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

+ **CRL.M.C. 5702/2022**

SJ

.....Petitioner

Through: Ms. Deeksha Dwivedi,
Adv.

versus

STATE (NCT OF DELHI) & ANR.Respondents

Through: Mr. Manoj Pant, APP for
the State with SI Reena
Kumari, PS Budh Vihar.
Ms. Geeta Verma and Mr.
Pawan Kumar, Advs. for
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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14.11.2024

1. The present petition is filed under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 11.10.2022 (hereafter '**the impugned order**'), passed by the Additional Sessions Judge, North West District, Rohini Court, Delhi, in the FIR No. 386/2022, registered at Police Station Budh Vihar.

2. By the impugned order, the learned Trial Court granted pre-arrest bail to Respondent No.2.

3. The brief facts of the case are that the petitioner had married the brother of Respondent No.2, namely, Shahid. It is alleged that within fifteen days of marriage, Shahid left the petitioner at her brother's house. The petitioner had filed a case against her husband– Shahid at the Women Cell. It is alleged that

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a lady named Pooja, claiming to be Shahid's wife, had threatened the petitioner to divorce Shahid. It is alleged that Shahid had called the petitioner to his house on the pretext that he was marrying again. When the petitioner reached the spot, Shahid told her that he wasn't getting married and took her to the basement of his house. It is alleged that Shahid and Respondent No.2, who was the brother-in-law of the petitioner, asked the petitioner to withdraw the cases lodged by her and raped her. It is also alleged that Respondent No.2 inserted his private parts in the mouth of the petitioner.

4. The learned Trial Court, while allowing the application of Respondent No.2 seeking pre-arrest bail, observed that the co-accused Shahid had already been enlarged on bail and there were various other pending cases between the parties. It was also noted that no reason had been given by the petitioner for belatedly lodging the FIR on 30.07.2022 even though the incident took place on 17.07.2022.

5. The learned counsel for the petitioner submits that the first pre-arrest bail application of Respondent No.2 was dismissed by the learned Trial Court on 20.08.2022 and his second pre-arrest bail application was dismissed as withdrawn on 05.09.2022. Thereafter, the applicant was admitted on bail by the impugned order. She submits that the learned Trial Court ought not to have granted pre-arrest bail to Respondent No.2 as there was no change in circumstances.

6. She submits that the parameters for grant of pre-arrest bail were not appreciated by the learned Trial Court which granted bail to Respondent No.2 without appreciating the gravity of crime and the specific allegations levelled against Respondent



No.2 by the petitioner.

7. She submits that the learned Trial Court failed to consider that the delay in reporting the matter to the police is of no consequence if the reason for delay is aptly explained. She submits that the petitioner had duly explained the reason for delay despite which the learned Trial Court erroneously observed that the petitioner had given no plausible reason for delay.

8. She submits that the learned Trial Court also did not appreciate that non-bailable warrants were issued against Respondent No.2 as he was not found at his residence.

9. The learned counsel for Respondent No.2 submits that the learned Trial Court has rightly applied its mind and granted bail to Respondent No.2 and there is no infirmity in the impugned order.

10. 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,



the continued custody of the accused subserves 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.



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)

11. The law is well settled through catena of judgments by the



Hon'ble Apex Court that the considerations for granting bail and 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.

12. The main ground on which the impugned order is challenged by the petitioner is that the bail application ought not to have been entertained in view of the earlier dismissal of the applications without there being any change in circumstance. It is also contended that the facts and the merits of the case do not justify the grant of pre-arrest bail and the petitioner had sufficiently explained the reason for delay in registration of FIR.

13. It has been held in a catena of judgments that there must be change in circumstances to warrant fresh consideration of the bail application. The successive bail applications filed without there being any material change in circumstances, is strongly discouraged, and is a gross abuse of the process of law. The Hon'ble Apex Court in the case of ***Kalyan Chandra Sarkar v. Rajesh Ranjan*** : (2004) 7 SCC 528 had observed as under:

“20. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications...”

(emphasis supplied)

14. The application seeking pre-arrest bail was dismissed by



the learned Trial Court by order dated 20.08.2022. Respondent No. 2 thereafter filed another application seeking pre-arrest bail which was dismissed as withdrawn on 05.09.2022. The impugned order was thereafter passed in the third pre-arrest bail application on 11.10.2022.

15. Thus, it is apparent that successive bail applications were entertained by the learned Trial Court in the absence of any material change in circumstance. The learned Trial Court also fails to record any fresh ground for grant of pre-arrest bail.

16. The accused is entitled to file a successive application after a material change in circumstance. He is also entitled to file a bail application before a superior Court. Successive bail applications in a short interval of time should not have been entertained by the learned Trial Court and to that extent, this Court agrees with the contention raised by the petitioner.

17. However, much water has flown since Respondent No.2 was granted bail and the trial has since proceeded. It is not the case of the petitioner that post the grant of pre-arrest bail, Respondent No.2 has in any manner impeded the cause of justice.

18. The FIR was registered on 30.07.2022 and the impugned order was passed way back on 11.10.2022. Concededly, the chargesheet and supplementary chargesheet have already been filed in the present case.

19. It also cannot be denied that the learned Trial Court, while passing the impugned order, noted that the parties were related and there are other pending cases between them. It was also noted that the co-accused Shahid, to whom the petitioner was married, has already been granted the benefit of bail. The petitioner has explained the delay in giving a complaint to the



Police, however, it cannot be denied that serious allegations were made and the complaint for the same was given after thirteen days, which casts some doubt at this stage for which the benefit cannot be denied to the accused.

20. In *Deepak Yadav v. State of U.P. : (2022) 8 SCC 559*, the Hon'ble Apex Court has emphasised that bail once granted, should not be cancelled in a mechanical manner. Cancellation of bail must be on very cogent and overwhelming circumstances.

21. 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.

22. In such circumstances, considering the aforesaid discussion, liberty granted to Respondent No.2 cannot be taken away after more than 2 years.

23. In view of the above, I find no reason to interfere with the impugned order and the present petition is dismissed.

24. It is made clear that the observations made by the learned Trial Court or in the present order are only made for the purpose of deciding the application for bail and be not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

AMIT MAHAJAN, J

NOVEMBER 14, 2024