



2024:DHC:7174



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

Date of decision: 10th SEPTEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 7044/2022**

I

.....Petitioner

Through: Ms. Anshu Priyanka, Mr. Vipul Saluja and Mr. Aakash Goswami, Advocates.

versus

STATE (NCT OF DELHI) AND ANR.

.....Respondents

Through: Mr. Yudhvair Singh Chauhan, APP for the State.

Mr. Sandeep Sharma, Mr. Amit Choudhary, Ms. Kavya Dauk, Mr. Kavish Sharma, Mr. Anil Kumar, Mr. Manjul Kumar Tiwari, Mr. Bed Prakash, Ms. Pragyanjali Prakhar and Ms. Anoushka Sharma, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner/victim has approached this Court seeking cancellation of bail granted to Respondent No.2/accused herein *vide* Order dated 10.11.2022 passed by the Ld. learned Additional Sessions Judge-03, (South), Saket Courts, New Delhi.
2. The facts which emerge out of the material on record discloses that on 26.09.2022, a PCR call vide DD No.122A was received at Police Station Mehrauli from a lady stating that a person has forcefully entered her house



and has committed rape on her and has kept her in confinement. On receipt of the said call, the Police reached the spot and took photographs of the place and the victim along with the accused was taken to the Police Station. The statement of the victim was recorded wherein the victim stated that she knew the Respondent No.2 only as a broker and on 25.09.2022 at around 06:00 PM, the accused under the influence of alcohol came to her rented house at F-166, B, 3rd Floor, Freedom Fighter Colony, New Delhi on the pretext to show her a place for rent and then started molesting her. She stated that when she tried to push him away, the accused started beating and abusing her and committed rape on her. On the said statement of the victim, the FIR No.595/2022 dated 26.09.2022 at Police Station Mehrauli for offences punishable under Sections 376/377/323/506/509 IPC was registered against the Respondent No.2/accused.

3. It is stated that the Respondent No.2 had joined the investigation in response to a notice served upon him. The Respondent No.2 in his statement to the Police stated that he met the victim through facebook when the victim commented on his photo and after that they started talking to each other. He stated that he then started showing the Petitioner some flats and during this process they became friends and they entered into a relationship. Respondent No.2/accused stated that on 25.09.2022, the Petitioner called him to her house saying that she is shifting to Mumbai and when he visited the house of the victim, they made sexual relations and after that they got into an argument as the victim demanded money from him which he denied.

4. Medical examination of the Petitioner was conducted *vide* MLC No.8353/2022. The Petitioner was produced before the Ld. MM, Saket Courts for recoding of statement under Section 164 Cr.P.C where the



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Petitioner corroborated her earlier statement given at the time of registration of the FIR.

5. Material on record indicates that the CDR of the Petitioner and Respondent No.2 shows that they were in contact from June, 2022 i.e., about three months before filing of the FIR, and most of the calls have been made by the Respondent No.2.

6. Material on record indicates that Respondent No.2 had approached the Ld. Trial Court for grant of bail and *vide* the Impugned Order dated 10.11.2022 passed by the Ld. learned Additional Sessions Judge-03, (South), Saket Courts, New Delhi, the Respondent No.2 was granted bail. The reasons given by the Trial Court for granting bail to Respondent No.2 are; (a) the Petitioner and the Respondent No.2 were talking to each other on various occasions and this fact has also been admitted by the Petitioner and the same also suggests that the Petitioner and the Respondent No.2 were well acquainted with each other; (b) there is no previous criminal history of the Respondent No.2; and (c) investigation is complete and the trial is going to take considerable amount of time.

7. It is this Order dated 10.11.2022 which is under challenge in the present petition.

8. Learned Counsel appearing for the Petitioner states that regular attempts are being made by Respondent No.2 to pressurize the Petitioner to withdraw the FIR. He states that written complaints have been given to DCP but not action has been taken. He states that at the time of incident, the bed sheet and photographs were seized from the site. He states that while granting bail, the FSL report and CDR were awaited, and therefore the Trial Court ought not to have granted bail to Respondent No.2 at that juncture.



9. Learned Counsel for the Petitioner further states that the Trial Court has ignored the fact that out of total 45 calls between the Petitioner and Respondent No.2, 44 calls were made by Respondent No.2 and only 1 call was made by the Petitioner and, therefore, the conclusion arrived at by the Trial Court that the Petitioner and Respondent No.2 were in constant touch and knew each other is not correct. He also states that the investigation has not been conducted in a proper way because the mobile phone of the Respondent No.2 was not recovered and facebook chats has also not been provided to the Investigating Officer by Respondent No.2. He also contends that the finding of the Trial Court that on 25.09.2022, the Petitioner had made a call from the phone of the Respondent No.2 at Swiggy App to order food for herself and Respondent No.2 is not corroborated by any material.

10. Learned APP appearing for the State submits that the offence committed by the Respondent No.2 is serious and therefore, the Respondent No.2 ought not to have been granted bail by the Trial Court.

11. Learned Counsel appearing for Respondent No.2 states that the trial is at advanced stage and all the witnesses have been examined. Even though the Petitioner states that attempts are being made to threaten her but no FIR has got registered by the Petitioner and the Petitioner has also not taken recourse to legal measures available to her. He, therefore, states that in view of the fact that the trial is at an advanced stage, bail granted to Respondent No.2 should not be cancelled.

12. Heard learned Counsel appearing for the Parties and perused the material on record.

13. The Petitioner, by way of the present petition, has challenged the Order dated 10.11.2022 *vide* which the Respondent No.2 has been granted



bail by the Trial Court. The Respondent No.2 has been granted bail on several conditions and one of the conditions of granting bail to Respondent No.2 was that the Respondent No.2 would not tamper with the evidence/witnesses/record. If that was the case, the Petitioner ought to have approached the Court which has granted bail for getting the bail cancelled and substantiate that the conditions for granting bail had been violated. Moreover, other than giving complaints, the Petitioner has not taken any steps to get the FIR registered. This Court is primarily dealing with the challenge of the Order granting bail to the Respondent No.2.

14. The parameters for grant of bail have been laid down by the Apex Court in several judgments. In Ram Govind Upadhyay v. Sudarshan Singh, (2001) 3 SCC 598, the Apex Court explained the factors to be considered for granting bail, wherein the Apex Court has held as under:-

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be



attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (emphasis supplied)

15. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., 2010 (14) SCC 496, the Apex Court has observed as under:-

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order 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.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]



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. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)”

15. The parameters for setting aside the order granting bail has already been laid down by the Apex Court. It is well settled that bail once granted should not be interfered with unless there are very cogent and overwhelming circumstances. The Apex Court in Dolat Ram v. State of Haryana, (1995) 1 SCC 349 has observed as under:

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the



bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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 the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

16. Similarly, the Apex Court in CBI v. Subramani Gopalakrishnan, (2011) 5 SCC 296 has observed as under:

“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the



possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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 the trial.”

17. The aforesaid judgment has been upheld by the Apex Court in X v. State of Telangana, (2018) 16 SCC 511. The Apex Court in the said judgment held that; a) bail once granted can be cancelled only when there is interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner, b) when the factors for grant of bail have not been considered by the Court granting bail, c) when irrelevant considerations have been taken into account while granting bail.

18. Investigation is over and chargesheet has been filed. Merely making allegations that Respondent No.2/accused is threatening the Prosecutrix would not be sufficient for cancelling the bail already granted and the Petitioner has to take steps in accordance with law to establish the allegations.

19. A perusal of the Impugned Order passed by the Trial Court indicates that the Trial Court has taken into account relevant factors which are necessary to be considered while granting bail to Respondent No.2. Apart from the fact that the Petitioner is alleging rape which, no doubt, is a very serious offence, no reason has been given by the Petitioner as to why the Respondent No.2 should be kept in custody. The fact that Respondent No.2



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is accused of an offence of rape alone is not sufficient for cancellation of bail already granted. The Trial Court has examined the circumstances and has come to a conclusion that in the present case, bail should be granted to the accused, which is a plausible view and just because there can be another plausible view alone cannot persuade this Court to substitute its opinion to the one arrived at by the Trial Court unless the Court is satisfied that irrelevant considerations have been taken on record while granting bail and relevant material has not been taken into account while granting bail, which is not there in the present case. It is well settled that bail is not punitive in nature and bail is the rule and jail is the exception.

20. In view of the above, this Court is not inclined to interfere with the Impugned Order passed by the Trial Court granting bail to Respondent No.2.

21. With these observations, the petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 10, 2024

S. Zakir