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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 3543/2024 & CRL.M.A. 33870/2024 & CRL.M.A.
33871/2024

SH. DEEPAK KASHYAPPetitioner

Through: Mr. Sidhant Dhingra, Advocate

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Anand V. Khatri, ASC for State
with Insp.Mukesh Kumar

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

% **ORDER**
13.11.2024

1. The instant petition under Article 226/227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") (earlier Section 482 of the Code of Criminal Procedure, 1973) has been filed by the petitioner seeking the following reliefs:

"1. Quash/set-aside the order dated 11.08.2023 passed by the Hon'ble Court of Ms. Bharti Beniwal, Ld. Metropolitan Magistrate-11, District- Dwarka Courts, Delhi and Ld. Trial Court be directed to admit the petitioner on bail in FIR No-218 of 2023 registered before PS Janakpuri U/s 395/385/452/170/201/120-b/34 IPC; and /or

2. Pass any other order(s) as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

2. Learned counsel appearing on behalf of the petitioner submitted that



the bail was granted vide order dated 3rd August, 2023 for the offence punishable under Sections 385/452/34 of the Indian Penal Code, 1860 (IPC). It is submitted that while granting the bail, the learned Metropolitan Magistrate directed the applicant to surrender before the Jail Authorities on 12th August, 2023 and at that stage, there were no allegations levelled against the petitioner for the offence punishable under Section 395/170/201/120 of the IPC.

3. Therefore, in view of the above facts and circumstances, the impugned order dated 11th August, 2023 passed by the learned MM may be set aside.

4. *Per contra*, learned ASC for the State appearing on advance notice vehemently opposed the instant petition and submitted that after granting the bail, the applicant never appeared or cooperated with the investigating agency. During the investigation, some material has been collected by the Investigating Agency and on the basis of the new material, Sections 395/170/201/120-B of the IPC were added.

5. It is submitted that since the applicant is a Government Servant in the Income Tax Department, therefore, there is strong possibility that he can misuse his position to threaten the complainant and the witnesses and also hamper the investigation of the case.

6. It is further submitted that two other accused are still absconding and they have not appeared before the investigating agency. It is submitted that the applicant has already been declared Proclaimed Offender (PO) in the instant case. It is submitted that the applicant is clearly seen in the CCTV camera and the investigation is at the initial stage.

7. It is submitted that during the investigation, Section 395 of the IPC is



invoked in the present case against the petitioner which is a serious offence and the bail granted by the concerned Court was in the lesser offence which were punishable under Sections 385/482/452/340 of the IPC, therefore, the offence punishable under Section 395 is an offence which is triable by the Sessions Court and not by the Magistrate Court.

8. Therefore, in view of the above facts and circumstances, there is no illegality or error in the impugned order and the instant petition, being devoid of any merit, is liable to be dismissed.

9. Heard learned counsel appearing on behalf of the petitioner and perused the contents made in the petition.

10. The petitioner herein has challenged the order passed by the learned MM, contents of which reads as under:

“11. First of all, I would like to address the submission advanced by Ld.Counsel for accused/respondent Deepak that this court does not have jurisdiction to entertain the present application and this application is only maintainable before Ld. Revision Court. This court derives its power to decide the instant application in view of Section 437(5) CrPC. Hence, the first argument advanced by Ld. Counsel is devoid of any merits. During the course of arguments, it was repeatedly argued by Id. Counsel for the respondent/non-applicant/accused that he has not violated any of the condition of the bail and no supervening circumstance have occurred. It was also argued that it is not the case that the accused has not joined the investigation or has tried to contact the complainant. On the other hand, Id. APP for the State submits that he is seeking cancellation of bail on the ground that a serious offence of dacoity has been committed and relevant material was omitted from consideration at the time when the bail was granted to the accused person.

*12. At this stage, this Court deems it fit to advert the findings of Hon'ble Supreme Court of India **Pradeep Ram Vs. State of***



Jharkhand And Anr. (2019) 17 SCC 326 wherein the Hon'ble Supreme Court of India has observed that addition of a serious offence can be a circumstance where the court can direct that accused be arrested and committed to custody even though an order of bail was earlier granted in his favour in respect of the offences with which he was charged when his application for bail was considered and a favourable order was passed. The recourse available to an accused in a situation where after the grant of bail, further cognizable and non-bailable offences are added to the FIR, is for him to surrender and apply afresh for bail in respect of the newly added offences. The investigating agency is also entitled to move the court for seeking custody of the accused by invoking provision under Section 437(5) CrPC. The observation was also relied upon by HMJ Hima Kohli in case titled as ***Ms.X Vs. State of Maharashtra in Crl. Appeal No.822-823 of 2023***, while allowing the bail cancellation application.

13. In case reported as ***Dinesh M.N. (S.P) Vs. State of Gujarat (2008) 5 SCC 66 and Narendra K.Amin (Dr.) Vs. State of Gujarat (2008) 13 SCC 584***, the Hon'ble Supreme Court of India held that bail under Section 437 (5) CrPC can be cancelled by the court if the order granting bail is perverse for the reason that irrelevant material of substantial nature has been taken into account or relevant material has been omitted from consideration.

14. I would also like to advert findings of Hon'ble Supreme Court of India in case reported as ***Vipan Kumar Dhir Vs. State of Punjab and Anr. in Crl. Appeal No.1161-1162 of 2021*** [arising out of SLP (Crl) No.5404-5405 of 2021] wherein it was held that bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by court when the investigation is at the threshold are also amongst a few situation where bail can be cancelled.

15. In the instant case, the CCTV has been placed on record by the complainant and State. The record has been perused. It is



evident in CCTV footage that accused Deepak, who is a government servant, is trespassing in the house while wearing his official uniform. He was admitted to bail for offence u/s 385/452 IPC but the offence, which has actually been committed, is very serious in nature. It is still unclear whether he was on leave or had made any departure entry in his concerned department. He has misused his official ID Card to enter the house of the complainant in broad day light. Gravity of the offence committed demands no leniency in the present case. It has been alleged by the complainant that they have also wrongfully taken the mobile phone of family members/guards/servants of the complainant. The offence has been committed by more than 5 persons and it has been admitted by the Investigating Officer/Inspector Mukesh Kumar that after obtaining legal opinion, he has added the relevant sections. The offence which has stated to have been committed by the accused persons is a Session triable matter and at the time of considering the bail application, this Court/Ld. Link Court did not take into account the relevant material which was there on record. It has already been stated above that the Hon'ble Supreme Court of India in case titled as **Dinesh M.N. (S.P) Vs.State of Gujarat (2008) 5 SCC 66 and Narendra K.Amin (Dr.) Vs. State of Gujarat (2008) 13 SCC 584** has held that bail can be cancelled under Section 437(5) CrPC solely on the ground that irrelevant material of substantial nature has been taken into record and relevant material has been omitted from consideration. Admittedly, it is not the case that supervening circumstances have occurred/taken place but since cognizable and non-bailable/serious offences have now been added, this Court allows the bail cancellation application filed by the State as well as the complainant. Accused is directed to surrender himself before Jail Authorities on 12.08.2023 at 10AM and IO is directed to file compliance report on 14.08 2023. Let the copy of this order be given to all parties.”

11. Upon perusal, it is made out that the learned MM Court passed the impugned order on the basis of subsequent developments in the case, where



additional penal provisions were added.

12. The paragraph no. 12 and 13 of the impugned order also clearly shows that the learned Court below relied upon the law laid down by the Hon'ble Supreme Court with regard to cancellation of bail.

13. Therefore, the arguments taken by the learned counsel for the petitioner do not hold any water, as this Court is of the view that the learned Court below duly abided by the settled position of law.

14. Furthermore, the material on record also shows that despite directions passed by the learned Court below, the accused/petitioner herein failed to surrender and is absconding, therefore, leading to him being declared as a Proclaimed Offender.

15. At last, this Court also deems it appropriate to appreciate the fact that despite grant of bail, the accused did not co-operate with the investigative agency, a ground cogent enough to cancel the bail.

16. In view of the above facts and circumstances, this Court does not find any reasons to interfere with the impugned order, and is of the view that the instant petition is liable to be dismissed.

17. Accordingly, the instant petition is dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J

NOVEMBER 13, 2024

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Click here to check corrigendum, if any