



2024:DHC:8167



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

% **Date of order: 15th October, 2024**

+ **CRL.M.C. 5102/2023**

RAVI KUMAR

.....Petitioner

Through: **Mr. Vibhas Kumar Jha and Ms. Manju Pandey, Advocates.**

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: **Mr. Satish Kumar, APP for the State**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") (now under Section 483(3) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner seeking the following reliefs:

"a) Cancel the regular bail granted by Shri Vikram, Id. ASJ, North West, Rohini Court Delhi vide order dated 18.05.2023 of the accused/respondent no.2 namely Ismile in FIR No. 731/2018, PS: Rajpark U/s. 307/34 IPC & 27 Arms Act or

b) Pass any order which this hon'ble court deem fit in the interest of justice."

2. The brief facts that led to the filing of the instant petition are as



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follows:

- a. At the behest of the complaint filed by the petitioner herein, an FIR No.175/2023 dated 17th March, 2023, under Sections 307/34 of the Indian Penal Code, 1860 (hereinafter “IPC”) and Section 27 of the Arms Act, 1959 at Police Station – Raj Park, Delhi was registered against the accused/respondent no.2.
- b. In the said FIR, it has been stated that one year prior to the eventful day i.e., 16th March, 2023, a quarrel broke out between the complainant/petitioner and one Mr. Arun @ Pussi. Then, on 16th March, 2023, in between 11:05 - 11:30 PM, after having dinner, the petitioner was roaming in the ground in front of the post office pursuant to which one Mr. Arun @ Pussi and Mr. Ismail came to the spot and they started abusing the complainant. Upon hearing their loud voices, 2-3 friends of Mr. Arun and Mr. Ismail also came to the spot. Pursuant to the same, Mr. Arun told the petitioner/complainant that as the petitioner had previously lodged a complaint against him, he shall teach him a lesson followed by Mr. Ismail, telling Mr. Arun to kill the petitioner. On hearing this, Mr. Arun took out a country made pistol and pointed at the petitioner and Mr. Ismail prompted Mr. Arun to shoot the petitioner. When the petitioner tried to run away from the spot, Mr. Arun fired



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two bullets at the petitioner out of which one bullet hit the petitioner's left leg near his knee and the other bullet missed the petitioner's hand. Thus, the FIR.

- c. Thereafter, the accused/respondent no. 2 filed an application under Section 439 CrPC seeking grant of regular bail which was allowed vide the order dated 18th May, 2023 by the learned ASJ-II, Special Judge NDPS, North – West, Rohini Courts, Delhi.
- d. Being aggrieved by the order dated 18th May, 2023, the petitioner has approached this Court seeking cancellation of regular bail granted to the accused/respondent no.2.

3. Learned counsel appearing on behalf of the petitioner submitted that the aforesaid FIR was registered against the respondent no. 2 and four other accused persons. Even though it is apparent from the CCTV footage recording dated 16th March, 2023, the police arrested only two accused persons and the rest of them were not even arrested by the police due to connivance with the accused persons and receipt of bribe of Rs. 2 Lakhs from the accused persons. It is submitted that the police finally filed the charge-sheet against the two accused only and the other accused persons were let off by the police.

4. It is submitted that due to the botched up investigation and despite the lapse of more than four months from the date of FIR, no arrest of all the accused persons was made by the investigating officer who are deliberately trying to save the accused herein.



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5. It is further submitted that during the pendency of the investigation, the respondent no. 2 was granted regular bail *vide* order dated 18th May, 2023 with certain conditions imposed upon him, however, the petitioner was not informed about the hearing of the said bail application and in his absence, the accused was granted bail.

6. It is submitted that the accused namely Mr. Ismail is threatening the petitioner to kill him by calling his mobile number on a regular basis, which is registered in the name of the wife of accused, Mr. Ismail. Furthermore, when the petitioner visited the concerned police station to lodge the complaint against the accused persons, the Head Constables Mr. Yogesh and Mr. Kapil did not allow the petitioner to meet any of their officers, and neither did ASI Ajay Kumar and SI Bir Singh picked up the petitioner's call nor did they meet with him.

7. It is submitted that the petitioner filed the application under Section 439(2) CrPC seeking cancellation of bail before the learned ASJ and during the pendency of the same, on 17th June, 2023, the Investigating Officer filed the charge sheet only against the two accused namely Mr. Arun and Mr. Ismail. Further, the application filed under Section 439(2) CrPC seeking cancellation of bail was dismissed by the learned ASJ *vide* order dated 18th July, 2023.

8. It is submitted that in the meanwhile, the petitioner had also filed an application under Section 156(3) of the CrPC seeking monitoring of investigation. It is further submitted that the aforesaid application was listed before the learned Metropolitan Magistrate on 4th July, 2023, when ASI Ajay



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Kumar failed to appear and did not even file the status report, and thereafter, the matter was simply adjourned to 6th July, 2023, 14th July, 2023, 18th July, 2023 and then to 31st July, 2023, and the said application is still pending.

9. Therefore, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

10. *Per contra*, the learned APP appearing on behalf of the State opposed the instant petition submitting to the effect that there is nothing on record to show that the accused has violated any terms and conditions of bail. Therefore, the instant petition, being devoid of any merits, may be dismissed.

11. Heard the learned counsel appearing on behalf of the parties and perused the material on record.

12. Before advertng to the merits of the instant case, this Court finds it appropriate to discuss the settled position of law with respect to the principle of cancellation of bail.

13. In *Deepak Yadav v. State of U.P.*, (2022) 8 SCC 559, the Hon'ble Supreme Court reiterated the jurisprudence *qua* cancellation of bail and observed as under:

“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.*



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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 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 miscondacted 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. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court.”

(emphasis supplied)

35. *This Court in Mahipal [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] held that : (SCC p. 126, para 17)*

“17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.”

14. In the above said judgment, the Hon’ble Supreme Court, while citing several cases described the concept of cancellation of bail and the grounds for the same and held that in order to cancel bail already granted, cogent and overwhelming circumstances are the necessary ingredients which are to be looked into.

15. It was also held that the grounds of cancellation of bail, broadly but



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not exhaustively, are the interference or attempt to interfere with the due course of administration of justice, or the evasion or attempt to evade the due course of justice, or the abuse of any concession granted to the accused in any manner.

16. Therefore, this Court is of the view that the Courts must be satisfied with the material placed on record to justify the cancellation of bail, however, while adjudicating upon an application seeking cancellation of bail, it must be borne in mind that bail once granted should not be cancelled in a mechanical manner without considering the nature of supervening circumstances.

17. Coming to the present case at hand, the petitioner has filed the instant petition seeking cancellation of bail granted to the respondent no.2/accused *vide* order dated 18th May, 2023 by the learned ASJ. It has been argued on behalf of the petitioner that the investigating agency did not pay heed to the fact that there are other accused persons who have not been arrested even though the complainant/petitioner has made allegations against them.

18. It has been also argued that the investigating agency and concerned police officials, in connivance with the accused persons, did not inform the petitioner about the accused's bail application as well as the bail order dated 18th May, 2023 and that the bail order passed in his absence.

19. It has been further argued that the accused, namely Mr. Ismail, is threatening the petitioner to kill him by regularly calling his mobile number which is registered in the name of the wife of accused. Furthermore, when the petitioner visited the concerned police station to lodge the complaint



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against the accused persons, the Head Constables Mr. Yogesh and Mr. Kapil did not allow the petitioner to meet any officers, and neither did ASI Ajay Kumar and SI Bir Singh picked up petitioner's call nor did they meet with him. Therefore, the bail granted to the respondent no. 2 is liable to be cancelled.

20. This Court has perused the entire record meticulously and is of the considered view that no such grounds have been made against the accused which warrants cancellation of bail granted to him. There is nothing on record to show that the accused has tampered with the evidence or violated any of the conditions imposed upon him during the time he was on bail. Even the learned APP for the State has not put forth any arguments to warrant the invocation of 439(2) read with Section 482 of the CrPC (now under Section 483 (3) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023).

21. In ***Prakash Kadam v. Ramprasad Vishwanath Gupta*, (2011) 6 SCC 189**, the Hon'ble Supreme Court observed that if there are serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him.

22. However, such is not the case in the present matter. It is pertinent to note here that the petitioner had filed an application for cancellation of bail before the learned ASJ as well which was dismissed *vide* order dated 18th July, 2023.

23. In the said application as well, the petitioner had sought for cancellation of bail on the grounds similar to that of the present petition. The



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learned ASJ, after hearing both the parties as well as the Investigating Officer, held that in view of the reply of the Investigating Officer, it is clear that the allegations contained in the said application have not been substantiated upon enquiry by the Investigating Officer, and therefore, there is no ground to cancel the bail.

24. It is noted that as per the reply of the Investigating Officer, the call to the petitioner was made from the number which is registered in the name of the wife of the accused and upon enquiry, it was found by the Investigating Officer that the said call was made with the purpose of requesting the petitioner to settle the case.

25. In view of the above facts and circumstances and including the fact that the petitioner has been unable to substantiate its allegations that the accused was threatening the petitioner by calling him, this Court is of the view that the petitioner has failed to put forth any contentions substantiated with any material evidence to show that the accused has violated the conditions imposed upon him while granting bail.

26. Therefore, in light of the settled position of law as well as the facts of the present case, this Court does not find any cogent reasons on merits for cancelling the regular bail granted to the respondent no. 2/accused as no grounds have been made out by the petitioner warranting the cancellation of bail.

27. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

28. It is made clear that the observations made by this Court in the



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preceding paragraphs are not to be taken as expression of this Court on merits of the case.

29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 15, 2024

rk/ryp/mk

Click here to check corrigendum, if any