dispute the fact that as on date, all the prosecution witnesses have been examined and the case is listed for defence evidence before the learned Trial Court.



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8. This Court is of the opinion that it is undisputed that the accused herein was arrested in the present case on 12.03.2020, and was released on bail as per HPC Guidelines on 18.04.2020. Noteworthy is the fact that after being released on HPC Guidelines and having remained on interim bail for about three years, the accused had surrendered before the jail authorities on 12.04.2023 after the order of Hon'ble Supreme Court in *Re: Contagion of Covid-19 Virus in Prisons and Director General (Prisons)*, IA No. 179931/2022 in *Suo Motu Writ Petition (C) No. 01/2020*, and he was in prison at the time when the matter was taken up for hearing. Equally important is to take note of the fact that on the date when bail was granted to the accused, the complainant as well as her mother already stood examined before the learned Trial Court, which weighed in the mind of this Court and was recorded in the order dated 01.06.2023 while granting bail to the accused.

9. It was also contended that an FIR, under Sections 279/337 of IPC, had been lodged prior to examination of the complainant with allegations that the accused had tried to cause injuries to the complainant. However, the learned counsel for the complainant conceded that on the day when the bail was granted to the accused, the complainant and her mother stood examined before the learned Trial Court, and no other complaint had been lodged by them with the police regarding intimidation of the witnesses or otherwise.

10. In such circumstances, though it was not mentioned in the order dated 01.06.2023 that there were other criminal cases also



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pending against the accused, the same however would not be of seminal importance in the given facts and circumstances, especially at this stage when the case is listed for defence evidence. Importantly, since the date when the accused was granted bail by this Court, no complaint has been filed either by the complainant or by any of her family members against the accused.

11. The Hon'ble Supreme Court in *Deepak Yadav v. State of Uttar Pradesh* (2022) 8 SCC 559 had emphasized that bail once granted, should not be cancelled 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.

12. In the present case, there is no material on record to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty. This Court is therefore not inclined to cancel the bail granted to the accused.

13. In view of the aforesaid discussion, the present application stands dismissed alongwith any pending applications thereof.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 11, 2024/zp