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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 7131/2024

MR RAKESH KUMAR & ORS.

.....Petitioners

Through: Mr. Sumeet Shokeen and
Mr. Vikram Dagar,
Advocates.

versus

STATE GOVT OF NCT OF DELHI
& ANR.

.....Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Insp. Pawan Kumar,
PS Kanjhawala.
Ms. Shreya Lamba,
Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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10.12.2024

1. The present petition is filed challenging the order dated 24.08.2024 (hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), North West District, Rohini Courts, Delhi, whereby Respondent No.2 was admitted on bail in FIR No. 328/2024 dated 29.07.2024, registered at Police Station Kanjhawala, for offences under Sections 109(1)/3(5) of the Bharatiya Nyaya Sanhita, 2023 ('**BNS**') and Sections 25/27 of the Arms Act, 1959.

2. The present FIR was registered on a complaint made by one Rahul. It is alleged that on 29.07.2024, at around 8:30AM, when the complainant and his friends were doing exercise at Ladpur Village, a quarrel erupted between the complainant and



one of his friends, namely, Pooja. It is alleged that the accused persons also started quarreling with the complainant. It is alleged that although the accused persons opened fire at the spot and shot three rounds, however, no one was injured. Thereafter, the complainant went to the house of accused Virender along with the petitioners and some of his friends, where the accused persons and the boys with them allegedly started firing indiscriminately as soon as the gate was opened. It is alleged that a total of 10-12 shots were fired. During the incident, Petitioner No.1 (uncle of the complainant) sustained three gun shot injuries. Petitioner No.2 (brother of the complainant) and Petitioner No.3 also sustained one gun shot injury each. The injuries were opined to be grievous in nature.

3. The learned counsel for the petitioners submits that the learned Trial Court has arbitrarily granted bail to Respondent No.2 in a hasty manner without considering the gravity of offence.

4. He submits that the learned Trial Court has erroneously observed that Respondent No.2 was not holding any weapon in his hands. He submits that the CCTV footage clearly shows Respondent No.2 brandishing a gun in his hand and it is specifically alleged in the FIR that Respondent No.2 had also fired upon the complainant party.

5. He further submits that the injuries suffered by the victims are grievous in nature and a total of five gun shot injuries were sustained by the victims.

6. He submits that the accused persons and the victims are residents of the same village and they have been pressuring and threatening the victims to settle the matter. He submits that a



complaint in this regard was preferred by the petitioners on 15.08.2024, however, the same has not been considered by the learned Trial Court.

7. The learned counsel for Respondent No.2 has contested the present petition and argued that the shots were fired in self defence.

8. She submits that the learned Trial Court has rightly taken into account the cross-FIR pending between the parties and enlarged Respondent No.2 on bail after considering that his custody is no longer required.

9. She submits that Respondent No.2 was merely a bystander and he did not engage in the scuffle at any point. She submits that the allegations against Respondent No.2 are baseless.

10. She further submits that no action has been taken by the police on the cross-FIR registered at the instance of co-accused Virender.

11. The learned Trial Court granted bail to Respondent No.2 by the impugned order after observing that a cross-FIR had been registered at the instance of the accused Virender on the same day. It was noted that it had been alleged in the cross FIR that two shots had been fired by Rahul (the complainant in the present case) during the first incident. It was also noted that there was no weapon in the hand of Respondent No.2 as per the CCTV Footage and only accused Virender is seen firing upon the complainant party. It was further observed that the complainant party had reached the house of the accused despite the previous scuffle.

12. The learned Trial Court also weighed in that the investigation *qua* Respondent No.2 was almost complete and he



has clean antecedents.

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

14. 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. In the case of **Jagjeet Singh v. Ashish Mishra : (2022) 9 SCC 321**, advertent to a catena of judgments, the Hon'ble Apex Court had discussed the law in relation to 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 Bharatiya Nyaya Suraksha Sanhita, 2023]. It was noted that the bail can be cancelled where the same is granted in ignorance of relevant factors. The relevant portion of the judgment is reproduced hereunder:

"5. Cancellation of bail is a serious matter. Bail once granted can be cancelled only in the circumstances and for the reasons which have been clearly stated by this Court in a catena of judgments. It would be appropriate to refer to a few of them before dealing with the rival contentions.

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10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not



undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

(emphasis supplied)

15. 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....”

16. It is argued on behalf of the petitioners that the learned Trial Court has erroneously recorded that Respondent No.2 was



not holding any weapon in his hand as per the CCTV Footage of the incident. It is also argued that it has been specifically alleged that Respondent No.2 had also fired upon the complainant party.

17. A bare perusal of the pictures annexed with the Status Report show that Respondent No.2 was holding weapons in both his hands. The Status Report however also mentions that Respondent No.2 cannot be seen firing at the complainant party and the shots were fired by the accused Virender.

18. On being pointedly asked, the learned Additional Public Prosecutor for the State states that all the bullets have been fired by only one gun.

19. Although the offences are serious in nature and the learned Trial Court has wrongly recorded that Respondent No.2 was not holding any weapon, however, at this stage, it appears that Respondent No.2 had not fired upon the victims and the main assailant was accused Virender. While the allegations and defences will be seen during the course of trial, however, it cannot be ignored that Respondent No.2 does not seem to have fired the shots that caused the grievous injuries. The implication of the presence of Respondent No.2 at the spot of incident with the weapons will be seen after the parties have led their evidence.

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. In the present case, I do not see any such ground being made out against the Respondent No. 2.

21. Insofar as the threats to settle the matter are concerned, a bare perusal of the complaint shows that the threats were



extended by the siblings of accused Virender. There is no material to show that Respondent No.2 was aware of the said threats or that the same were made at his instance. Even so, appropriate action will be taken in regard to the said complaint in accordance with law.

22. The learned Trial Court has imposed the condition on Respondent No.2 to not influence the witnesses in any manner, however, considering the gravity of the alleged offences, this Court considers it apposite to further direct Respondent No.2 to refrain from contacting the complainant and victims in any manner as well.

23. In such circumstances, this Court does not consider it apposite to interfere with the liberty granted to Respondent No.2.

24. The petition is, therefore, dismissed.

25. It is made clear that the observations made in the present order are only made for the purpose of deciding the present petition and shall not affect the trial in any manner.

AMIT MAHAJAN, J

DECEMBER 10, 2024