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

+ CRL.M.C. 4549/2019

V (NAME WITHHELD)Petitioner

Through: Mr. Abhinav Sharma,
Advocates.

versus

STATE & ANR.Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Ms. Neha Sharma,
Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

08.08.2024

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1. The present petition was filed way back in September, 2019 for cancellation of bail granted to Respondent No.2 by the order dated 18.07.2019 (hereafter '**impugned order**'), passed by the learned Trial Court, in FIR No.616/2018, registered at Police Station Saket.

2. The learned Trial Court had noted that there was an unexplained delay of two years in lodging of the FIR. It was further noted that apart from the testimony of the prosecutrix, there was no other material to support the allegations of rape. It was noted that no investigation was conducted to link the petitioner to the extortion emails received by the father of the prosecutrix.

3. The learned counsel for the petitioner argued that the learned Trial Court had failed to appreciate that the FIR was



lodged belatedly due to the threats extended by the petitioner and had not taken into account the gravity of the alleged offence owing to the fact that the petitioner/ prosecutrix was a minor at the time of the incident.

4. The law in relation to the setting aside or 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.

5. The Hon'ble Apex Court in ***Mahipal vs. Rajesh Kumar @ Polia and Anr : (2020) 2 SCC 118***, has opined as under :

“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)

6. The learned Trial Court has passed a reasoned order. While it is argued that the learned trial Court did not pay enough deference to the age of the petitioner when considering the gravity of the offence, the impugned order was evidently not passed in ignorance of the said fact. No glaring inaccuracy has been pointed to suggest non-application of mind by the learned Trial Court.

7. It is trite law that bail cannot be denied to an accused person solely on account of the gravity of the alleged offences.

8. Insofar as the prosecutrix's explanation for the delay in lodging the FIR is concerned, the veracity of any such explanation would be seen during the course of the trial.

9. However, without adverting extensively to the merits of the impugned order in regard to the *prima facie* case against Respondent No.2, it is relevant to note that notice was issued in the present case on 23.09.2019.

10. Thereafter, the matter could not be effectively taken up till March, 2022, due to onset of COVID-19.

11. Subsequently, the matter was not heard due to some reason or the other. It is seen that on a couple of occasions, the learned counsel for the petitioner was not available and on one occasion, the State had taken time to file updated status report.



12. On being asked, it is informed that the matter is now listed for cross-examination of victim.
13. It is apparent that the matter has proceeded after the grant of bail to Respondent No.2.
14. The Investigating Officer is present in Court and states that the accused has not misused the liberty granted by the learned Trial Court.
15. No apprehension is expressed that Respondent No.2 will make any attempt to evade the trial or tamper with the evidence.
16. At this stage, the accused/ Respondent No.2 has already been released on bail and has not misused the liberty for almost five years.
17. 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.
18. Even though, it is not the fault of the petitioner that the matter was not heard in last five years, however, when the trial has already started and proceeded, this Court does not consider it apposite to entertain the present petition.
19. The petition is, therefore, dismissed.
20. It is clarified that any observations made in the present order are for the purpose of deciding the present case and the same should not be taken as an opinion as to the merits of the case and should also not influence the outcome of the trial.

AMIT MAHAJAN, J

AUGUST 8, 2024

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