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

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Reserved on: 16.01.2024
Pronounced on: 30.01.2024+ **CRL.M.C. 2564/2021****BABBAN GIRI**

..... Petitioner

Through: **Mr. Kamlesh Kumar Mishra**
and Mr. Bibhuti Bhusan
Mishra, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: **Mr. Naresh Kumar Chahar,**
APP for the State.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The petitioner has filed this petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking cancellation of bail granted to the accused persons namely, respondent no. 2 i.e. Garvesh *vide* order dated 16.09.2020, respondent no. 3 i.e. Sunil Gupta *vide* order dated 04.08.2020, respondent no. 4 i.e. Praful Kumar *vide* order dated 05.10.2020, respondent no. 5 i.e. Abhishek Kumar, respondent no. 6 i.e. Sandeep Kumar Samal, respondent no. 7 i.e. Sunil Gupta *vide* orders 14.10.2020, and respondent no. 8 i.e. Dilip Kumar *vide* order



dated 29.10.2020, in FIR No. 400/2018, registered at Police Station Najafgarh, Delhi for offences punishable under Sections 364/34 of the Indian Penal Code, 1860 ('IPC') on the ground that the accused persons are threatening and abusing the complainant and her relatives.

2. The FIR in this case was registered on 07.12.2018, on the complaint made by the wife of present petitioner, whereby it was alleged that her three daughters had been kidnapped on 04.12.2018 by the accused persons.

3. Learned counsel appearing on behalf of the petitioner submits that the accused persons are violating the conditions imposed upon them by the learned Trial Court while granting them regular bail. It is argued that the petitioner and his family is victim of circumstances and the crimes committed by the respondents herein, who are victimizing the petitioner and his daughters. It is stated that on 14.06.2020, the accused persons had attempted to burn the petitioner's house by pouring petrol on the main gate. It is also submitted that another FIR No. 705/2020 was registered on 10.07.2020, on the complaint lodged by petitioner's wife, on allegations that her two daughters had gone missing and that there have been several instances on which the accused persons have threatened the complainant with dire consequences. It is also pointed out that one more FIR was registered on 05.02.2021 on the complaint of petitioner's wife as her minor daughter had gone missing. It is also argued that present petitioner was falsely implicated in one case under Sections 323/354/376D/506/34 of IPC, by wife of one of the



accused. It is submitted that the accused persons are misusing the liberty granted to them by the learned Trial Court and that they are a threat to the complainant and her family. Therefore, it is prayed that the bail granted to the accused persons be cancelled.

4. On the other hand, learned counsel appearing on behalf of respondents submits that the complainant/petitioner has been making false allegations against the accused persons, solely with the motive of getting their bails cancelled. It is further stated that since their release on bail, the accused persons have neither contacted the complainant nor any of her family members. It is further stated that the complainant herein had filed an application seeking cancellation of bail granted to the co-accused persons herein which was dismissed by the learned Trial Court *vide* order dated 20.06.2020 on the ground that the complaints made by the complainant contained only general allegations against the accused persons. Therefore, it is prayed that present petition be dismissed.

5. Learned APP appearing on behalf of the State submits that PCR calls made by the complainant had been answered and upon conducting enquiry, no evidence was found to register a case against the accused persons. It is stated one FIR has already been registered on 10.07.2020 *qua* the alleged incident of 30.06.2020, and one another FIR was registered on 05.02.2021 when the daughter of petitioner had gone missing.

6. This Court has heard arguments addressed on behalf of both the parties and have perused the material placed on record.



7. The present petition has been filed by the complainant seeking cancellation of bail granted to the accused persons in the year 2020 by the learned Trial Court.

8. Before considering merits of the case, this Court finds it necessary to look at the law on cancellation of bail. In this regard, a reference can be made to the decision of Hon'ble Apex Court in case of *Deepak Yadav v. State of Uttar Pradesh* (2022) 8 SCC 559 wherein it was observed as under:

“...30. 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)**. A two-Judge Bench of this Court in *Dolat Ram And Others Vs. State of Haryana* (1995) 1 SCC 349 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 accused absconding
- (v) Likelihood of/actual misuse of bail
- (vi) Likelihood of the accused tampering with the evidence or threatening witnesses.

31. 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:-



- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- b) 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.
- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.
- d) Where bail has been granted on untenable grounds.
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- f) 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.
- g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

32. In *Neeru Yadav Vs. State of Uttar Pradesh And Another (2014) 16 SCC 508*, the accused was granted bail by the High Court. In an appeal against the order 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:-

“...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 and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail...”

(Emphasis Supplied)

9. The Hon’ble Apex Court in *Ms. X v. State of Telangana (2018) 16 SCC 511*, had also held as under:



“ 15. For the above reasons, we hold that the order of the High Court allowing the application for bail cannot be faulted. Moreover, no supervening circumstance has been made out to warrant the cancellation of the bail. There is no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty.”

10. By way of present petition, the petitioner has not challenged the legality of the orders granting bail to the accused persons and merits of the same, rather the same has been filed on the grounds that the accused persons are misusing the liberty granted to them.

11. This Court has perused the Status Report filed on behalf of the State. With regard to the PCR calls made by the complainant, it is mentioned that a PCR was received on 04.06.2020, but the complainant had not handed over any written complaint. Further, it is mentioned in the status report that as far as the alleged incident of 14.06.2020 is concerned, the same was enquired into by the police, however, neither any neighbour had come forward to give any statement regarding the incident of pouring petrol on the main gate of the house of the complainant, nor there was any CCTV footage available, to support the case of the complainant, and even no residue of petrol was found on the gate. Further, during the investigation in relation to FIR No. 705/2020, which was registered *qua* an alleged incident of 30.06.2020, when the daughters of complainant had been allegedly chased by some person on bike, the police had obtained the CDR details and phone locations of present accused persons, and as



per records, at the time of incident, the location of the accused persons were different from the place of alleged incident.

12. The petitioner herein had also been arrested on 20.10.2020, in one FIR No. 892/2020, registered under Sections 323/354/376D/506/34 of IPC at Police Station Ranhola, on the basis of complaint lodged by wife of one of the accused herein. The petitioner was granted bail by this Court in the said FIR *vide* order dated 24.08.2021.

13. In the present case, the accused persons were granted bail in the year 2020 and since then, about four years have passed. It is settled law that bail once granted, cannot be cancelled in a mechanical manner, and in absence of any supervening event which would render it impossible to ensure a fair trial.

14. In view thereof, this Court is not inclined to allow the present petition and cancel the bail granted to the accused persons herein.

15. However, the complainant will be at liberty to approach the Witness Protection Committee, in case of any threat being extended. The SHO of concerned Police Station will also ensure that prompt action is taken, upon receipt of any complaint, if any threat is extended to the complainant herein, in accordance with law.

16. With the above directions, the application is disposed of.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 30, 2024/ns