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

\+ CRL.M.C. 5099/2023

PRATEEK KULDEEP .....Petitioner

Through: Mr. Dharamraj Ohlan & Mr. Krishan Kant Kaushik Advocates

versus

STATE (GOVT. OF NCT OF DELHI) AND ANR. .....Respondents

Through: Mr. Laksh Khanna, APP for State with SI Somvir Singh, Cyber PS/OND

Mr. Ajay Khanna and Mr. Harry Bir, Advocates for respondent No.2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **30.08.2024**

1. By way of present petition, the petitioner/complainant seeks to assail the order dated 08.07.2023 passed by the Special Judge (NDPS), North. Rohini Courts, Delhi in Bail Matters 1227-2023 vide which the respondent No.2 was granted anticipatory bail in the proceeding emanating out of FIR No. 54/2022 registered under Section 420/406/506 IPC at P.S. Cyber Police Station Outer North, Delhi.

2. Learned counsel for the petitioner submits that the impugned order suffers from infirmity and is liable to be set aside as the Trial Court failed to consider all material aspects before admitting the respondent No.2 on anticipatory bail. He further submits that the petitioner was not informed about the listing of the aforesaid bail application and was thus denied an opportunity to oppose the same. Learned counsel for the petitioner further contends that though the Court in the impugned order notes that respondent

No.2 is a first-time offender and not involved in any other offence, there are in fact atleast three other persons who have been defrauded by the respondent No.2 and the details of the same have been provided to the Investigating Officer.

He further contends that the respondent No.2 has lured the petitioner with false promises of getting gold chips, bitcoins, and air tickets at a cheap rate to extract money from the petitioner on various occasions. The total cheated amount is Rs.13,23,000/- which is huge and is yet to be recovered. Moreover, post registration of FIR, the respondent No.2 had given two cheques, the first bearing No.0001 dated 15.01.2023 drawn in the favor of Ms. *Yashodha Kuldeep* (mother of the petitioner) for the amount of Rs.6,00,000/- and another cheque bearing No.0002 dated 15.02.2023 for the amount of Rs.7,00,000/- drawn in favor of the petitioner but both of these cheques were dishonored with the reason "Funds Insufficient".It is stated that this by itself is evident of the conduct of the respondent No.2 and the same was brought to the attention of the Trial Court which however failed to give any weightage to the same.

Lastly, learned counsel for the petitioner submits that in order to threaten and intimidate the petitioner, the respondent No.2 has filed a false complaint against him with DCP, P.S. Bawana in which he has also levelled accusations against the Investigative Officer and such intimidatory tactics by the respondent No.2 by itself merit cancellation of the bail granted to him.

3. *Per contra*, learned counsel for the respondent No.2 has vehemently opposed the present application. He submits that the impugned order admitting respondent No.2 to anticipatory bail is a well-reasoned order passed after considering all the material facts and does not suffer from any

infirmity. He further submits that the respondent No.2 has already joined investigation and is co-operating with the investigating authorities. There has not been any violation of the bail conditions imposed on him. Learned counsel for the respondent No.2 further contends that respondent No.2 is engaged in the work of performing and organising artistic performances and musical concerts and also runs a travel agency by the name of 'Travel Mafia.' Learned counsel further contends that the petitioner had met respondent No.2 in Mumbai and expressed interest in investing in the respondent No.2's business undertakings and thereafter both of them have organized various events together. With respect to the two cheques which were dishonoured, learned counsel for the respondent No.2 submits that respondent No.2 was forced to issue the same in front of the police official as security.

4. Learned APP for the State on instructions, states that so far as the contention of the petitioner that he was not informed of the filing of the bail application is concerned, the same is patently untrue as he was duly informed regarding the same telephonically. Learned APP further States that the petitioner had provided names and details of some persons who were also allegedly defrauded by the respondent No.2. However, when these people were contacted by the IO during enquiry, they denied filing any complaint against respondent No.2 and moreover they also refused to provide any statements. Learned APP states, on instructions, that although the FIR was registered under Section 420 IPC, subsequently, chargesheet has been filed in the present case and charges under Sections 406 and 506 IPC have also been added. He further states that the respondent No.2 has joined investigation and is co-operating.

5. I have heard the learned counsel for the parties and learned APP for the State also gone through the record.

6. The scope and powers of the Court while considering a challenge to the bail granted are well delineated in Puran v. Rambilas, reported as **(2001) 6 SCC 338**:

> *"10.It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected."*

7. Further,highlighting the difference in the approach of the Court while assessing the correctness of an order granting bail and the Court's power while considering an application for cancellation of bail, the Supreme Court has observed in Mahipal v. Rajesh Kumar alias Polia, reported as **(2020) 2 SCC 118**, 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. The principles governing challenge to grant of bail were reiterated by the Supreme Court in Ajwar v. Waseem, reported as **2024 SCC OnLine SC 974**, and the same are reproduced hereinunder:

> *'27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order…'*

9. Recently, Supreme Court in Manik Madhukar Sarve and Others v. VitthalDamujiMeher and Others, reported as **2024 SCC OnLine SC 2271**, observed as follows:

> *'29. In Jagjeet Singh (supra)[11], a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr. P.C. is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted*

> *by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail...'*

10. Coming to the facts of the present case, the petitioner who is a preventive officer in Mumbai customs met the respondent No.2 when they shared a cab through the *BlaBla*car pool application. The petitioner transferred money in the account of the respondent No.2 on multiple occasions in total amounting to a sum of Rs. 13,23,000/-. The petitioner contends that this transfer occurred because the respondent No.2 presented himself to be living a luxurious life style, and made false promises of getting at a cheap rate gold chips, bitcoins, and air tickets. The defense put forth by the respondent No.2 is that he is an artist who had charged fees from the petitioner to performing and organizing events and booking travel tickets. Upon being served a Notice under Section 41ACr.P.C., the respondent No.2 has duly joined the investigation and his conduct is also said to be satisfactory. The petitioner has not put forth evidence of any threat being extended to him. Merely because the respondent No.2 has filed a complaint against the petitioner, the same cannot be called an intimidatory tactic since the veracity of the complaint is yet to be tested in the proper proceedings. The claim of the petitioner that he was not informed about the hearing of the bail application has also been refuted by the learned APP for the State. The respondent No.2 also stated to have no prior involvements. Although the petitioner contends that there are other victims as well who have been defrauded by respondent No.2 and whose details he has provided to the IO, however all of them have denied filing any complaint against the respondent

No.2. Moreover, chargesheet in the present matter already stands filed. The petitioner had previously preferred an application for cancellation of bail granted to respondent No.2 which was dismissed by Trial Court vide order dated 17.07.2023 wherein all the contentions raised by the petitioner have been dealt with. The order of the Trial Court granting anticipatory bail to the respondent No.2 cannot be said to be suffering from any illegality or perversity and merits no interference. This Court finds that the parameters which govern cancellation of bail have not been satisfied in the present case.

11. Considering the aforesaid, no grounds is made out to entertain the present petition and consequently, the same is dismissed.

12. Needless to state that this Court has not expressed any opinion on the merits of the case and has made the observations only with regard to present petition and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present petition.

MANOJ KUMAR OHRI, J

AUGUST 30, 2024

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