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

+ CRL.M.C. 911/2023

ANUPAM GUPTA

.....Petitioner

Through: Mr. Manish Vashisht, Sr. Adv., Mr.
Rikky Gupta, Ms. Ananya Singh, Mr.
Sandeep Jain, Advs.

versus

STATE PS EOW MANDIR MARG NEW DELHI & ORS.

.....Respondents

Through: Ms. Shubhi Gupta, APP for the State.
Insp. Satyabir Singh, PS EOW.
Mr. Navin Kumar Thakur, Mr.
Shobhit Gupta, Mr. Ram Kumar, Mr.
Uttam Kumar, Advs. for R 2 to 4.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

18.02.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 439(2) read with Section 482 of the CrPC has been filed seeking quashing of the orders dated 20.04.2022 and 14.12.2022 passed by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi in CR. No. 3481/2021 arising out of FIR No. 230/2019 registered under Sections 420/406/120B IPC at PS EOW .
3. Learned counsel appearing on behalf of the petitioner submits that *vide* order dated 20.04.2022 learned Trial Court granted bail to respondents no. 2 to 4 in the present case. Thereafter, the petitioner filed an application seeking cancellation of bail, however, the same was dismissed by the learned Trial Court *vide* order dated 14.12.2022. Order dated 14.12.2022 is reproduced as



under:

It is stated by counsel for the complainant that no notice was given to the complainant/victim nor complainant/victim was heard before enlarging accused on bail as per principle set out in Jagjit Singh Vs. Ashish Mishra 2022 SCC online SC 453, IO has filed closure report against four accused persons namely Ashish Gupta, AGS Retail pvt. Ltd, Aerens Projects and Infrastructure Pvt. Ltd. and Golden Arch Infrastructure Pvt. Ltd. and accused Ashish Gupta has been put in column of suspect. No ground for closure of case against other accused persons is given. There are serious allegations of money laundering of Rs.300 crores against accused Amit Gupta, Gaurav Gupta and Surender Gupta. IO has not made investigation qua financial audit report handed over to the IO by the complainant. Action of IO is doubtful as he was aware that Directorate of Enforcement was also investigating angle of money laundering against the accused persons. The accused persons did not co-operate in the investigation. Accused persons were not arrested by the IO despite such grave offences committed by them. Accused persons are of flight risk as vide order dated 18.08.2022 NBWs were also issued by this Court. Prayer is made for cancelling the bail of accused Amit Gupta, Gaurav Gupta and Surender Gupta.

IO and accused persons have already filed reply to the present applications. Copies already supplied.

IO in his report has stated that details./documents sought by the ED for looking into the matter pertaining to PMLA Act qua accused persons have already been provided to ED. It is also reported that investigation in the present matter is ongoing and supplementary charge-sheet will be filed after conclusion of investigation.

Counsel for the accused persons Amit Gupta, Gaurav Gupta and Surender Gupta submits that the present application is not maintainable and has been filed for ulterior motive. Vide order dated 20.04.2022, Ld. Predecessor of this Court had granted bail to accused persons subject to certain conditions. Accused persons had cooperated in and joined investigation and charge-sheet has been filed, so no fruitful purpose would be served in keeping them behind the bars. Grounds for cancellation of bail are not made out against the accused persons. It is stated that there is no merit in the present application and same may be dismissed.

Heard. Record perused.

As per record, vide order dated 07.04.2021, accused persons mentioned in Column No.11 of the charge-sheet Le. Amit Gupta, Gaurav Gupta, Surender Gupta and Suresh Garg were summoned and vide order dated



20.04.2022 all the four accused persons were admitted to bail by the Ld. Predecessor of this Court. The present application for cancellation of bail has been filed against accused Amit Gupta, Gaurav Gupta and Surender Gupta. Accused Ashish Gupta has been kept in Column No.12 and has not been arrested, So present application is not maintainable against him. Present applications are not filed against accused Suresh Garg. The contention with respect to IO not conducting proper investigation cannot be a ground to cancel bail of accused persons. The decision relied upon by complainant/applicant in Jagjit Singh's case (SUPRA), observes that Courts must re-frame from evaluating or undertaking a detailed assessment of evidence while deciding bail applications. Ld. APP for the State was heard when the bail applications were disposed off on 20.04.2022. As per decisions in State Vs. Sanjay Gandhi 1978 (2) SCC 411 and Daulat Ram Vs. State of Haryana (1995) 1 SCC 349, it has been observed that interference or attempt to interfere with administration of justice, evade the due course of justice, abuse concession granted to accused are factors to be considered while considering bail granted to accused. Bail cannot be cancelled in a mechanical manner. The applicant herein has failed to show any supervening circumstances rendering it no longer conducive to fair trial to allow accused persons to retain their freedom by enjoying concession of bail during trial. Grounds for rejection of bail are different from grounds for cancellation of bail. IO has already stated in his reply that he is further investigating the matter and supplementary charge-sheet would be filed after conclusion of investigation.

As regards issuance of NBWs on 18.08.2022 against accused Amit-Gupta, Gaurav Gupta and Surender Gupta due to their non appearance once, cannot be a ground to cancel their bail.

In view of the aforesaid, there is no merits in the applications. Both applications are dismissed.

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4. Learned Senior Counsel on behalf of the petitioner submits that no notice of hearing was given to the complainant i.e. the petitioner at the time of grant of bail to the respondents by the learned Trial Court on 20.04.2022. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Jagjeet Singh & Others v. Ashish Mishra alias Monu & Others, 2022 SCC Online 453**, to submit that it is a valuable right of the complainant to participate in



each and every stage of proceedings. It was further submitted that when this fact was brought to the notice of the learned Trial Court *vide* an application seeking cancellation of bail, the learned Trial Court while passing the order dated 14.12.2022 did not consider the said ground for cancellation and recorded that the learned APP for the State was heard when the application for bail was disposed of.

5. Learned Senior Counsel further submitted that the learned Trial Court while granting bail to respondent Nos. 2 to 4 completely ignored the seriousness of the offence committed by the latter. It is submitted that the present case pertains to money laundering to the tune of Rs. 300 crores, which was supported by a financial audit conducted by a competent firm. Attention of this Court has been drawn to following grounds taken for the purposes of the present petition.;

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“D.Because the learned Magistrate failed to appreciate that if any further investigation is pending, the same itself is a ground to look into the fact that whether the Accused persons can be enlarged on bail. Admittedly the fact of the further investigation, if any, was concealed by the Investigating Officer when the applications for bail were filed by the Accused persons. Hence even this was the fit ground for cancellation of bail.

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J Because the Learned Trial Court failed to appreciate that the present case being sensitive in terms of economic offence, the same should not have been ended up in smoke as the present matter pertains to money laundering to the tune of Rs 300 crores which was supported by the Financial audit conducted by a well reputed Chartered Accountancy Firm.

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P. Because the Learned Trial Court also failed to appreciate that it is contended that the economic offences is a class apart and the gravity is an extremely relevant factor while considering bail. That in order to



contend that this aspect has been judicially recognized, the decisions in the case of “State of Bihar & Anr. vs. Amit Kumar”, (2017) 13 SCC 751; “Nimmagadda Prasad vs. CBI”, (2013) 7 SCC 466; “CBI vs. Ramendu Chattopadhyay”, 2019 SCC Online SC 1491; “Seniors Fraud Investigation Office vs. Nittin Johari & Anr.”; (2019) 9 SCC 165; “Y.S. Jagan Mohan Reddy vs. CBI”, (2013) 7 SCC 439; “State of Gujarat vs. Mohanlal Jitmalji Porwal”, (1987) 2 SCC 364 are relied upon. Perusal of the cited decisions would indicate that this Court has held that economic offences are also of grave nature, being a class apart which arises out of deep-rooted conspiracies and effect on the community as a whole is also to be kept in view, while consideration for bail is made.

That it is submitted that the Petitioner has filed a Protest petition for filing of closure against the Accused persons who were not chargesheeted. The said Protest Petition is pending consideration before the court of learned Magistrate. The copy of the Protest petition is annexed and marked as ANNEXURE A-7.”

6. Learned Senior Counsel further submitted that the protest petition was pending consideration before the learned Magistrate wherein the following grounds had been taken: -

“ii. That no action was taken by the EOW on the complaint filed by the Complainant. Resultantly the complainant preferred a Petition under Section 156 (3) CrPC before this Hon’ble Court. That after the intervention of this Hon’ble Court, EOW, registered FIR No 230 of 2019 against the Accused persons under Section 406, 420 & 120-B IPC.

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iv. That along with the complaint the Complainant also submitted a Review Report of a Chartered Accountant explaining the fact of Money Laundering by the Accused persons. That the Investigating Officer with the Charge Sheet has filed the complaint but chose to conceal from this Hon’ble Court the said Review Report. The Charge-sheet further makes it clear that the IO did not even bother to call the chartered accountant to understand the modus operandi of the Accused persons and no statement of CA was recorded in support of the charge-sheet. The said Review Report chronologically explains that the manner in which the Aerens Goldsouk International Limited, AGS Retail Private Limited and Aerens Projects & Infrastructure Pvt. Ltd. and few other companies all controlled by Mr Amit Gupta & his family parked around Rs 300 Crores



in Goldenarc Infrastructure Private Limited to dupe the Complainant, banking institutions and many other persons. **The complainant is filing the said Review Report with the present application for the kind perusal of the Hon'ble Court. The Review Report is annexed as Annexure A-1.**

v. That it is submitted that no investigation whatsoever was conducted by the Investigating Officer in respect of allegations made in Para 16 to 20 of the complaint which was based on the legal and admissible document in the form of Financial Audit undertaken by the reputed Chartered Accountancy firm of New Delhi.

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viii. That despite the fact that the Enforcement Directorate started an investigation against the Accused persons and called for the records from EOW, the said important fact under the circumstances has been purposefully diluted by the Investigating officer by not even referring the same in the Charge Sheet and by concealing from this Hon'ble Court as to what action was taken by him pursuant to the communication dated 15.02.2021 of Enforcement Directorate. It is apparent that the charge-sheet to shield the Accused persons in a hus-hush manner.”

7. Finally, learned Senior Counsel pointed out in fact Directorate of Enforcement also *vide* letter dated 15.02.2021 had sought certain documents from the DCP, EOW, Mandir Marg with respect to the present FIR. In sum and substance, it was submitted that while the protest petition was pending, learned Trial Court did not apply its mind to these documents at the time of granting bail or at the time of dismissing the application seeking cancellation of bail. Reliance is placed on judgment of the Hon'ble Supreme Court in **Meena Devi v. State of UP and Others, (2022) 14 SCC 368** and **Vivekanand Mishra v. State of UP & Ors., 2022 SCC Online SC 1903**.

8. *Per contra*, learned counsel appearing on behalf of the respondent submits that chargesheet in the present has been filed without arrest and, therefore, as per the dictum of the judgment of the Hon'ble Supreme Court in



Satender Kumar Antil v. CBI, (2022) 10 SCC 51:2022 SCC OnLine SC 825, the learned Trial Court had granted bail as the chargesheet was filed under Sections 420, 406 and 120 B of the IPC. Attention of this Court was drawn to the relevant portion of the chargesheet wherein it has been recorded that the complainant at one point of time did not have sufficient funds to honor the agreement to sell as he could not pay the balance amount.

9. It is submitted that there is no evidence with regard to allegations made by the petitioner herein. It is submitted that the respondents duly cooperated in the investigation and the chargesheet has been filed without them being required to be sent to judicial custody.

10. Learned APP, on instructions of the IO submitted that investigation in the present FIR is complete, a supplementary chargesheet was filed after the protest petition filed by the present petitioner regarding one Ashish Gupta and he was again put in Column No.12 in the supplementary chargesheet. It is submitted that the protest petition filed by the petitioner was with respect to the said Ashsish Gupta not being chargesheeted.

11. Heard learned counsel for the parties and perused the records.

12. Respondent Nos.2 to 4 were granted bail by the learned Trial Court *vide* order dated 20.04.2024 which is reproduced as under:-

“Vakalatnama filed on behalf of accused Amit Gupta, Gaurav Gupta, Suresh Garg and Surender Gupta. Taken on record.

Ld. Counsel submits that he accepts notice on behalf of accused no. 4 company namely M/s Aerens Gold Souk International Ltd, and he will file appropriate application for the same.

4 separate bail applications moved on behalf of accused Amit Gupta, Gaurav Gupta, Suresh Garg and Surender Gupta. Ld. Counsel submitted that accused persons have been charge sheeted in 406 and 420 B IPC for criminal conspiracy. It is submitted by Ld. Counsel that



accused persons are engaged in real estate business practicing clear business strategies and having clean antecedents and due to economic slowdown the real estate business got badly hit which gave rise to this complaint. It is submitted that accused persons have rendered full cooperation to the IO and they have not been arrested during investigation. They have deep roots in the society and there is no scope of having evading as their family and business is in Delhi.

Heard. Perused.

Considering the submissions made by Ld. Counsel of all the accused persons, The accused persons are admitted to bail subject to furnishing personal bond surety bond for a sum of Rs. 50,000/- with the following conditions;

1. That accused shall continue to participate in the investigation as and when required or so intimated by the IO.
2. That accused will not tamper with the evidence or influence any witness.
3. That accused shall furnish his mobile phone number to the police station / IO which shall be kept operational at all times, so that he can be reached out.
4. That accused shall not indulge in any activity of similar nature during their period of release,

Applicant disposed off accordingly.

Put up for scrutiny of documents and argument on charge for 18.08.2022.”

13. Admittedly, respondent Nos. 2 to 4 were chargesheeted without arrest in the aforesaid FIR for offences punishable under Sections 406/420 of the IPC. The Hon’ble Supreme Court in **Satender Kumar Antil v. CBI, 2021 SCC OnLine SC 3302**, before the passing of the final judgment had observed as under: -

“6. We may also clarify that **if during the course of investigation, there has been no cause to arrest the accused, merely because a charge sheet is filed, would not be an ipso facto cause to arrest the petitioner**, an aspect in general clarified by us in Criminal Appeal No.



838/2021 - *Siddharth v. State of Uttar Pradesh* dated 16.08.2021.”
(emphasis supplied)

Thereafter, the Hon’ble Supreme in the final judgment of **Satender Kumar Antil, (2022) 10 SCC 51**, has observed and held as under: -

“89. We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. To clarify this position, we may hold that if an accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter. **It is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court.** Similarly, we would also add that the existence of a *pari materia* or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling the accused for a default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code.”
(emphasis supplied)

By making the aforesaid observation, following direction was passed by the Hon’ble Supreme Court in **Satender Kumar Antil (supra)**: -

“Summary/Conclusion

100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:

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100.5. There need not be any insistence of a bail application while considering the application under Sections 88, 170, 204 and 209 of the Code.”

(emphasis supplied)

14. The learned Trial Court while dismissing the application seeking cancellation of bail by the present petitioner *vide* order dated 14.12.2022 has observed that filing of a protest petition or any defect in the investigation by



the IO, cannot be a ground to cancel the bail granted by the concerned court. It is not the case of the petitioner that any condition of the bail was violated by the answering respondents or on account of some supervening circumstances, at the instance of the accused person demonstrating that they being enlarged on bail would not be conducive to fair trial.

15. Normally, as per the procedure, the notice of a bail application should have been given to the complainant/petitioner but not giving the same cannot be a ground to cancel the bail, if otherwise the said order has been passed in accordance with law. The judgments relied upon by the learned Senior Counsel would not be applicable in the facts of the present case. In **Meena Devi (supra)**, the Hon'ble Supreme Court was dealing with an FIR registered under Section 302 of the IPC. The respondent in the said case was involved and was facing trial in 37 cases registered against him under various provisions of law. Similarly, in **Vivekanand (supra)**, the Hon'ble Supreme Court was dealing with a case where an anticipatory bail was given in respect of offence under Sections 304B of the IPC ignoring the material on record including the dying declaration made by the deceased in the hospital. In the present case, as already noted above, the respondent Nos.2 to 4 were chargesheeted without arrest and in view of the aforesaid judgment passed by the Hon'ble Supreme Court, the grant of bail by the learned Trial Court cannot be said to have been in violation of any law or by ignoring any material on record. The Hon'ble Supreme Court in **Satender Kumar Antil (supra)** has categorically held that in cases where persons are not arrested during investigation then, there is no need for further arrest at the instance of the Court.

16. In these circumstances, the petition is dismissed and disposed of.



17. Needless to state that, the contentions on behalf of the petitioner with regard to any protest petition, if pending, will be decided on its own merit in accordance with law.
18. Pending application, if any, also stands disposed of.
19. Order be uploaded on the website of the Court *forthwith*.

AMIT SHARMA, J

FEBRUARY 18, 2025/nk/pr

Click here to check corrigendum, if any