



2024:DHC:8956



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

% **Date of order: 6th November, 2024**

+ **CRL.M.C. 8189/2023**

AMIT JAIN

.....Petitioner

Through: **Mr. Asim Naeem, Advocate**

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: **Ms. Richa Dhawan, APP for State
with SI Mahesh Kumar, PS Kalkaji
Mr. Rajiv Mohan, Mr. Swapnil
Krishna, Mr. Sachit Sharma and Mr.
Udath Singh, Advocates for R-2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”) [now under Section 483(3) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023] has been filed on behalf of the petitioner seeking cancellation of regular bail granted vide order dated 10th May, 2023 to the respondent no. 2 by the learned Additional Sessions Judge-01, Special Court (POCSO), South East District, Saket Court, New Delhi (hereinafter as the “ASJ”) in

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FIR bearing no. 227/2022 registered at Police Station – Kalkaji under Sections 420/406/34 of the Indian Penal Code, 1860 (hereinafter as the “IPC”).

2. The brief facts of the case are that M/s Sparentools Private Limited, a company run by Mr. Narender Kumar (Authorized Representative and Global Business Head of the company), Mr. Atul Kumar Gupta, Ms. Subhash Tapar, Mr. Nishant Kumar (Directors of the company), and Mr. Pankaj Thapar, respondent no. 2 herein (CEO of the company), and the said persons are accused in the instant case.

3. As per the petitioner’s allegations in the aforesaid FIR, the accused persons with false and fabricated documents, induced the petitioner to invest Rs. 90,00,000/- in the company and forced him to take a loan of Rs. 24,50,000/-, thereby, keeping his personal properties in collateral. Thereafter, the petitioner was asked to resign from the company and after such resignation, the accused diverted the petitioner’s money. Moreover, the security cheques that were given to the petitioner by the respondent no. 2 were also dishonored upon presenting. Hence, the aforesaid FIR was registered at the behest of the complaint made by the petitioner.

4. Thereafter, notices were issued under Section 41A of the Code to the respondent no. 2 twice to join the investigation and upon failure of the respondent no. 2 to join the investigation, non-bailable warrants were issued against him. The respondent no. 2 did not join the investigation despite issuance of non-bailable warrants and therefore, a Look Out Circular was also issued against him.



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5. Consequently, the respondent no. 2 filed an application for anticipatory bail before the Court concerned, however, the same was dismissed vide order dated 5th May, 2022. Thereafter, he was apprehended by the police and an application for regular bail was filed which was also dismissed by the Court concerned vide order dated 14th November, 2022.

6. Subsequently, the respondent no. 2 filed an application for interim bail and vide order dated 19th December, 2022, the Court concerned observed that the respondent no. 2 wishes to explore the avenues of settlement with the petitioner and for the said purpose, interim bail was granted to the respondent no. 2.

7. Accordingly, the parties entered into a Memorandum of Understanding (hereinafter as the “MoU”) dated 28th January, 2023, wherein all the disputes between them were settled.

8. Thereafter, the respondent no. 2 filed another application for regular bail, which was vehemently opposed by the petitioner, however, the respondent no. 2 was granted regular bail by the Court concerned vide order dated 10th May, 2023.

9. Aggrieved by the same, an application for cancellation of bail was filed by the petitioner before the learned ASJ, which was dismissed vide order dated 16th October, 2023 (hereinafter as the “impugned order”) on the ground that no criteria for cancellation of bail is made out.

10. Aggrieved by the impugned order, the petitioner has filed the instant petition seeking setting aside of the same.

11. Learned counsel appearing on behalf of the petitioner submitted that



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that the learned ASJ erred in passing the impugned order as the same has been passed without any application of judicial mind.

12. It is submitted that the learned ASJ has failed to appreciate that the respondent no. 2 was granted interim bail only on the ground that he explores possibilities of settlement with the petitioner, which thereafter formulated into an MoU settling all their disputes. However, after the release of respondent no. 2 on regular bail, he failed to comply with the terms and conditions of the MoU and therefore, the bail granted to the respondent no. 2 is liable to be cancelled.

13. It is submitted that the learned ASJ erred in appreciating that the respondent no. 2 did not cooperate in the investigation and was only arrested when he failed to appear before the Investigating Officer despite serving two notices under Section 41A of the Code, non-bailable warrants, and LOC upon him.

14. It is submitted that the learned ASJ ignored the fact that the respondent no. 2 entered into an MoU only to avoid arguing the interim bail application on merits. Further, the respondent no. 2 failed to honour the terms and conditions of the settlement and misused the liberty granted to him by the Court concerned vide order dated 10th May, 2023.

15. It is further submitted that the learned ASJ passed the impugned order incorrectly as the respondent no. 2 was granted bail in a mechanical manner without appreciating the facts and circumstances of the case. Hence, it is prayed that the instant application may be allowed and the bail granted to the respondent no. 2 may be cancelled.



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16. *Per Contra*, learned APP appearing on behalf of the State submitted that the respondent no. 2 was issued two notices under Section 41A of the Code, non-bailable warrants as well as an LOC and was arrested only upon his failure to appear for the investigation. It is further submitted that during investigation, certain relevant documents such as the MoU dated 6th April, 2019 which was entered between the petitioner and the accused in the aforesaid FIR were recovered.

17. It is submitted that the respondent no. 2 was granted interim bail vide order dated 19th December, 2022 only on the ground that the parties enter into a settlement and accordingly, the parties entered into an MoU dated 28th January, 2023. Thereafter, the respondent no. 2 was granted regular bail vide order dated 10th May, 2023 by the Court concerned, however, the said bail was granted on merits and not on the ground of settlement between the parties.

18. Learned counsel for the respondent no. 2 submitted that the respondent no. 2 was granted regular bail vide order dated 10th May, 2023 on merits and not on the ground of settlement between the parties and the same has been rightly observed by the learned ASJ in its impugned order.

19. It is submitted that the respondent no. 2 is not bound by the settlement condition imposed by the Court concerned vide order dated 19th December, 2022 as the same is not a condition in the order dated 10th May, 2023, wherein regular bail was granted to the petitioner.

20. It is submitted that it is a settled law that for cancellation of bail, supervening circumstances and misuse of liberty or bail conditions is a



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requirement. However, since the respondent no. 2 has not violated the liberty granted to him and in absence of supervening circumstances, his bail is not liable to be cancelled and the same was rightly held by the learned ASJ in its impugned order.

21. Therefore, in light of the foregoing submissions, it is prayed that the instant application is devoid of any merits and may be dismissed.

22. Heard learned counsel for the parties and perused the record.

23. At this juncture, it is pertinent to note that the regular bail was granted to the respondent no. 2 vide order dated 10th May, 2023 on the ground that the chargesheet has been filed in the instant case and that more time will be needed in commencing and concluding the trial. Accordingly, while passing the impugned order, the learned ASJ was of the view that no conditions were imposed by the Court concerned in granting regular bail to the respondent no. 2, especially pertaining to the MoU, and therefore, no ground was made out for cancellation of the bail.

24. It is the contention of the petitioner that the Court concerned granted the interim bail to the respondent no. 2 vide order dated 19th December, 2022 only on the pretext that the respondent no. 2 wishes to explore avenues of settlement with the petitioner. However, upon entering into the MoU and receiving regular bail, the respondent no. 2 failed to comply with the terms and conditions of the MoU and therefore, the said bail is liable to be cancelled.

25. In this context, it is pertinent to understand the scope of Section 439(2) of the Code. The said provision merely states as to when a person



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who has been released on bail may be taken into custody upon appropriate direction of the High Court or Sessions Court. However, the essence and objective of the provision and the jurisprudence therein has evolved over the years and the position of law pertaining to the cancellation of bail has been settled by the Hon'ble Supreme Court as well as the High Courts in catena of judgments, wherein a set of grounds for cancellation have been laid down.

26. Here, it is pertinent to mention the case of ***Dolat Ram And Others Vs. State of Haryana, (1995) 1 SCC 349***, wherein the grounds of cancellation of bail are encapsulated as follows –

- a) Where there is an interference or an attempt to interfere with the due course of administration of justice;
- b) Where there involves evasion or an attempt to evade the due course of justice;
- c) Where the accused misuses the concession granted by the Court concerned;
- d) Where there involves possibility of absconding;
- e) Whether there is a likelihood or an actual misuse of the bail; and
- f) Where there is a likelihood of accused tampering with the evidence and threatening the witnesses;

27. While considering a case of cancellation of bail, it is also to be borne in mind that once the bail is granted to the accused, the same should not be cancelled until and unless the accused misconducted himself, violated the bail conditions or some supervening circumstances warranting such cancellation have occurred.



28. The aforesaid guidelines, which are non-exhaustive, have been reiterated in the recent judgment of the Hon'ble Supreme Court in the case of *Deepak Yadav v. State of U.P.*, (2022) 8 SCC 559. However, the Hon'ble Court also went forward in stating that if the order granting the bail to the accused is illegal and non-justifiable then bail may be cancelled even in the absence of supervening conditions.

29. Adverting to the facts of the instant case, upon perusal of the order dated 10th May, 2023, it is observed that the Court concerned has anticipated the procedural impediment of delay in commencement and conclusion of the trial and observed that the investigation of the accused is not required given that the chargesheet has already been filed. Therefore, it is this Court's observation that the reasoning and the grounds stated in the said order are cogent for granting bail to the respondent no. 2 and therefore, the same is justified, and the bail granted cannot be cancelled on the ground of non-justification.

30. Moreover, it is trite law that once the bail is granted, the accused cannot be deprived of such liberty in a mechanical and perverse manner.

31. In the present case, the respondent no. 2 was granted interim bail vide order dated 19th December, 2022 only on the condition that he explore possibilities of settlement with the petitioner. Accordingly, the respondent no. 2 and the petitioner entered into an MoU settling all their disputes. Thereafter, the respondent no. 2 filed a regular bail application before the Court concerned and vide order dated 10th May, 2023, he was granted bail. However, it is pertinent to note that the Court concerned has not relied on



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the settlement that took place between the parties or the compliance thereof, and the same is not one of the conditions for granting of regular bail.

32. It was also taken into consideration by the learned ASJ while passing the impugned order that no conditions were imposed upon the respondent no. 2 while granting regular bail vide order dated 10th May, 2023 and that the settlement between the parties *via* the MoU cannot be viewed as part and parcel of the bail order.

33. In light of the above, the contention of the petitioner pertaining to the non-compliance of the terms and conditions of the MoU for cancellation of bail does not form a relevant ground for cancellation of the bail as the same was not a condition for granting regular bail to the petitioner. Accordingly, this Court has taken into account that there is no violation of the terms and conditions of the regular bail imposed upon the respondent no. 2 during his bail period as the same was not granted based on the merits of the MoU entered between the parties. Moreover, the chargesheet has been filed and the investigation in the case has already been completed.

34. Keeping in view that the petitioner has not violated the terms and conditions of bail and in absence of any supervening circumstances arising from the same, this Court does not find any merit in the instant petition and therefore, is not inclined to allow the instant petition seeking cancellation of bail granted to the respondent no. 2.

35. Accordingly, the instant petition stands dismissed, along with pending applications, if any.

36. It is made clear that the observations made herein, touching upon the



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merits of the case, are purely for the purpose of deciding the question of cancellation of bail, which shall not be construed as an expression of final observations on the merits of the present case.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 6, 2024

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Click here to check corrigendum, if any

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