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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 4805/2019

KARUNA SHARMA

.....Petitioner

Through: Ms. Shaurya Singh, Adv.
along with petitioner in
person.

versus

THE STATE & ANR

.....Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Robin Vimal, PS
Shastri Park.
Mr. U.S. Khator, Adv. for
R-2 along with R-2 in
person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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04.11.2024

1. The present petition has been filed under Section 439 (2) of the Code of Criminal Procedure, 1973 ('CrPC') read with Section 482 of the CrPC seeking cancellation of bail granted to Respondent No.2 by order dated 07.02.2019 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('ASJ'), North East District, Karkardooma Courts, Delhi, in Bail Application no.125/2019 in FIR No. 27/2019, registered at Police Station New Usmanpur (Shastri Park), for offences under Sections 376/354C/506/323 of the Indian Penal Code, 1860 ('IPC').

2. The learned counsel for the petitioner submits that no reason has been given by the learned Trial Court while admitting the accused on bail.

3. She submits that in regard to offences under Sections 376/354C of the IPC, the learned Court of Sessions has to follow the provisions of Section 437 of the CrPC and the accused cannot be

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released unless there appear reasonable grounds for believing that he is not guilty of the offence.

4. She submits that the only ground which weighed the learned ASJ was that the accused was arrested on 18.01.2019 and he had remained in judicial custody since then.

5. She submits that the bail was granted by the impugned order after the accused had only spent about 19 days in custody. She submits that the same cannot be considered as a long period of incarceration.

6. The learned counsel for Respondent No. 2 submits that accused has not misused the liberty granted to him and he has been appearing in the trial after passing of the impugned order. He submits that the petitioner is delaying the trial and she has not been appearing before the learned Trial Court regularly.

7. He further submits that a bare perusal of the FIR makes it apparent that Respondent No. 2 has been falsely implicated in the present case and that is probably the reason that the petitioner has not been appearing before the learned Trial Court.

8. He vehemently contends that the bail granted to Respondent No. 2 cannot be cancelled for the reason that the learned ASJ did not give proper reasons.

9. He submits that all the relevant arguments were taken before the learned ASJ which led to passing of the impugned order. He submits that the failure of the learned ASJ to take note of the arguments so raise and record appropriate reasons for passing the impugned order cannot be to the prejudice of the accused.

10. I have heard the counsel and perused the record.

11. 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. Cancellation of bail must be on very cogent and overwhelming circumstances. However, at the same time, it cannot be denied that a judicial order passed without stating any reasons shows non-application of mind.

12. A three Judge Bench of the Hon'ble Apex Court in the case of **Deepak Yadav v. State of U.P. : (2022) 8 SCC 559**, advertent to a catena of judgments, had discussed the law in relation to cancellation of bail and cancelled the bail of the accused therein due to non-application of mind by the Court granting bail. It was observed as under:

*“30. A two-Judge Bench of this Court in **Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558]** observed : (SCC p. 125, para 14)*

*“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 [Rajesh Kumar v. State of Rajasthan, 2019 SCC OnLine Raj 5197] 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.”

C. Cancellation of bail

31. 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).

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35. This Court in Mahipal [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] held that : (SCC p. 126, para 17)

“17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.”

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41. Grant of bail to Respondent 2/accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court has not taken into consideration the criminal history of Respondent 2/accused, nature of crime, material evidence available, involvement of Respondent 2/accused in the said crime and recovery of weapon from his possession.”

(emphasis supplied)

13. The relevant portion of the impugned order is reproduced hereunder:

“The accused was arrested on 18.01.2019 and since then is running in JC. A bare perusal of the contents of the FIR renders it a fit case to grant bail to the accused / applicant without any further observation. Accordingly, accused /



applicant Rahul Pandey is hereby admitted on bail on furnishing personal bond in the sum of ₹20,000/- with one surety in the like amount to the satisfaction of Ld. MM/Ld. Link MM/Ld. Duty MM concerned. Copy of the order be given dasti to the Ld. Counsel for the applicant/accused as prayed for.”

(emphasis supplied)

14. In the present case, it is argued that the learned ASJ passed the impugned order after hearing extensive arguments. While it is a possibility that the relevant material was considered by the learned ASJ before granting bail, however, the same is not apparent from the impugned order. A bare perusal of the impugned order suggests that the same was passed without duly appreciating the gravity of the alleged offence and perusing the record.

15. In view of the aforesaid discussion, the impugned order is unsustainable and the same is set aside.

16. Considering the fact that Respondent No. 2 is on bail since 07.02.2019, and it is not the case of the prosecution that he has misused the liberty, this Court considers it apposite to grant Respondent No. 2 three weeks' time to surrender before the learned Trial Court.

17. Respondent No. 2 is at liberty to file an application seeking bail afresh. As and when any such application is filed, the learned Trial Court is directed to decide the same on its own merits, without being influenced by the observations made by this Court in the present order and also keeping in mind the fact that Respondent No. 2, while on bail, has not misused the liberty.

18. The present petition is allowed in the aforementioned terms.

19. It is clarified that any observations made in the present order are for the purpose of deciding the present matter and



should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

NOVEMBER 4, 2024/“SK”