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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 9165/2024 & CRL. MAs 35094-95/2024**
DEEPAK KUMARPetitioner
Through: Mr. Satya Bhushan, Advocate

versus

STATE (GOVT. OF NCT OF DELHI) AND ANRRespondent
Through: Mr. Laksh Khanna, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
22.11.2024

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1. By way of the present petition, the petitioner, who is the complainant in the FIR No. 543/2022 registered under Sections 420/406/120B IPC at P.S. Vasant Kunj, Delhi, seeks to assail the order dated 02.09.2024 passed by learned ASJM-02, Patiala House Courts, New Delhi, vide which the respondent No.2/accused person namely *Mrs. M. Radha* has been granted regular bail.
2. Learned counsel for the petitioner submits that the instant petition is premised on two grounds, firstly, that the learned Trial Court has failed to appreciate the allegations in the correct perspective and secondly, it did not take notice of the other involvements of the respondent No.2, who is stated to be involved in 5 other FIRs of a similar nature, among other cases. He further submits that after taking into account all the relevant material and allegations against respondent No.2, this Court had dismissed respondent No.2's anticipatory bail application vide order dated 15.05.2024 passed in Bail Appln. 2912/2023.



3. Learned APP for the State submits that respondent No.2 was arrested on 26.06.2024 whereafter she was admitted to regular bail by the impugned order on 02.09.2024 i.e., after being in custody for a period of less than three months. He further submits that initially, considering the sections involved, only notice under Section 41-A Cr.PC was issued to the respondent No.2, however, she failed to join the investigation on account of which NBWs were obtained and the respondent No.2 was subsequently arrested. He also submits that along with the Status Report, the list of involvements of the respondent No.2 were also placed before the learned Trial Court. On merits, it is stated that the respondent No.2 is accused of entering into an Agreement to Sell with the complainant/petitioner with respect to a property of which she was not even the owner and in this manner, duped the petitioner. However, it is the case of respondent No.2 that she has been falsely implicated in the matter and is a genuine purchaser of the subject property/flat by means of a sale and purchase agreement from one *Imran*, against which she had even paid a consideration of Rs.15,00,000/- and was herself a victim of cheating and fraud. Even otherwise, it is submitted that the dispute, relating to the property in question, is civil in nature. It is further stated that the charge-sheet already stands filed in the present matter.

4. I have heard learned counsel for the parties and perused the record placed before me.

5. The FIR in the instant case was registered under Section 420/406/120B IPC and the charge-sheet has also been filed under the same sections. The respondent No.2 has remained in custody for a period of about three months. Though the impugned order has not recorded the factum of other involvements, however, the same was placed before the Trial Court in



the form of Status Report as well as the dismissal order passed by this Court. It is noted that once the bail has been granted to an accused, the considerations for cancellation of bail differ.

6. It is a settled position in law that Courts, while granting bail, are required to consider relevant factors such as nature of the accusation, role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk et al.

7. In Prasanta Kumar Sarkar v. Ashis Chatterjee, reported as (2010) 14 SCC 496, the Supreme Court observed:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.'*

8. The scope and powers of the Court while considering a challenge to the bail granted are well delineated in Puran v. Rambilas, reported as (2001)



6 SCC 338:

“10.It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.”

9. Further, in regard to the Court’s power in assessing the correctness of an order granting bail and the Court’s power while considering an application for cancellation of bail, the Supreme Court has observed in Mahipal v. Rajesh Kumar alias Polia, reported as **(2020) 2 SCC 118**, as under:

‘16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been



granted...'

10. The principles governing challenge to grant of bail were reiterated by the Supreme Court in Ajwar v. Waseem, reported as **2024 SCC OnLine SC 974**, and the same are reproduced hereinunder:

'27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order...'

11. Recently, Supreme Court in Manik Madhukar Sarve and Others v. Vitthal Damuji Meher and Others, reported as **2024 SCC OnLine SC 2271**, observed as follows:

'29. In Jagjeet Singh (supra)¹¹, a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr. P.C. is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail...'



12. Considering the totality of the facts as noted above, including the nature of the allegations as well as period of custody of respondent No.2, it is further noted that no allegation of violation of any of the bail conditions have been made against respondent No.2 and a reading of the impugned order does not indicate that it was passed on irrelevant considerations or is in any manner illegal or perverse.

13. Keeping in view the above-cited legal position and the aforesaid facts, no ground to entertain the present petition is made out and the same is accordingly dismissed, alongwith pending applications.

MANOJ KUMAR OHRI, J

NOVEMBER 22, 2024/rd