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

+ **CRL.M.C. 8498/2024 & CRL.M.A. 32421/2024,**
CRL.M.A. 32422/2024

TABASSUM

.....Petitioner

Through: Mr. Nishank Mattoo, Mr.
Ishan K. Dubey, Mr.
Rishabh Munjal and Ms.
Tanya Sharma, Advs.

versus

STATE OF N.C.T. OF DELHI & ORS.Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
with SI Arvind Verma, PS
Gokalpuri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **25.10.2024**

1. By the present petition, the petitioner challenges the order dated 05.08.2024 passed by the learned Special Judge (NDPS) / Additional Sessions Judge (**ASJ**), North East, KKD Courts, Delhi, pursuant to which the petitioner's challenge to the order dated 06.05.2024, passed by the learned Metropolitan Magistrate (**MM**)-03, NE, KKD Courts, granting bail to Respondent Nos. 2 and 3, was rejected.

2. The learned MM, by order dated 06.05.2024, admitted Respondent Nos. 2 and 3 on bail in FIR No. 301/2017 dated 28.06.2017, registered at Police Station Gokul Puri, for offences under Sections 380/448/420/467/468/471/506/34 of the Indian Penal Code, 1860 (**IPC**).

3. The FIR was registered on an allegation that the locks of

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the property bearing No. A-27, Khasra Number 78, Village Meerpur Turk, Gali No.1, Chand Bagh, Karawal Nagar, Delhi ('**subject property**') were broken and the petitioner had been dispossessed. It is alleged that Respondent Nos. 2-3, on multiple occasions, had approached the petitioner for selling the property in question. It is further alleged that the possession of the property had been taken forcibly on the basis of forged documents.

4. The learned counsel for the petitioner submits that the Respondent No. 3's bail application was dismissed on an earlier occasion by a detailed order dated 09.04.2024, passed by the learned Additional Sessions Judge-02, NE, KKD, Delhi. He submits that the accused persons concealed the said fact and filed a subsequent bail application, which was allowed by the learned MM.

5. He submits that the bail application was allowed without giving opportunity to the complainants and the aspect of dismissal of the bail application on an earlier occasion was not brought to the knowledge of the learned MM even by the prosecution.

6. He submits that the application was also not supported with any affidavit and thus was not maintainable.

7. He further contends that the bail applications filed by the accused persons were dismissed by the learned Additional Sessions Judge, and at that stage chargesheet had already been filed. He submits that there was no change in circumstances that would have entitled the accused persons to file a bail application before the learned MM under Section 437 of the Code of Criminal Procedure, 1973 ('**CrPC**').



8. *Prima facie*, there is a merit in the arguments raised by the learned counsel for the petitioner. The order appears to have been passed on concealment of important fact that the bail application was dismissed by the learned Court of Sessions by a detailed order on merits.

9. The dismissal of the bail application by the learned Additional Sessions Judge by order dated 09.04.2024 ought to have been brought to the knowledge of the learned MM.

10. The bail application was dismissed by the learned ASJ by order dated 09.04.2024 and subsequent application was filed by the accused under Section 437 of the CrPC without any change in circumstance which led to passing of the order dated 06.05.2024.

11. Though, it is true that each day of custody can in some cases give rise to a fresh cause of action, however, the accused at the same time is not permitted to file repeated bail applications (Ref: ***Kalyan Chandra Sarkar v. Rajesh Ranjan and Another : (2005) 2 SCC 42***).

12. It is, however, not disputed that the accused persons were released pursuant to the order dated 06.05.2024. The chargesheet has already been filed and the matter has since proceeded with the trial.

13. The learned MM noted that the accused persons and their family members are residing in the subject property for the last 13 years and whether the accused have forged the documents to obtain the possession is a matter of trial.

14. It was further noted that the accused are admittedly not flight risk and no material has been brought on record to show that the accused have ever tried to influence or threaten the witnesses.



15. The learned MM also noted that the investigation is complete and all the relevant material is also in possession of the prosecution and hence, there is no chance of tampering with the evidence. The age of the accused persons were also taken note of.

16. The learned ASJ, by impugned order, rightly noted that the reason for grant of bail cannot be said to be erroneous.

17. The learned ASJ dismissed the challenge to the order passed by the learned MM, noting that the accused had already spent considerable period of time in custody.

18. It was further held that the conclusion arrived at by the learned MM does not suffer from non-application of mind and the reason for granting bail are borne out from the *prima facie* view of the evidence and the other circumstances.

19. As rightly noted by the learned ASJ in the order dated 05.08.2024, the learned MM admitted the accused persons on bail only on relevant considerations.

20. The bail granted to the accused can be set aside / cancelled if the order is passed on an erroneous considerations and without appreciating the relevant facts.

21. As noted above, the learned MM rightly considered the parameters for grant of bail.

22. Moreover, much water has flown since passing of the order dated 06.05.2024. The accused persons have since been released on bail and that too after spending considerable period of time in custody. No allegation in regard to abuse of the liberty has been made.

23. The Investigating Officer is present in Court and is clueless about the case.

24. Considering the totality of the circumstances, this Court



does not consider it apposite to entertain the present petition to cancel the bail granted to the accused persons.

25. In view of the above, the present petition is dismissed. Pending application(s) also stand disposed of.

26. A copy of this order be sent to the concerned SHO.

AMIT MAHAJAN, J

OCTOBER 25, 2024

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