



2024:DHC:7980



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

Date of decision: 08th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 4686/2022**

V

.....Petitioner

Through: Mr. Madhu Sudan Bhayana, Mr. Suresh Chaudhari, Mr. Madhav Shah and Mr. Deepanshu Rehaja, Advocates.

versus

STATE & ANR.

.....Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
Mr. Sandeep Khatri, Advocate for Respondent No.2.
SI Reena Kumari (D-2974), PS Budh Vihar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Prosecutrix/Petitioner seeks to challenge the Order dated 05.08.2022 passed by learned Additional Sessions Judge - 05, Rohini Courts, Delhi, granting bail in the event of arrest to Respondent No.2 herein in FIR No. 393/2022 dated 03.08.2022 registered at Police Station Budh Vihar for offences under Section 376, 506 & 509 IPC.
2. Shorn of unnecessary details, the facts of the case reveal that on a complaint given by the Petitioner herein, in FIR No. 393/2022 dated 03.08.2022 was registered at Police Station Budh Vihar for offences under Section 376, 506 & 509 IPC.



2024:DHC:7980



3. In the complaint, the Prosecutrix has alleged that she was married to late Rajesh Kumar, i.e., the brother of Respondent No.2 in the year 2004. It is stated that the husband of the Prosecutrix passed away due to COVID-19 on 03.05.2021, i.e., after 17 years of the marriage.

4. It is stated that on the intervening night of 27.06.2022, Respondent No.2 herein committed rape on her. It is stated that a complaint was given regarding this incident but a compromise was arrived at and it was alleged in the complaint that Respondent No.2 and the family members of Respondent No.2 promised that they will get the Prosecutrix married to the Respondent No.2 herein. It is stated that the marriage was supposed to be held on 03.08.2022. It is stated that on 02.08.2022, when the father of the Prosecutrix came to the matrimonial home of the Prosecutrix to discuss about her marriage with Respondent No.2, the family members of Respondent No.2 abused her father and told him that the Respondent No.2 had fled from the house.

5. On the said allegations in the complaint, the instant FIR was registered. The statement of the Complainant/Prosecutrix was taken under Section 164 CrPC wherein the Complainant has reiterated the allegations made in the FIR.

6. Respondent No.2 approached the learned Additional Sessions Judge, Rohini Courts, Delhi for grant of bail in the event of arrest and the learned Additional Session Judge after perusing the material on record came to the conclusion that in the facts of the present case, the custodial interrogation and the arrest of Respondent No.2 is not required for the purpose of investigation and Respondent No.2 was granted bail in the event of arrest on the condition that (a) He shall make himself available for interrogation as



2024:DHC:7980



and when required by the Police Officer; (b) He shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer, and (c) He will not leave the country without the prior permission of the Court. The learned Additional Sessions Judge came to the conclusion that when the matter reached the Police Station on 24.07.2022, there is no allegation of rape by the Prosecutrix and the subsequent allegation made in the FIR is an afterthought. It is this order which is under challenge before this Court in the present petition.

7. Learned Counsel for the Petitioner has primarily levelled allegations against the Investigating Officer. He has stated that the investigation has not been carried out properly. He has also contends that the learned Additional Session Judge had ignored the fact that the offence which is alleged against Respondent No.2 is a very serious offence and anticipatory bail ought not to have been granted.

8. *Per contra*, learned Counsel for Respondent No.2 contends that cogent reasons have been given by the learned Trial Court as to why bail has been granted. He states that chargesheet has been filed. He also states that the allegation of rape is only a pressure tactic by the Petitioner herein to force marriage on Respondent No.2.

9. Heard learned Counsel for the parties and perused the material on record.

10. The impugned order was passed on 05.08.2022. There is no allegation against Respondent No.2 that he has violated the conditions of bail. Though the fact that he has not violated any condition of bail is not a ground to consider as to whether bail has been granted to Respondent No.2 after



2024:DHC:7980



proper consideration, this Court also has to see the conduct of Respondent No.2 while considering a challenge to an order granting bail.

11. This Court has also perused the so-called compromise letter which has been entered into between the Petitioner/Complainant and Respondent No.2 before the Police Station at the time when the initial complaint had been filed. The said compromise document only records the statement of the Complainant which states that her husband passed away on 03.05.2021 due to COVID-19. The Prosecutrix has two children one aged 15 years and aged 13 years. She has also stated that she is having daily fights with the Respondent No.2 and that on 24.07.2022 the parties have entered into a compromise.

12. There is no allegation of rape on 24.07.2022. The present FIR has been filed on 03.08.2022, i.e., 10 days of the compromise. Chargesheet has been filed. Trial has commenced and the prosecution evidence is going on.

13. The parameters for cancellation of bail already granted to the accused have been laid down by the Apex Court in a number of judgments. In Dolat Ram v. State of Haryana, (1995) 1 SCC 349, the Apex Court has observed as under:

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any



2024:DHC:7980



manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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 the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

14. Similarly, in CBI v. Subramani Gopalakrishnan & Anr., (2011) 5 SCC 296, the Apex Court has observed as under:-

“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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



2024:DHC:7980



by enjoying the concession of bail during the trial.”

15. This Court is of the opinion that the order granting bail to Respondent No.2 herein is on the basis of cogent reasons given by the Trial Court. As stated above, in the earlier statement given by the Complainant in the Police Station, there is no mention of rape. Chargesheet has been filed and this Court is of the opinion that no useful purpose would be served in keeping Respondent No.2 in custody. In the considered opinion of this Court, bail has been granted on cogent reasons which does not warrant interference by this Court.

16. The Petitioner has levelled allegations of rape against the brother-in-law, which is a serious offence but that alone is not a sufficient ground for this Court to set aside the order granting bail to Respondent No.2 in the facts of the present case. In view of the above, this Court is not inclined to interfere with the order passed by the Trial Court.

17. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 08, 2024

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