$~39

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

\+ **CRL.M.C. 6768/2022**

SAHIL DUDEJA .....Petitioner

Through: None.

versus

THE STATE GOVT OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Ajay Vikram Singh, APP for the State with Insp. Birender Singh, PS Cyber Dwarka.
Mr. Prakash Kumar Singh, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **27.09.2024**

1. None appears for the petitioner.

2. It is seen that none had appeared for the petitioner on the last two dates of hearing, that is, on 27.02.2024 and 22.05.2024 as well.

3. By way of the present petition, the petitioner challenges the order dated 07.11.2022 (hereafter '**impugned order**'), passed by the Additional Sessions Judge (**ASJ**)-03 / Special Judge (Companies Act), Dwarka Courts, New Delhi, pursuant to which Respondent No. 2 was admitted on bail in FIR No. 18/2022, dated 15.04.2022, registered at Police Station Cyber Police Station Dwarka, for offence under Section 420/34 of the Indian Penal Code, 1860 (**IPC**).

4. Briefly stated, the FIR in the present case was registered

on a complaint filed by the complainant/petitioner alleging that he had applied for Parle Distributorship through online medium on 13.02.2022 whereafter, he received an email and as per the details in the email, he transferred a total amount of ₹13,40,000/- in two bank accounts. Subsequently, the complainant received calls from the persons impersonating themselves to be as Parle employee from two mobile numbers demanding further amount of ₹4,40,000/- and ₹8,20,000/-. During the investigation, it was found that the complainant had been cheated of that amount and the amount deposited by him was found to be transferred in the account of co-accused – Ravi Lohar.

5. Respondent No. 2 was arrested on 10.07.2022 and was admitted on bail by the impugned order.

6. The learned ASJ, in the impugned order, noted that neither any amount has been deposited in the account of Respondent No. 2 nor any documentary evidence regarding any kind of transaction was found. It was also noted that the investigation had already been completed and the chargesheet had also been filed and no fruitful purpose would be served by keeping the accused in further custody.

7. The Investigating Officer is present in Court and on being asked, states that Respondent has not violated any of the conditions imposed by the learned Trial Court while granting bail.

8. There is no allegation of any threat or inducement to the complainant. Neither has Respondent No. 2 been found to have tampered with the evidence.

9. It is trite law that an order granting bail ought not to be disturbed unless there are strong reasons to do so. The party

seeking cancelation of bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper.

10. The law in relation to the setting aside or cancellation of bail is well settled. The consideration for cancellation of bail stands on different footing than grant of bail. The Hon'ble Apex Court, adverting to a catena of judgments, had discussed the grounds for cancellation of bail in exercise of jurisdiction under Section 439 (2) of the Code of Criminal Procedure, 1973 (*pari materia* to Section 483 (3) of the BNSS) in the case of ***Abdul Basit v. Mohd. Abdul Kadir Chaudhary* : (2014) 10 SCC 754**. The relevant portion of the judgment is reproduced hereunder:

> "***14.*** *Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail.* ***Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive….***
>
> xxx
>
> ***17****. In this context, it is profitable to render reliance upon the decision of this Court in Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] . In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In Narendra K. Amin v. State of Gujarat [(2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief*

available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in Puran case [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court.

xxx

19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

xxx

***21.** It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.*"

(emphasis supplied)

11. The Hon'ble Apex Court in the case of ***Himanshu Sharma v. State of Madhya Pradesh* : 2024 INSC 139** had held as under:

"12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has

misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; ***(d) or that the bail was procured by misrepresentation or fraud****.....”*

(emphasis supplied)

12. In the present case, the chargesheet has already been filed. In the absence of there being a strong *prima facie* case on the conditions of the bail having been violated, it would not be appropriate to interfere in the impugned order. The petitioner had already spent about 121 days in custody. Since then, the trial has proceeded.

13. It is also 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.

14. Even otherwise, the petitioner does not seem to be interested in pursuing the present petition.

15. The present petition is, therefore, dismissed.

AMIT MAHAJAN, J

SEPTEMBER 27, 2024

‘KDK’