



\$~61

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

+ **CRL.M.C. 8804/2024 & CRL. MAs 33670-71/2024**

XXXXX

.....Petitioner

Through: Mr. Prashant Sodhi and Mr. Kunal Kapoor, Advocates.

versus

STATE OF NCT OF DELHI & ANR

.....Respondents

Through: Mr. Nawal Kishore Jha, APP for State with SI Suman PS Dwarka South and SI Ritu PS Mohan Garden, Delhi.
Mr. Achintya Dvivedi, Advocate for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

11.11.2024

%

1. By way of present petition, the petitioner/prosecutrix seeks cancelation of bail granted to the respondent No.2 vide order dated 28.02.2024 passed by learned ASJ (FTSC) (RC) in Bail I.A. No.06/2024 filed by the respondent No.2 in FIR No.0123/2022 registered under Sections 376//506/328 IPC at P.S. Dwarka, New Delhi.

2. The instant petition is premised on the ground that post grant of the aforesaid order, the prosecutrix has received veiled threats in the form of phone calls from international numbers as well as by way of an incident by which a paper wrapped around a stone was thrown at her which contained the following words, “*shikayat nahi samjhota karo jo hua so hua*”. The aforesaid incident statedly occurred on 22.05.2024, pertaining to which an FIR No.0174/2024 was registered under Section 506 IPC at P.S. DLF,



Phase- III, Gurugram, Haryana. It is stated that the petitioner, thereafter, preferred an application on 28.05.2024 before the Trial Court seeking cancellation of bail and in the said proceedings, Status Reports were filed, a copy whereof has been handed over today in the Court.

3. Learned APP for the State submits that as the calls made were international, therefore, the identity of the caller could not be established despite the best efforts by Cyber Cell, Dwarka, New Delhi. Eventually, the application seeking cancellation of bail came to be dismissed by the Trial Court on 30.09.2024, finding no material in support of the allegation.

4. As far as the FIR registered at P.S. Gurugram is concerned, a copy of the order dated 08.10.2024 is also handed over in the Court. The relevant extract of the said order is reproduced as under:

“...3.Today the SHO Balraj filed an affidavit wherein he deposed that the matter has been investigated by SI Rakesh, Addl. SHO handed over the file without his knowledge to ASI Hawa Singh, then L/ASI Geeta and thereafter PSI Ankit for filing the status report. It has been deposed that the matter has been investigated by ASI Virender. He did not deny the fact regarding the FIR No.40/1993 mentioned in reply however he explained that in the status report dated 18.09.2024 it was also mentioned that the said fact had to be verified as the same was mentioned on the basis of the record produced by the complainant. Time was consumed for verifying the said record. However, on verification the said case, it was found that the said case was registered against one other person of same name Anil Thakur, however, particulars of parents and residence were different. As per verification the applicant/accused has no connection with FIR No.40/1993.

4. Separate status report was filed by ASI Virender where it is mentioned that as per the investigation till date, no evidence has been found against the applicant/accused and his son Anshuman to arrest them. At the same time prayer is made to



dismiss the bail on the ground that deep investigation is required to be done and the apps used and the international calls received to be done and the apps used and the international calls received on the mobile phones of complainant and her husband are yet to be investigated with the assistance of Cyber Cell. Request is made not to grant the anticipatory bail otherwise applicant/accused would tamper with evidence influence and pressurize the witnesses.

5. The learned counsel for applicant/accused has submitted that the application for cancellation of bail of the applicant/accused filed by complainant in FIR No.123/2022 u/s 384/506/328/376 IPC has been dismissed vide order dated 30.09.2024 by the court of learned ASJ.FTC (RC) South West, District, Dwarka. The learned Trial Court has dealt with the issue of international calls, stone thrown upon complainant with a threatening message and after observing the same not finding any substance in application, the said application was dismissed. The learned counsel submitted that prosecution has crossed every limit to get the bail dismissed somehow and even misled the court and gave false fact regarding FIR No.40/1993 registered against the applicant/accused at Bihar. He prayed that the present FIR is totally misuse of the process of law. He further submitted that not only applicant/accused has been harassed by the IO by calling him time and again at police station and making him sitting in the police station for a long time unnecessarily but also his son is not spared. The learned counsel prayed to allow the bail application.

6. Heard. The applicant/accused has been granted interim bail vide order dated 19.09.2024. In compliance of order he joined the investigation. Thereafter, also he joined the investigation. The FIR No.40/1993 registered at PS LMNO-Bihar was not found registered against him. Through reply was forwarded by learned APP even knowingly said fact is not verified. Learned APP could not assist the court how section 195A is made out. Further, cancellation of bail of applicant/accused filed by the complainant in FIR No.123/2022 u/s 384/506/328/376 IPC has been dismissed wherein the learned Trial Court has also considered the alleged incident of



throwing stone wrapped in a paper containing threatening message. Moreover, as per own reply dated 30.09.2024 of the prosecution no evidence has come on record till date to arrest the applicant/accused or his son.

7. All the status reports/replies have been forwarded by learned APP. During the course of arguments the learned APP failed to assist the court how section 195A IPC has been made out in the present case which was invoked by the IO, after the grant of interim bail. He also failed to explain about contradictory stand in its last status report, as on the one hand it is submitted that no evidence has come on record during investigation conducted till dated against the applicant/accused and his son to arrest him and at the same time it is prayed that the bail be dismissed as the applicant/accused could pressurize the witnesses and the applicant/accused is required for deep investigation.

8. Hence, keeping in view the above discussion, overall facts and circumstances, this court is of the considered opinion that applicant/accused deserves the concession of anticipatory bail. Hence the present bail application is hereby allowed. In the event of his arrest, the applicant/accused shall be released on anticipatory bail subject to furnishing of bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of Investigating Officer/Arresting Officer.

The petitioner shall abide by the conditions contained in Sub-Section (2) of Section 438 Cr.PC.

9. Before parting with order, this court finds it necessary to bring into notice of concerned higher authorities, how the state has filed reply without verifying the facts and same is forwarded by the prosecution without getting the facts verified in order to mislead the court. The present case seems a classical case of misuse of State Machinery, for ulterior motives. The copy of this order along with order dated 19.09.2024 be sent to Commissioner of Police, Gurugram for information and for perusal and also to the Director, Prosecution, State of Haryana, Panchkula, how the reply/status report of the bail applications are filed to the court without verifying the facts to mislead the court. File be consigned to the record room after due compliance...”



5. Learned APP for the State further submits that the respondent No.2 was released on regular bail after a custody of 22 months and that in the Trial, the prosecutrix already stands examined.

6. Considering that none of the allegations are substantiated by any material on record, this Court finds no ground to entertain the present petition and the same is accordingly dismissed alongwith pending applications.

7. In case the petitioner seeks any protection, she will be at liberty to approach the concerned SHO/Trial Court which would look into the same in accordance with law.

MANOJ KUMAR OHRI, J

NOVEMBER 11, 2024/rd