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

+ **CRL.M.C. 9704/2024 & CRL.M.A. 37223/2024**

NARENDRA KUMAR SRIVASTAVAPetitioner

Through: Mr. Chinmoy Pradip
Sharma, Senior Advocate
with Mr. Ravi Kumar, Mr.
Shailesh Kumar Sinha,
Mr. Irfan Hasieb, Mr.
Suman Kumar, Mr.
Krishna Jyoti Deka, Mr.
Ashish Kumar Pandey,
Mr. Vijay Deora and Ms.
Nisha, Advs.

versus

STATE OF NCT OF DELHI AND ANR.Respondents

Through: Mr. Satish Kumar, APP
for the State with SI
Karamveer, PS Mundka,
Delhi.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

10.12.2024

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1. The present petition is filed challenging the order dated 05.08.2024 (hereafter '**impugned order**'), passed by the learned Trial Court, whereby Respondent No. 2 was admitted on regular bail in FIR No. 366/2024 dated 02.05.2024, registered at Police Station Mundka, for offences under Sections 420/468/471/120B/34 of the Indian Penal Code, 1860 (**IPC**).

2. The FIR was registered on a complaint made by the petitioner, who is a partner of M/s. Narendra Polypack Industries (hereafter '**the Firm**'). Respondent No.2 had joined the Firm as Mundka Factory In-charge. It is alleged that the accused persons,



including the petitioner, in connivance with each other, had been stealing the raw materials purchased by the Firm and stored in the Mundka Factory. It is alleged that the accused persons had been further selling the valuable raw materials by hiding the same under waste scrap materials. It is further alleged that the accused persons had also created forged GST Bills of the factory and fraudulently paid advance GST.

3. The learned senior counsel for the petitioner submits that the impugned order was passed erroneously noting that the investigation is complete.

4. He submits that there are multiple accused in the present case and the investigation is still continuing. He submits that the other accused persons are also trying to take advantage of the impugned order and seeking bail on the ground the parity.

5. He submits that the chargesheet still remains to be filed against one of the accused persons.

6. It is trite law that an order granting bail ought not to be disturbed unless there are strong reasons to do so. The party seeking cancelation of bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper.

The Hon'ble Apex Court in ***Mahipal vs. Rajesh Kumar @ Polia and Anr : (2020) 2 SCC 118***, has opined as under :

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed



the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. The principles that guide this Court in assessing the correctness of an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] . In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held : (SCC pp. 499-500, paras 9-10)

“9. ... It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] 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.*

10. It is manifest that if the High Court does not advert to



these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

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...”

(emphasis supplied)

7. The law is well settled through catena of judgments by the Hon’ble Apex Court that the considerations for granting bail and for its cancellation are fundamentally different. Bail granted to an accused can only be cancelled if the Court is convinced that, after



release, the accused has either (a) misused the liberty granted, (b) flouted the conditions of the bail order, (c) the bail was granted in contravention of statutory provisions limiting the Court's authority to grant bail, or (d) the bail was obtained through misrepresentation or fraud. In the present case, none of these situations existed.

8. It is the case of the petitioner that the learned Trial Court erroneously granted bail to Respondent No.2 by erroneously observing that since the charge sheet has already been filed *qua* Respondent No.2, the remaining investigation does not require his further detention. Investigation, according to the petitioner, was still pending.

9. Respondent No. 2 was arrested on 30.05.2024 and was admitted on bail by the impugned order. The learned Trial Court has noted in the impugned order that on being specifically asked, the Investigating Officer had not stated any reason for detaining Respondent No.2 in custody.

10. It appears that the investigation is still pending in certain aspects. Undoubtedly, the Police is empowered to investigate further after filing of the chargesheet and is entitled to file a supplementary chargesheet. However, the same cannot be a ground for subjecting Respondent No.2 to further incarceration when the chargesheet has admittedly been filed.

11. In ***Deepak Yadav v. State of U.P. : (2022) 8 SCC 559***, the Hon'ble Apex Court has emphasised that bail once granted, should not be cancelled in a mechanical manner. Cancellation of bail must be on very cogent and overwhelming circumstances. In the present case, I do not see any such ground being made out against the Respondent No. 2.



12. It is not the case of the petitioner that Respondent No.2 has in any manner impeded the cause of justice post the grant of bail.

13. It is to be borne in mind that at the pre-conviction stage, there is a presumption of innocence. Detention is not supposed to be punitive or preventive.

14. In view of the above, I find no reason to interfere with the impugned order. The present petition is therefore dismissed. Pending application(s) also stand disposed of.

15. It is made clear that the observations made by the learned Trial Court are only made for the purpose of deciding the application for bail and be not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

AMIT MAHAJAN, J

DECEMBER 10, 2024

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