



2024:DHC:6273



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

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*Date of Decision: 13<sup>th</sup> August, 2024*

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**CRL.M.C. 3908/2019****SHASHI AGGARWAL**

.....Petitioner

Through: Mr. Tushar Rohmetra,  
Adv.

versus

**THE STATE (GOVT. OF NCT OF  
DELHI) & ANR**

.....Respondents

Through: Mr. Naresh Kumar  
Chahar, APP for the State  
with Mr. Mohan Singh  
Rawat, Mr. Akhilesh Pant,  
Mr. Sunil Pant, Ms.  
Mahika Pant & Mr.  
Abhishek Anthwal, Advs.  
SI Deepika, PS- Sadar  
Bazar  
Mr. Kanhaiya Singhal, Mr.  
Ujwal Ghai, Mr. Prasanna,  
Mr. Ajay Kumar & Mr.  
Udit Bakshi, Advs. for R2**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed challenging the order dated 27.04.2019 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), West District, Tis Hazari Courts, Delhi, in FIR No. 341/2018, registered at Police Station Model Town, for offence under Sections 420/467/468/471/120B/34 of the IPC. The petitioner seeks cancellation of the bail granted to Respondent No. 2 by the order

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dated 21.01.2019, passed by the learned MM, Tis Hazari Court, Delhi.

2. Briefly stated, the FIR in the present case was registered on a complaint made by Ms. Shashi Aggrawal/petitioner, against Respondent No.2 along with co-accused namely, Naresh Jain, Simmi Jain, Shreya Jain and M/s NH International, alleging that the property, being, 3815, in Gali Sadar Bazar, Delhi (**'subject property'**), was unlawfully acquired by the accused persons. It is further alleged that Respondent No.2 along with co-accused persons prepared two forged sale deeds in respect of the subject property. It is the case of the prosecution that Respondent No.2 was the co-applicant in taking loan from Cholamandalam Investment and Finance Company Ltd. by keeping the forged sale deed of the subject property as collateral security.

3. The learned ASJ, by the impugned order, dismissed the application filed by the petitioner seeking cancellation of bail under Section 439(2) of the CrPC, on the ground of maintainability.

4. The learned MM, by order dated 21.01.2019, had admitted Respondent No.2 on bail in FIR No. 277/2018. The learned MM, on the basis of the facts put forth by the Investigating Officer, observed as under :

*".....there is no allegation of forgery committed and the Prosecution is unable to show even prima facie that he had knowledge that the documents used/ given as collateral security were forged in nature, keeping in mind the relation he is having with co-accused persons and his age at that time. Therefore, the bar envisaged in section 467/468/471 IPG, in deciding the present bail application does not apply.....*

*..... Keeping in view the facts and circumstances of the present case, the fact that applicant is a young man of 25 years of age*

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*having clean antecedents, who is about to get married and his further in JC shall adversely effect his future prospects, career & life, accused/applicant Kashish Jai is admitted to bail.....”*

5. The learned counsel for the petitioner submits that the application seeking cancellation of bail was dismissed by the learned Sessions Court on the ground of maintainability and without appreciating the totality of the facts.

6. He further submits that the bail was granted only after the ten days custody of the applicant.

7. The short question that falls for consideration by this court, is whether the High Court ought to exercise its discretionary power under Section 482 of the CrPC and revoke/set-aside the bail granted to the respondents by the impugned order.

8. 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. 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,*

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*the continued custody of the accused subverts 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.*

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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.

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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)

9. The law is well settled through catena of judgments by the Hon’ble Apex Court that the considerations for granting bail and



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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.

10. It is not disputed that the co-accused, Naresh Jain, who was alleged to be the main mastermind in the present case has already been admitted on bail by this Court by order dated 19.03.2024. Respondent No. 2 is stated to be the son of Naresh Jain.

11. The allegation was that the forged documents were executed to take loan from M/s Chola mandlam Investment and Finance Company Ltd.

12. The learned MM, in the present case, passed a well-reasoned order after perusing the material on record. The learned MM categorically recorded his satisfaction that *prima facie* a case in favour of Respondent No.2 was made out for grant of bail from the evidence on record.

13. Insofar as the gravity of the offence is concerned, it is trite law that the same alone cannot be a ground to deny bail to the accused person.

14. The chargesheet was filed way back on 27.11.2018 and as pointed out by the learned counsel for Respondent No. 2, the charges are yet to be framed.

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15. It is relevant to note that the impugned order was passed way back in the year 2019. It is not the case of the prosecution that Respondent No. 2, after being released, at any stage, has misused the liberty granted to him or flouted any of the conditions of the bail. It is further not the case of the prosecution that the evidence in any manner has been tampered with by Respondent No.2. Moreover, as noted above, the father of Respondent No.2, who is alleged to be the mastermind has already been enlarged on bail.

16. 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.

17. Without going into the aspect of maintainability of application under Section 439(2) of the CrPC, this Court finds no infirmity with the impugned order as far as the grant of bail to Respondent No. 2 is concerned.

18. The petition is, therefore, dismissed.

**AMIT MAHAJAN, J**

**AUGUST 13, 2024**