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

+ **CRL.M.C. 7657/2024**

ANIL KUMAR CHATURGUN MAURYAPetitioner

Through: **Mr. Rohit Gupta,**
Advocate

versus

STATE (NCT OF DELHI) & ANR.Respondents

Through: **Mr. Ajay Vikram Singh,**
APP for the State

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **26.09.2024**

CRL.M.A. 29203/2024 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The present petition is filed under Section 483 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') read with Section 528 of the BNSS seeking cancellation of bail granted to Respondent No.2, in FIR No. 412/2022 dated 31.07.2022, registered at Police Station Laxmi Nagar, by the order dated 21.05.2024, passed in Bail Appl. No. 2689/2022.

4. Before granting bail, this Court had considered that the applicant has joined investigation and has been cooperating with the investigating agency. It was further noted that the rice, which was the subject matter of dispute, was in fact supplied by the accused and some payments were made. It was also noted that the accused had deposited a sum of ₹5 lakhs in the account of the company– Kiya Agro Industries Private Limited (hereafter 'the

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company’) to show his *bona fides*.

5. The learned counsel for the petitioner submits that certain wrong averments were made which led to passing of the order dated 21.05.2024. He submits that it was wrongly misrepresented that the amount of ₹5 lakhs was deposited in the account of the company even though only ₹2.5 lakhs were deposited.

6. He submits that the accused took advantage of the dispute between the petitioner and another Director of the company, namely, Mr. Amit Goyal. He submits that Mr. Amit Goyal conspired against the petitioner with the accused and entered into a settlement without the knowledge of the petitioner.

7. It is not disputed that the complainant was represented before this Court and the arguments advanced by the parties were duly recorded.

8. The learned counsel for the petitioner states that some other lawyer was engaged at that stage and he was not properly instructed.

9. In the opinion of this Court, the same cannot be a ground to cancel the bail.

10. 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.

11. 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, advertng 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**

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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....

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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.

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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.

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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)

12. 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)

13. While misrepresentation can be a ground for cancellation of bail, it is pertinent to note that the misrepresentation is not alleged *qua* the merits of the case.

14. Insofar as the misrepresentation regarding payment of ₹2,50,000/- instead of ₹5,00,000/- is concerned, even if the same is assumed to be true, as noted above, the complainant was duly



represented before this Court when the bail was granted and the said objection was not raised at that time. It was also duly noted that there seemed to be some discord that the money was paid to one of the Directors of the company with whom the other Director is in dispute.

15. Even so, the payment was not a pre-condition for grant of bail. The same was made by the accused to show his *bona fides*, however, it is evident from the order dated 21.05.2024 that a number of other factors were considered before granting bail, including, that the applicant had joined the investigation and he was cooperating with the investigating agency and that the entire material seemed to be documentary in nature which was already available with the Investigating Agency.

16. 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.

17. On being asked, the learned Additional Public Prosecutor for the State submits that the chargesheet is likely to be filed in the near future.

18. In such circumstances, when the investigation is almost complete and the chargesheet is about to be filed, this Court finds no reason to cancel the bail granted to Respondent No.2.

19. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 26, 2024

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