



2024:DHC:8329



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

% *Date of Decision: 25th October, 2024*

+ **CRL.M.C. 1960/2021**

NITIN JAISWAL & ANR.Petitioners
Through: Mr. Mukul Talwar, Senior Advocate with Mr. Sunil Kumar, Mr. Ankit Dixit and Mr. Surender Kumar, Advs.

versus

GOVT. OF NCT OF DELHI & ORS.Respondents
Through: Mr. Sunil Kumar Gautam, APP for the State with Insp. Satyabir Singh, EOW.
Mr. Tanmaya Mehta, Mr. Arpit Kr. Singh and Mr. Vishal Singh, Advs. for R-2 (Ajay Gupta)

+ **CRL.M.C. 6280/2022**

STATE (GOVT OF NCT OF DELHI)Petitioner
Through: Mr. Sunil Kumar Gautam, APP for the State with Insp. Satyabir Singh, EOW.
Mr. Mukul Talwar, Senior Advocate with Mr. Sunil Kumar, Mr. Ankit Dixit and Mr. Surender Kumar, Advs. for complainants.

versus

RAVI TALWAR & ANR.Respondents
Through: Mr. Tanmaya Mehta, Mr.



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Arpit Kr. Singh and Mr.
Vishal Singh, Advs. for R-
2 (Ajay Gupta)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. By CRL.M.C. 6280/2022, the order dated 13.07.2021(hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge (**ASJ**), Karkardooma Courts, Delhi is challenged by the State to the extent that the respondents Ravi Talwar and Ajay Gupta were admitted on pre- arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**).
2. In CRL.M.C. 1960/2021, the impugned order dated 13.07.2021 is challenged by the complainants, however the cancellation of bail granted to the accused 'Ajay Gupta/Respondent No.3' only has been sought.
3. It is pointed out that the complainants, during the course of the proceedings, have settled their disputes with the accused – Ravi Talwar and the petition filed by them on an earlier occasion seeking his cancellation of pre-arrest bail, has already been withdrawn.
4. The FIR was registered on 29.06.2018, alleging that in February, 2014, the complainants came in contact with one – Praveen Jain, a broker who introduced them to accused – Ajay Gupta while looking for investments. It is alleged that Ajay



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Gupta represented himself to be one of the Directors of M/s Allied Motors Ltd. (AML) and stated that accused – Ravi Talwar was the Managing Director and shareholder of the said company. It is alleged that based on the assurances of the accused persons and negotiations, the shareholding of AML was transferred to the complainants for a total agreeable purchase price of ₹42,25,00,000/-. It is alleged that the accused persons demanded the amount from the complainants without providing no due/non-encumbrances certificate and also informed that accused – Ajay Gupta had no status in AML even though Ajay Gupta had received an amount of ₹11,00,00,000/- in the presence of accused – Ravi Talwar against execution of cash receipts in the capacity of Director of AML. Subsequently, accused – Ravi Talwar expressed his inability to transfer shareholding of the company due to disputes, unpaid loans and pending litigation. It was alleged that the documents produced by the accused persons were forged and fabricated.

5. The learned ASJ, in the impugned order, noted that the dispute started between the parties way back in the year 2014 for which the notice was given by the complainant in the year 2015. The complaint, however, was made to the Police for the first time on 25.04.2017 and a suit has also been filed by the complainant seeking recovery of the alleged cheated amount. The civil suit was filed on 27.04.2017.

6. The learned ASJ noted that the FIR, however, came to be registered on 29.06.2018 whereas the notice under Section 41A of the Code of Criminal Procedure, 1973 (CrPC) was given for



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the first time in December 2020 pursuant to which the accused had joined investigation.

7. On being pointedly asked, the Investigating Officer, who is present in Court, states that the investigation is complete and the chargesheet would be filed within a period of six to eight weeks. It is stated that the chargesheet was not filed due to the pendency of the present petitions.

8. The learned counsel for the petitioner submits that huge amount of money has been received by the accused persons.

9. The learned ASJ, taking note of the order dated 13.12.2018 passed by the coordinate Bench of this Court in CS(COMM) 346/2017 pursuant to which the application filed by the complainants under Order XIII A of the Code of Civil Procedure, 1908, was rejected, rightly placed reliance on the judgment passed by the Hon'ble Apex Court ***Dilip Singh v. State of M.P. : (2021) 2 SCC 779***, wherein it was held that the criminal court exercising jurisdiction to bail / anticipatory bail, is not expected to act as a recovery agent to realize the dues of the complainant.

10. The Coordinate Bench of this Court, by order dated 13.12.2018, disposed of the application filed by the complainants/ plaintiffs seeking summary judgment noting that merely because the Defendant/ Ajay Gupta has signed the agreement, cannot lead to a conclusion that he is a Director or shareholder. It was further held that it cannot lead to a conclusion that he was authorized to accept the money.

11. Court noting that the Defendant/ Ajay Gupta contends to have allegedly paid a sum of ₹11 crore by cash held that the



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complainant would have to lead evidence before any such conclusion as regard his liability can be arrived at.

12. Mr. Mukul Talwar, learned Senior Counsel submits that an appeal has already been filed challenging the order dated 13.12.2018. The same is pending consideration.

13. The learned ASJ rightly noted that the transaction between the parties happened way back in the year 2014 for which the dispute allegedly started in the year 2015 whereas the FIR was registered as late as in the year 2018. In the meantime, the complainant also filed a civil suit seeking recovery of the alleged cheated amount.

14. It is not the case of the prosecution that the accused has not joined investigation pursuant to the impugned order admitting the accused on bail.

15. It is trite law that an order granting bail ought not to be disturbed unless there are strong reasons to do so. The party seeking cancellation of bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper.

16. The law in relation to the setting aside or cancellation of bail is well settled. The consideration for cancellation of bail stands on different footing than grant of bail. The Hon'ble Apex Court, advertent to a catena of judgments, had discussed the grounds for cancellation of bail in exercise of jurisdiction under Section 439 (2) of the Code of Criminal Procedure, 1973 (*pari materia* to Section 483 (3) of the BNSS) in the case of **Deepak Yadav v. State of U.P. : (2022) 8 SCC 559**. The relevant portion of the judgment is reproduced hereunder:



“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*



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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.

34. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , the accused was granted bail by the High Court. In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under : (SCC p. 513, para 12)

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail....”

17. The Hon’ble Apex Court in the case of ***Himanshu Sharma v. State of Madhya Pradesh : 2024 INSC 139*** had held as under:

“12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud.....”

(emphasis supplied)

18. The impugned order has been passed taking into account the relevant consideration and tenable grounds and cannot be held to be whimsical or perverse in the facts of the case.



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19. As noted above, the only reason for not filing the chargesheet seems to be the pendency of the present petitions. It is not the case of the prosecution that there is a possibility of accused absconding or that he did not cooperate during the investigation.

20. In view of the above, this Court finds no infirmity with the impugned order.

21. The present petitions are, therefore, dismissed.

22. It is made clear that any observation made by the learned ASJ or this Court shall not be taken as an opinion on the merits of the case and the learned Trial Court shall consider the case on its own merits and shall not influence the outcome of any proceedings before the learned Trial Court in future.

23. Since the chargesheet is yet to be filed, this Court considers it apposite to put condition on the accused that before leaving the boundaries of this Country, an itinerary in the form of an affidavit be filed before the concerned Trial Court specifically indicating the period for which the accused proposes to travel.

24. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

OCTOBER 25, 2024

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