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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 1105/2020

SH. VIPIN NISCHAL & ANR

.....Petitioners

Through: Mr. Mehul Gupta, Adv.
through V.C.

versus

STATE & ANR.

.....Respondents

Through: Mr. Pradeep Gahlot, APP
for the State.
SI Dharmendra Sharma,
PS Patel Nagar.
Mr. Aman Sareen, Mr.
Gurpratap Singh, Mr.
Nishant Pathak & Mr.
Afesh Kumar, Advs. for
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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17.04.2025

1. By way of the present petition, the petitioner challenges the order dated 25.01.2020 (hereafter “**impugned order**”) passed by the learned Additional Sessions Judge-01 (‘ASJ’), Tis Hazari Courts, Delhi, pursuant to which Respondent No. 2 was admitted to bail in FIR No. 347/ 2019 dated 16.10.2019 registered at Police Station Patel Nagar for offence under Sections 420/ 406/ 448/ 34 of the Indian Penal Code, 1860 (‘IPC’). Chargesheet has been filed in the present case.

2. The FIR in the present case was registered on a complaint filed by the petitioners/ complainants alleging that Respondent No. 2 in collusion with the other accused persons, cheated the complainants by inducing them to make payments towards the purchase of the 2nd floor and 1/4 share in the parking of the

CRL.M.C. 1105/2020

Page 1 of 7



property bearing No. 34/22, East Patel Nagar, Delhi (hereafter “**said premises**”) for a total sale consideration of ₹2,84,50,000/- and promised to complete the construction of the same within 12 months. It is alleged that in furtherance of the Agreement to Sell dated 25.03.2017, the complainants made a payment of ₹1,00,00,000/- to Respondent No. 2. It is alleged that the complainants made another payment of ₹10,00,000/- whereafter Respondent No. 2 delivered the physical possession of the incomplete premises to the complainants *vide* possession letter dated 31.01.2018 and promised to complete the remaining work within the stipulated time.

3. It is alleged that on 12.10.2018, accused persons namely– Sachin Pamnani and Sonu Talwar and two unknown persons came to the said premises and started abusing the guards and servants and also destroying the material bought by the complainants for the construction of the said premises. It is stated that in this regard, a police complaint was filed by Petitioner No. 2 on 15.10.2018. It is further alleged that the complainants later found out about a registered Sale Deed dated 20.12.2017 in the name of one of the other accused persons namely – Chhavi Pamnani in respect of the same premises, which has been executed by Respondent No. 2, for a total sale consideration of ₹81,50,000/- and the said amount was stated to be paid.

4. Respondent No. 2 was arrested in the present case on 19.10.2019.

5. The learned ASJ by the impugned order, admitted Respondent No. 2 on bail while pointing out irregularities in the alleged Agreement to Sell which was produced by the complainants. It was observed that the alleged documents have already been seized by the police and that it is unlikely that



Respondent No. 2 will tamper with evidence or threaten witnesses.

6. The learned counsel for the petitioners submits that the impugned order has been passed without application of mind and without appreciating the fact that Respondent No. 2 is a habitual offender who is running an organised racket in the locality and has been implicated in several FIRs and has defrauded several persons in respect of the said premises.

7. He submits that Respondent No. 2 is alleged to have committed a similar offence, as in the present case, in FIR No. 22/2019, wherein he defrauded the complainants therein for a sum of ₹1.30 crore in respect of the said premises. He states that another buyer namely– Mrs. Namita Gupta has also been defrauded by Respondent No. 2 for a sum of ₹50,00,000/- towards the purchase of the said premises.

8. He states that the learned ASJ failed to consider the fact that Respondent No. 2 was also declared a Proclaimed Offender in the FIR No. 22/ 2019, and therefore there are high chances of him fleeing from justice.

9. He further states that the condition imposed upon Respondent No. 2 to deposit ₹15 lacs is on the lower side when the said premises is itself worth ₹2.5 crore.

10. 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 cancellation of bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper.

11. The learned ASJ took note of the fact that the Agreement to Sell relied upon by the complainants reveals that payment of ₹1,00,00,000/- was made in instalments on 09.03.2017, 22.03.2017 and 25.03.2017. It was observed that nothing entailed



therein reflects that the payments were made in pursuance to any oral agreement, prior to the formal execution of the Agreement to Sell. It noted that there was no clause pertaining to earnest money or the construction linked payment plan. It was also noted that no notice was given by the complainants to Respondent No. 2 for completing the construction within the stipulated time.

12. The learned ASJ noted that even otherwise, to rely on the Agreement to Sell, the same was required to be registered with 90% of the applicable stamp duty paid, for the complainants to be in possession of the said premises, however the same was not done in the present case. Whereas the possession was delivered to the complainants on 31.01.2018 with permission to complete the construction and assurance of executing the Sale Deed with only 40% of the consideration amount having been paid, which seem highly improbable.

13. In the opinion of this Court, the impugned order passed by the learned ASJ is a reasoned order and does not warrant any interference.

14. The law in relation to the setting aside or cancellation of bail is well settled. The consideration for cancellation of bail stands on different footing than grant of bail. The Hon'ble Apex Court, advertng to a catena of judgments, had discussed the grounds for cancellation of bail in exercise of jurisdiction under Section 439 (2) of the Code of Criminal Procedure, 1973 (*pari materia* to Section 483 (3) of the BNSS) in the case of **Abdul Basit v. Mohd. Abdul Kadir Chaudhary : (2014) 10 SCC 754**. The relevant portion of the judgment is reproduced hereunder:

“14. Under Chapter XXXIII, Section 439 (1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439



(3) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive....

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17. In this context, it is profitable to render reliance upon the decision of this Court in *Puran v. Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] . In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In *Narendra K. Amin v. State of* [(2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in *Puran* case [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court.

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19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before



us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

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21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court."

(emphasis supplied)

15. The Hon'ble Apex Court in the case of **Himanshu Sharma v. State of Madhya Pradesh : 2024 INSC 139** had held as under:

"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)

16. Respondent no.2 was admitted on bail after having spent more than 100 days in custody. The investigation at the time of passing of the impugned order had completed and therefore the accused was not required for any further investigation.

17. Admittedly, it is not the case of the petitioners that Respondent No. 2 has violated any of the conditions imposed by the learned ASJ while granting bail. There is no allegation of any threat or inducement to the complainant. Neither has Respondent No. 2 been found to have tampered with the evidence.

18. In the present case, the chargesheet has already been filed.



In the absence of there being a strong *prima facie* case on the conditions of the bail having been violated, it would not be appropriate to interfere in the impugned order. The petitioner had already spent about 100 days in custody. Since then, the trial has proceeded.

19. It is also 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.

20. In view of the above, the present petition is dismissed.

AMIT MAHAJAN, J

APRIL 17, 2025

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