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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 8956/2024**

M/S NETSITY SYSTEMS PVT LTDPetitioner

Through: Mr. C.M. Verma, Adv.
with the AR of the
petitioner in person.

versus

THE STATE GOVT OF NCT OF DELHI
& ANR.

.....Respondents

Through: Mr. Utkarsh, APP for the
State with Maya Shankar,
PS Preet Vihar.

+ **CRL.M.C. 8957/2024**

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Through: Mr. Utkarsh, APP for the
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CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **18.11.2024**

**CRL.M.A. 34284/2024 in CRL.M.C. 8956/2024 (exemption
from filing certified copies of orders / annexures / documents)**

**CRL.M.A. 34285/2024 in CRL.M.C. 8957/2024 (exemption
from filing certified copies of orders / annexures / documents)**

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

CRL.M.C. 8956/2024 & CRL.M.C. 8957/2024

3. By the present petitions, the petitioner challenges the order dated 16.08.2024, passed by the learned Additional Sessions Judge (ASJ)-02 / Special Judge (NDPS), East, Karkardooma Courts, Delhi, whereby the application filed by the petitioner



under Section 439(2) of the Code of Criminal Procedure, 1973 (CrPC) seeking cancellation of bail granted to respective Respondent Nos. 2 in the present petitions, was dismissed.

4. The respective Respondent Nos. 2 in the present petitions were admitted on bail by order dated 10.11.2023, passed by the learned Additional Chief Metropolitan Magistrate (ACMM), East, Karkardooma Courts, Delhi, noting that the chargesheet has already been filed and there is no chance of the accused absconding or tampering with the evidence or influencing the witnesses.

5. The learned ACMM also noted that no further investigation is pending.

6. It was further noted that even though the allegation made by the complainant is in regard to huge amount running in crores, however, the same cannot be the sole reason for taking the accused in custody.

7. The learned counsel for the petitioner submits that the pre-arrest bail applications filed by the respective Respondent Nos. 2 in the present petitions, were dismissed by the order dated 01.02.2023 passed by this Court in BAIL APPLN. 3058/2018 and BAIL APPLN. 3068/2018.

8. He submits that the respective Respondent Nos. 2 in the present petitions / accused were not granted pre-arrest bail despite the fact that the chargesheet had already been filed at that stage.

9. He submits that in such circumstances, there was no change in circumstance for the learned ACMM to allow the applications filed by the respective Respondent Nos. 2 in the present petitions / accused seeking grant of pre arrest bail.



10. The FIR was registered way back in the year 2018. Concededly, the chargesheet was also filed way back on 18.07.2022.

11. This Court, on an earlier occasion, dismissed the applications filed by the respective Respondent Nos. 2 in the present petitions, noting that interim protection was granted to the accused on their undertaking that the cheated amount would be repaid to the complainant.

12. The said bail applications were filed in the year 2018. The matters, thereafter, went on for years and the accused did not make any payment. In the meantime, the accused joined investigation and the chargesheet was filed.

13. This Court, noting the conduct of the respective Respondent Nos. 2 in the present petitions, dismissed the applications seeking pre-arrest bail.

14. Undoubtedly, when applications seeking pre-arrest bail were dismissed, no further application seeking pre-arrest bail could have been entertained by the learned Trial Court. However, in the present case, it appears that the chargesheet was filed on which the cognizance was taken and the accused persons were summoned and the bail bonds were filed under Section 88 of the CrPC. It is at this stage that subsequent applications were filed by the accused, which were decided by the order dated 10.11.2023 and the accused were admitted on bail.

15. The learned ASJ, in a challenge to the order dated 10.11.2023, noted that there is nothing on record to suggest that the accused persons were a flight risk and would tamper with the evidence or influence the witnesses.

16. It was further noted that the prosecution has not alleged



that the accused persons had violated any of the conditions of the bail.

17. The consideration for cancellation of bail stands on different footing than grant of bail. The Hon'ble Apex Court had discussed the grounds for cancellation of bail in exercise of jurisdiction under Section 439 (2) of the Code of Criminal Procedure, 1973 in the case of ***Himanshu Sharma v. State of Madhya Pradesh* : 2024 INSC 139**. The relevant portion of the judgment is reproduced hereunder:

“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)

18. Undisputedly, this Court had dismissed the applications filed by the accused persons on an earlier occasion on the ground that the chargesheet being filed cannot be the sole reason for admitting the accused on bail.

19. However, as noted above, the learned ACMM, while admitting the accused on bail, specifically noted that there is no chance of the accused persons tampering with the evidence or influencing the witnesses. It was further observed that, as per the prosecution, no further investigation is pending.

20. In view of the above, this Court finds no reason to interfere with the impugned order.

21. The learned counsel for the petitioner submits that the present petitions be transferred to the same Judge who had



dismissed the bail application ~~me~~ by the respective Respondent Nos. 2 in the present petitions on an earlier occasion.

22. The roster of the predecessor Judge has been changed. The Hon'ble Judge is today sitting in a Division Bench.

23. Considering the above, this Court does not consider it apposite to accede to the request made by the learned counsel for the petitioner.

24. The present petitions are, therefore, dismissed.

25. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

NOVEMBER 18, 2024

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