



2024:DHC:9580



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 03rd December, 2024

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CRL.M.C. 3291/2019

GARIMA

.....Petitioner

Through: Mr. Satish Tamta, Senior Advocate with Mr. Shariq Iqbal and Ms. Manavi Josh, Advocates.

versus

STATE & ORS.

.....Respondents

Through: Mr. Manoj Pant, APP for the State with SI Sanjay Bansal, PS Bhajanpura.
Mr. Shadman Ahmed Siddiqui and Ahmad Ammar, Advocates for R2 & R3.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed impugning the order dated 06.07.2019 (hereafter '**the impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Karkardooma Courts, Delhi in Case No. 64/17, whereby and whereunder Respondent Nos. 2 and 3 were released on bail in connection with FIR No. 373/2016 registered with Police Station Bhajanpura for offences under Sections 323/504/34 of the Indian Penal Code, 1860 ('**IPC**') and Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('**SC/ST Act**').

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2. Briefly stated, the FIR was registered based on the

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complaint of the petitioner, alleging assault and abuse by Respondent Nos. 2 and 3/accused persons, on 02.11.2015. Allegedly, the incident took place in front of the petitioner's residence in Yamuna Vihar, Delhi due to a dispute between her family and the respondents over the drainage system in the neighbourhood. The complainant further claimed that the accused persons had been consistently abusing and harassing her family members due to their objections over the flow of foul-smelling water from the respondents' balcony.

3. After the completion of the investigation, the charge sheet was filed before the learned Trial Court on 18.03.2017.

4. The learned Trial Court issued arrest warrants against Respondent Nos.2 and 3 on 05.04.2017. Subsequently, the respondents filed a petition before this Court, challenging the said order. This Court, by order dated 20.04.2017 stayed the operation of the order dated 05.04.2017 noting that on the perusal of the complaint filed by the petitioner, no allegations under the provisions of SC/ST Act seem to appear.

5. On 06.07.2019, the learned Trial Court granted bail to Respondent Nos.2 and 3. The petitioner challenges this order, stating that no opportunity was given for the petitioner to be heard in opposition to the bail.

6. The learned senior counsel for the petitioner submits that in compliance with the SC/ST Act, any order regarding bail must be passed only after hearing the complainant. In the present case, the petitioner was not heard, and the order was passed in violation of the established procedure. The learned Senior



Counsel for the petitioner relies on the judgment in ***Hariram Bhambhi v. Satyanarayan* : 2021 SCC OnLine SC 1010**, where the Hon'ble Apex Court set aside the bail granted without the victim's hearing.

7. He contends that the learned Trial Court failed to follow the mandatory procedure outlined in Section 3(1)(r) of the SC/ST Act, thus rendering the impugned order invalid.

8. He submits that the impugned order was passed hastily, and the bail application was not properly listed for hearing. No notice was issued, and the complainant and the Public Prosecutor were denied an opportunity to oppose the application.

9. *Per contra*, the learned counsel for Respondent Nos.2 and 3 argues that the charge sheet was filed without the necessity of arresting the respondents, which justifies the granting of bail.

10. He submits that the impugned order clearly states that all advocates were heard in court, and the complainant was represented by her counsel. Thus, the requirement of a fair hearing was met. To support this contention, the learned counsel refers to the judgment passed by the Hon'ble Apex Court in ***State of Maharashtra v. Ramdas Shrinivas Nayak* : (1982) 2 SCC 463** wherein, the Hon'ble Apex Court held that while it is vital to adhere to procedural fairness, the presence of legal representation for the complainant is sufficient to satisfy the requirement for a fair hearing. The learned counsel submits that since the complainant was represented by a counsel, the learned Trial Court rightly proceeded with the matter without requiring the complainant to be personally heard.



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11. He submits that the reliance placed by the petitioner on the case of **Hariram Bhambhi v. Satyanarayan** (*supra*) is misplaced. While the Hon'ble Apex Court in that case rightly emphasized the importance of providing the victim an opportunity to be heard in bail proceedings, particularly in cases involving serious offences such as those under the SC/ST Act, the circumstances, in that case, were different. In **Hariram Bhambhi v. Satyanarayan** (*supra*), the victim was not represented by counsel, nor was any appearance recorded on their behalf. However, in the present case, the learned ASJ has explicitly recorded the appearance of the complainant's counsel. As such, the presumption under Section 114 of the Indian Evidence Act, 1872, applies, which provides that the Court may presume that the complainant's counsel, who appeared and represented her, was acting in accordance with the instructions and interests of the complainant. Therefore, the requirement of a direct hearing of the victim is deemed satisfied through her representation by counsel in this case.

12. 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 an order granting bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper. 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

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accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection 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)

13. The law is well settled through a catena of judgments by the Hon’ble Apex Court that the considerations for granting bail and for its cancellation are fundamentally different. Bail granted to an accused can only be cancelled if the Court is convinced that, after release, the accused has either (a) misused the liberty granted, (b) flouted the conditions of the bail order, (c) the bail was granted in contravention of statutory provisions limiting the Court’s authority to grant bail, or (d) the bail was obtained through misrepresentation or fraud. In the present case, none of these situations existed.

14. Upon careful consideration of the contentions raised by the petitioner, it is evident that the cancellation of the bail has been sought primarily on the premise that the learned Trial Court failed to adhere to the procedural fairness required by law, specifically regarding the victim’s right to be heard. In the present case, the learned counsel for Respondent Nos. 2 and 3 argues that the presence of the complainant’s counsel in court suffices for procedural fairness. This contention is supported by the fact that the learned ASJ recorded the appearance of the complainant’s counsel. As per the principle established in ***State of Maharashtra v. Ramdas Shrinivas Nayak*** (*supra*), the statement of the learned Judge regarding the representation of the



complainant through the learned counsel must be accepted as conclusive, and the petitioner cannot contradict this statement by claiming that the complainant was not personally heard in court.

15. The petitioner's assertion that the learned ASJ did not provide an opportunity for the complainant to be heard directly is *prima facie* inconsistent with the court record and cannot be contradicted by an affidavit or oral evidence at this stage. If the petitioner believes that the proceedings were wrongly recorded, the proper course of action would have been to raise the matter before the learned ASJ when the events were still fresh, not at the stage of challenging the bail order.

16. Moreover, it is crucial to note that Respondent Nos. 2 and 3 were not arrested at the time the charge sheet was filed on 18.03.2017. The respondents have remained on bail throughout the proceedings, and there has been no substantial evidence presented by the petitioner suggesting misuse of this liberty. The prosecution evidence in the case has been concluded, and the trial is progressing as per due process. At this juncture, taking away the respondents' liberty by cancelling their bail would be detrimental to the progression of the case and would undermine the principle that bail is not to be lightly revoked unless compelling reasons exist.

17. Furthermore, there has been no allegation from the petitioner that Respondent Nos. 2 and 3 have misused their liberty or violated the conditions of their bail. The ground of procedural irregularity for seeking cancellation of bail is insufficient to justify such a drastic step in the facts of the present



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case. In *Deepak Yadav v. State of U.P. : (2022) 8 SCC 559*, the Hon'ble Apex Court has emphasised that bail once granted, should not be cancelled in a mechanical manner. Cancellation of bail must be on very cogent and overwhelming circumstances.

18. The freedom made available by grant of bail cannot be taken away on inadequate grounds or mere assertions or allegations, the veracity whereof remains to be tested. The liberty, even though on bail is an important fundamental right and cannot be taken away except on the grounds as discussed above.

19. It is not the case of the petitioner that post the grant of pre-arrest bail Respondent Nos. 2 and 3, have, in any manner impeded the cause of justice.

20. 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.

21. In view of the above, I find no reason to interfere with the impugned order, and the present petition is dismissed.

22. It is made clear that the observations made by the learned ASJ or in the present order are only for the purpose of deciding the application for bail and be not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

AMIT MAHAJAN, J

DECEMBER 3, 2024
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