



2024:DHC:2479



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 6th March, 2024*

+ **CRL.M.C. 3850/2019**

STATE Petitioner
Through: Mr. Utkarsh, APP for the
State with SI Pankaj
Kumar, CR/Crime Branch.
versus
RAKESH GOEL Respondent
Through: Mr. Sanchit Garga, Adv.
(through VC)

+ **CRL.M.C. 3854/2019**

STATE Petitioner
Through: Mr. Utkarsh, APP for the
State with SI Pankaj
Kumar, CR / Crime
Branch.
versus
SHARAD INDU GOEL Respondent
Through: Mr. Sanchit Garga, Adv.
(through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

1. The present petitions are filed under Section 439(2) of the Code of Criminal Procedure, 1973 (**CrPC**), challenging the order dated 10.05.2019 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge (**ASJ**)-03, Central District, Tis Hazari Courts, Delhi in FIR No. 65/2019 dated 12.02.2019, registered at Police Station Karol Bagh, for offences under Sections 304/308 of the Indian Penal Code, 1860 (**IPC**).

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By: HARMINDER KAUR
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2. The learned ASJ, by the impugned order, had granted bail to the respondents / accused (s).
3. The FIR was registered on an information received from the PCR on 12.02.2019 at 4:43 a.m. that fire broke out at hotel Arpit, Karol Bagh, Delhi. On the said information, the concerned Police Officials reached the spot where the rescue operation was already being carried out. It was alleged that twenty one people were rescued from the hotel, out of which seventeen people expired and four were injured.
4. It was alleged that the respondents in connivance with each other had obtained the clearances from various departments on the basis of forged and fabricated documents and they did not undertake adequate safety measures for the hotel. It was alleged that neither any fire alarm was installed in the hotel nor any fire fighting equipment were installed. It was further alleged that the respondents violated the necessary rules and regulations which were essential for the construction of the said hotel.
5. Pursuant to the registration of the FIR, the respondents Rakesh Goel and Sharad Indu Goel were arrested on 16.02.2019 and 19.02.2019 respectively. It is alleged that the respondents were managing the affairs of the hotel namely – Arpit Palace, Karol Bagh, Delhi.
6. The learned Additional Sessions Judge (ASJ), Tis Hazari Courts, Delhi by the impugned order granted bail to the respondents.
7. The petitioner/State has challenged the impugned order



and further seeks to set aside the same by cancelling the regular bail granted to the respondents, mainly on the ground that the learned ASJ has committed gross errors of law and ignored crucial evidence on record. The learned Additional Public Prosecutor (APP) for the State submits that the order granting bail in a serious offence, is unjustified, illegal and perverse and the same is liable to be set aside.

8. The learned Trial Court while passing the impugned order observed that the police had not been able to point out which conscious act or omission on the part of the respondents led to the fire breaking out. A wire short circuit, assuming it to be cause of the fire, could not have been anticipated and the respondents' prior knowledge of its occurrence has not been attributed by the police. It held that the present case bears striking resemblance to the facts of Uphaar tragedy case wherein, though the investigation revealed that the owners were at fault for the incident due to a multitude of deviations from norms and failure to adopt prescribed safety measures, the learned Trial Court convicted the owners of the cinema hall for the offence under Section 304A of the IPC and not Section 304 of the IPC. It was thus, held that notwithstanding the irregularities or the deviations being found, only the offence under Section 304A of the IPC is made out.

9. The learned Trial Court also noted that the respondents had already spent almost ninety days in incarceration and that the chargesheet had already been filed, therefore, the respondents



were no longer required for custodial interrogation.

10. The short question that falls for consideration by this court, is: whether the High Court ought to exercise its discretionary power under Section 439(2) of the CrPC and revoke/set-aside the bail granted to the respondents by the learned Trial Court by order dated 10.05.2019 on the ground that the learned ASJ has allegedly disregarded the crucial evidence on record and thereby, committed gross error of law.

11. No doubt, in the present case the offence with which respondents are charged is serious in nature, but every accused is presumed innocent until proven guilty beyond reasonable doubt.

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

13. The law in relation to the cancellation of bail and the interference of the High Court with the order passed by the Trial Court granting bail is well settled. The consideration for cancellation of bail stands on different footing than interfering/setting aside the order granting bail while assessing its correctness.

14. 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 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...”

15. The learned Trial Court, while passing the impugned order relied upon the judgment passed by the Hon’ble Apex Court in the case of **Sushil Ansal v. State : (2014) 6 SCC 173**, that is popularly known as Uphaar Tragedy case. The Hon’ble Apex Court observed as under:

“199. The decision in Alister Anthony Pareira case [Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953] or that delivered in Sanjeev Nanda case [State v. Sanjeev Nanda, (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2013) 3 SCC (Cri) 899] does



not lay down any specific test for determining whether the accused had the knowledge that his act was likely to cause death. The decisions simply accept the proposition that drunken driving in an inebriated state, under the influence of alcohol would give rise to an inference that the person so driving had the knowledge that his act was likely to cause death. The fact situation in the case at hand is not comparable to a case of drunken driving in an inebriated state. The case at hand is more akin on facts to Keshub Mahindra case [Keshub Mahindra v. State of M.P., (1996) 6 SCC 129 : 1996 SCC (Cri) 1124] where this Court was dealing with the question whether a case under Section 304 Part II IPC was made out against the management of Union Carbide India Ltd., whose negligence had resulted in highly toxic MIC gas escaping from the plant at Bhopal. The trial court in that case had framed a charge against the management of the Company for commission of an offence under Section 304 Part II IPC, which was upheld by the High Court in revision. This Court, however, set aside the order framing the charge under Section 304 Part II and directed that charges be framed under Section 304-A IPC instead. ”

16. The learned ASJ, in the present case, passed a well-reasoned order. It perused the contents of the FIR and examined the graveness of the allegations and supporting material. Relying upon the judgment passed in ***Sushil Ansal v. State*** (*supra*), it held that even if the allegations are assumed to be correct, the same *prima facie* do not point towards the commission of culpable homicide not amounting to murder.

17. It further noted that the prosecution has not alleged that there was an intent on the part of the respondents to cause death or to cause such bodily injury as is likely to result in death or that the respondents performed an act knowing that it will cause



death. The allegations of the prosecution are that there had been irregularities in upkeep of the hotel due to which fire took place.

18. It was also noted that the prosecution had not been able to link the deviation in the irregularities with the cause of fire.

19. The allegations made did not point towards the conscious act or omission on the part of the respondents that had led to the fire. The respondents *prima facie* could not have anticipated or had the prior knowledge of the occurrence of the fire.

20. The acts attributed may show some negligence or recklessness with the aim of profit making but in the absence of any other material, could not be termed as culpable homicide not amounting to murder so as to fall within the definition of Section 304 of the IPC.

21. In regard to the allegations under Sections 467/468/471 of the IPC, it was alleged that the respondent, Rakesh Goyal, submitted false and forged licenses to the MCD for obtaining trade license.

22. The learned Trial Court noted that it was not necessary to enter into the controversy whether the document was false or forged and that nothing has emerged at that stage which could show that the forgery, if any, was done by the respondents.

23. It was noted that there was no evidence to show that the respondents have committed offence under Section 467 of the IPC and the offences under Sections 468/471 of the IPC are punishable with seven years of imprisonment and attracts the embargo on arrest under Section 41 of the CrPC.



24. The learned Trial Court also relied upon the judgment passed by the Hon'ble Apex Court in the case of *Arnesh Kumar v. State of Bihar*, **Crl. Appeal NO. 1277/2014** dated 02.07.2014, wherein it was held that a person accused of offence punishable with an imprisonment of a term which may be less than seven years or extend to seven years cannot be arrested only on the satisfaction that such person has committed the offence. The Police has to be satisfied that such arrest is necessary to prevent such person from committing further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness; to ensure the presence of the accused before the Court.

25. The respondents are residents of Delhi residing with their family members since a considerable period of time. As rightly noted by the learned Trial Court, the chances of the respondents absconding on being released on bail, are bleak. The learned Trial Court rightly observed that the respondent Rakesh Goyal was in custody for almost 90 days and the investigation was complete and the prosecution had informed that the chargesheet had already been prepared.

26. A perusal of the impugned order and the material on record does not suggest that the learned ASJ has taken into account the irrelevant material or has overlooked the record. The order cannot be called perverse or illegal. There is also nothing



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on the record to suggest that the petitioners have flouted the condition of bail in any manner.

27. It is settled that 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. It is trite that the test is whether the order granting bail is perverse, illegal or unjustified. Further, it cannot be lost sight that cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

28. The impugned order granting bail was passed way back in the year 2019. It is not alleged that any of the conditions imposed in the impugned order has been violated by the respondents. It is also not alleged that the respondents have tampered with any evidence, or have threatened or contacted the witnesses in any manner, or that they had not appeared before the learned Trial Court or have left the country. Admittedly, flouting of such conditions is not the case of the petitioner/State.

29. In view of the above, this Court finds no infirmity with the impugned order and the present petitions are, accordingly, dismissed.

AMIT MAHAJAN, J

MARCH 6, 2024

'KDK' / UG/SS