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

\+ **CRL.M.C. 6848/2022**

STATE N.C.T. OF DELHI .....Petitioner

Through: Mr. Naresh Kumar Chahar, APP for the State. SI Ravinder Kumar, ISC / Crime Branch Chanakayapuri.

versus

BALWINDER SINGH BHATIA ALIAS KARAN .....Respondent

Through: Mr. Aman Sareen, Mr. Gurpratap Singh, Mr. Afesh Kumar, Advs. for R-2.

**CORAM:**
**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**O R D E R**

% **04.12.2024**

1. The prosecution challenges the order dated 17.10.2022 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**') pursuant to which the respondent was admitted on bail.

2. FIR No. 184/2022 dated 26.08.2022 was registered at Police Station Crime Branch on a complaint given by one Sukhdev under Sections 420/467/468/471/120B of the Indian Penal Code, 1860 and Section 12 of the Passports Act, 1967. It is the case of the prosecution that the accused Manjeet Singh along with the respondent as well as other accused persons cheated the complainant on the pretext of getting work Visa for Portugal. It is alleged that in January 2022, one Paramjit Singh told the

complainant that his son Gurpreet Singh got work permit for Portugal. The said Paramjit Singh then gave the number of the complainant to accused Manjeet Singh. It is alleged that the complainant was contacted by the accused Manjeet Singh in January 2022, and the complainant asked accused Manjeet Singh to manage his visa for Portugal.

3. It is alleged that thereafter accused Manjeet Singh informed the complainant that he would get the visa for Portugal and asked for a sum of ₹12,00,000/- from the complainant, and also asked to transfer an amount of ₹55,000/- at that time itself.

4. It is alleged that thereafter on 24.01.2022, accused Manjeet Singh asked the complainant to go to Delhi and meet with his partner, that is, the respondent. It is alleged that the respondent took the passport of the complainant and informed the complainant that the visa would be issued in 1-2 months. Subsequently, on multiple occasions, the complainant transferred certain amounts from his account to the account of the accused Manjeet Singh. It is the case of the complainant that the accused Manjeet Singh later informed the complainant that his ticket to Portugal had been booked. It is further the case of the complainant that thereafter he learnt that the visa was fake.

5. The learned Additional Public Prosecutor for the State submits that the procedure adopted by the learned ASJ is unheard of. He submits that the respondent had sought interim bail on medical grounds and the learned ASJ treated the said application as an application seeking regular bail. He submits that the prosecution was not given any opportunity to file an appropriate status report, since the reply was filed only verifying the medical condition of the respondent.

6. On being pointedly asked, it is informed that the

respondent has not misused the liberty in any manner whatsoever.

7. This Court has perused the impugned order. It is seen that on that occasion, the counsel appearing on behalf of the respondent before the learned ASJ, had argued that while the application was one seeking interim bail, however, since the latest health/medical documents of the respondent were not available, the application be heard on merits. It was further submitted that the health condition of the respondent be also considered while deciding the application.

8. The learned ASJ noted that the prosecution is chiefly relying upon the banking transactions of the respondent with the accused Manjeet Singh as well as the Manjeet Singh's wife. Further, the prosecution also relied upon certain disclosure statements made by the co-accused persons. The learned ASJ noted that there was nothing specific to show that such disclosures led to any discovery of fact admissible under Section 27 of the Indian Evidence Act, 1872.

9. The learned ASJ noted that the complainant met one Paramjeet Singh in January, 2022. It was noted that it was not clear when money was firstly handed over by the complainant to any of the accused persons, especially accused Manjeet Singh. The FIR mentions that the complainant was called to Delhi on 24.01.2022 by accused Manjeet Singh to meet the respondent, and that the complainant had transferred a sum of ₹55,000/- prior to that date in the account of accused Manjeet Singh. The date of transfer, however, was not mentioned.

10. The learned ASJ noted that the respondent and the wife of Manjeet Singh had various financial transactions prior to 24.01.2022, that is, much prior to the complainant giving money

to accused Manjeet Singh. Though certain financial transactions happened between accused Manjeet Singh and the respondent after 28.02.2022, however, the reason for the transfer is not clear.

11. The learned ASJ further noted that there is nothing specific to connect the transactions of the respondent with the accused persons with the money transferred by the complainant.

12. Undisputedly, the ASJ ought not to have considered the application seeking interim bail as an application for regular bail. Though, whether it is an interim bail or regular bail, both are filed under Section 439 of the Code of Criminal Procedure, 1973, however, it cannot be denied that an opportunity is to be given to the State to file an appropriate status report, especially when the chargesheet, at that stage, was not filed.

13. While the procedure adopted by the learned ASJ may not be advisable, however, this Court cannot lose sight of the fact that the prosecution is seeking cancellation of bail thereby depriving the respondent of his personal liberty.

14. Much water has flown since the respondent was granted bail. It is not the case of the prosecution that post the grant of bail, the respondent has impeded the cause of justice in any manner or has misused the liberty.

15. The FIR was registered on 26.08.2022 and the impugned order was passed way back on 17.10.2022.

16. Chargesheet in the present case has already been filed and, therefore, the respondent admittedly is no longer required for any custodial interrogation.

17. 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.

18. 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.

19. In such circumstances, considering the aforesaid discussion, liberty granted to the respondent cannot be taken away after more than 2 years.

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

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

**AMIT MAHAJAN, J**

**DECEMBER 4, 2024**
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