



2025:DHC:2780



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.04.2025

+ **CRL.M.C. 4502/2024**

XYZ

..... Petitioner

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Filza Moonis, Adv.

For the Respondents : Mr. Naresh Kumar Chahar, APP for the State
SI Krishan Kumar, PS-Bawana
SI Sheetal, PS- Bawana
Mr. Nitesh Rana (Amicus Curiae) , Mr. Deepak Nagar, Mr. Nikhil Kohli & Mr. Suyash Pandey, Advs.
Ms. Shreya Lamba, Adv. for R2

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed, *inter alia*, praying as under:
 - a. *Set aside the impugned order dated 12.02.2024 passed by the Ld. Sessions Court, Rohini Delhi in SC No. 575/2023, FIR No. 196/2022; and or*
 - b. *Cancel the bail granted by the Ld. Sessions Court, Rohini, Delhi in SC No. 575/2023, FIR No. 196/2022;*



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Brief Facts

2. Briefly stated, FIR No. 196/2016 dated 07.02.2022 for offences under Sections 376/377/498A/406/323/506/509/34 of the Indian Penal Code, 1860 ('IPC'), was registered based on a complaint dated 06.02.2022, by the petitioner/ complainant, alleging that the relationship between the petitioner and Respondent No.2/accused was marred by continuous physical and mental abuse by Respondent No.2 and his family. The present FIR arises from a grave incident alleged to have occurred on the night of 05.02.2022, wherein it is stated that the petitioner was subjected to rape by her father-in-law and, upon attempting to flee, was mercilessly assaulted by Respondent No.2 and his parents, resulting in serious bodily injuries, including a torn lip, a broken thumb, pelvic injury, and multiple contusions. The incident was immediately reported to the police and the petitioner was taken for medical examination.

3. The MLC of the petitioner reflects physical assault with grievous injuries, however, the petitioner denied internal examination required to determine sexual assault on her.

4. Following the investigation, the main chargesheet dated 22.07.2022 was filed wherein one Mr. Amardeen, Mrs. Urmila and one Mr. Rajak were included as accused persons, however, Respondent No. 2 had not been arraigned. The learned Metropolitan Magistrate ('MM'), Rohini Courts, Delhi took cognizance on 06.06.2023.



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5. On 04.03.2022, Respondent No. 2 was granted interim protection and was directed to join the investigation, by the order of the learned Trial Court, wherein he was also directed to return Istridhan and other articles belonging to the petitioner.

6. The first pre-arrest Bail Application No. 563/2022 was filed by Respondent No. 2, on ground that that he has been falsely implicated in the present case and that it was the petitioner who used to physically and mentally torture Respondent No. 2 and his relatives, moreover, the father of Respondent No. / co-accused namely – Mr. Amardeen has already been granted pre-arrest bail vide order dated 24.02.2022.

7. On 21.12.2022, the learned Additional Sessions Judge ('ASJ'), Rohini Courts, Delhi, dismissed the pre-arrest bail application of Respondent No. 2, vide an even dated order, on ground that Respondent No. 2 had not co-operated in the investigation as though, as per the Report filed by the Investigating Officer, the Istridhan articles were yet to be returned to the petitioner, and that Respondent No. 2 has not given any explanation regarding the same.

8. The pre-arrest Bail Application No. 3908/2022 filed by Respondent No. 2, before this Hon'ble Court, came to be dismissed vide order dated 26.12.2022 on ground that Respondent No. 2 has not co-operated in the investigation and that photographs shown by the learned APP for State, reflect that the injuries sustained by the petitioner/ complainant, are grievous in nature.



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9. Thereafter, a Special Leave Petition ('SLP') bearing No. 579/2023 was filed by Respondent No. 2 before the Hon'ble Supreme Court for grant of pre-arrest bail, wherein Respondent No. 2 was granted interim protection vide order dated 20.01.2023 and was directed to implead the petitioner/ complainant as a respondent party in the SLP vide order dated 25.04.2023.

10. In the meanwhile, supplementary chargesheet had been filed against Respondent No. 2 on 21.04.2023 whereafter, the learned MM took cognizance of the offences without arrest of Respondent No.2. Respondent No. 2 and his relatives were summoned by and were directed to furnish bail bonds and surety bonds vide order dated 28.07.2023. On 28.08.2023, the learned MM committed the present case to the learned ASJ for trial.

11. The Hon'ble Apex Court vide order dated 09.08.2023, set aside the order dated 26.12.2022 passed by this Hon'ble Court, thereby granting pre-arrest bail to Respondent No. 2, on ground that chargesheet had been filed and that as per record, Respondent No. 2 had been co-operating in the investigation and had been appearing regularly before court.

12. The petitioner filed a recall application in respect of the order dated 09.08.2023 passed by the Hon'ble Apex Court, stating that the petitioner was not granted an opportunity to assist the court, despite the direction for impleadment. The Hon'ble Apex Court disposed of the said application *vide* order dated 11.01.2024 while refusing to interfere with the impugned order dated 09.08.2023 and directing the



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bail application of Respondent No. 2 to be taken up and disposed of within a period of two weeks by the learned Trial Court, while considering the circumstances of the case.

13. Subsequently, Respondent No. 2 moved a regular Bail Application which was allowed by the learned ASJ vide order dated 12.02.2024, while observing that the relations between the parties are of husband and wife and that the investigation had been completed since the chargesheet as well as the supplementary chargesheet had been filed in the present case, therefore incarceration of Respondent No. 2/ accused would not serve any fruitful purpose.

14. Being aggrieved by the same, the petitioner has filed the present petition, seeking cancellation of the bail order dated 12.02.2024 passed by the learned ASJ.

Submissions by the learned counsel for the petitioner

15. The learned counsel for the petitioner has assailed the impugned order on multiple grounds. She submitted that the impugned order passed by the learned ASJ granting regular bail to Respondent No.2 suffers from gross procedural impropriety, and is ex-facie illegal. She contended that the bail application filed by Respondent No.2 was not maintainable in law as the accused was not in custody at the time of its filing. It is submitted that under the provision of Section 439 of the CrPC, a bail application can only be entertained when the accused is in custody. Reliance is placed upon the judgment of the Hon'ble Apex Court in *Nirmal Jeet Kaur v. State*



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of Madhya Pradesh : (2004) 7 SCC 558, wherein the Hon'ble Apex Court held that unless a person is in custody, an application for bail under Section 439 of the CrPC would not be maintainable.

16. She submitted that Respondent No.2 had neither surrendered before the learned Trial Court nor was taken into custody before moving the bail application. Hence, the grant of bail in the absence of such custody violates the jurisdictional mandate of Section 439 of the CrPC.

17. She further submitted that the impugned order misrepresents facts by recording that the accused was on pre-arrest bail, whereas the Hon'ble Apex Court had, *vide* its order dated 11.01.2024 in Criminal Appeal No. 2381/2023, categorically dismissed Respondent No.2's appeal against the dismissal of pre-arrest bail. She pointed out that the interim protection earlier granted by the Hon'ble Apex Court was specifically recalled on 16.10.2023, and thus, there was no subsisting protection available to Respondent no.2 on the date the bail was granted.

18. The learned counsel for the petitioner also emphasized the grave nature of the offences involved and submitted that the photographs placed on record reflect the brutality of the attack and corroborate the medical findings.

19. Further, learned counsel pointed out that there is credible apprehension that Respondent No.2, being a law professor, has misused his legal knowledge and connections to subvert the process of justice and submitted that his release on bail poses a real danger to the



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safety of the petitioner and could lead to tampering with evidence and influencing witnesses.

Submissions by the learned counsel for Respondent No.2

20. *Per contra*, learned counsel for Respondent No.2, supported by learned APP for the State, submitted that the impugned order was passed in compliance with the direction of the Hon'ble Apex Court dated 11.01.2024, wherein the Hon'ble Apex Court had directed that any bail application filed by the Respondent No.2 be considered and decided within a period of two weeks. It was submitted that the respondent appeared in court and was not evading process and had previously cooperated with the investigation.

21. It was submitted that the execution of bail bonds earlier, pursuant to the chargesheet being filed and summoning of Respondent No.2, appearance on multiple dates, including the date of hearing, amounted to constructive surrender or deemed custody, sufficient to invoke the jurisdiction under Section 439 of the CrPC.

22. It was further contended that the chargesheet had already been filed, and no further investigation was pending. Thus, no purpose would be served by taking Respondent No.2 into custody, especially when there were no recovery formalities or material evidence left to be collected. The learned counsel also argued that the allegations in the FIR were rooted in matrimonial discord and must be viewed in that context.



Submissions by the learned Amicus Curiae, Nitesh Rana

23. The learned *Amicus Curiae* was appointed by this Court to assist in the adjudication of the present petition, particularly in relation to the procedural validity of the bail granted to Respondent No.2 and the interpretation of ‘custody’ under Section 439 of the CrPC. The learned *Amicus* filed a compilation of relevant judgments and advanced submissions both on procedural aspect and on the broader principles guiding the discretion of the Court while entertaining a regular bail application.

24. He emphasized that the interpretation of ‘custody’ under Section 439 of the CrPC has been settled through the judgment of the Hon’ble Apex Court in ***Niranjan Singh v. Prabhakar Rajaram Kharote : (1980) 2 SCC 559***, where it was held that custody is not limited to physical confinement and includes constructive custody, such as where an accused appears before the Court and submits to its jurisdiction.

25. He submitted that while there may have been technical irregularity in the present case, the learned Trial Court had nonetheless taken into account the stage of proceedings, the completion of investigation, the filing of the chargesheet, and the nature of the allegations before granting bail.

Analysis

26. 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.

27. 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, advertent 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 **Deepak Yadav v. State of U.P. : (2022) 8 SCC 559**. The relevant portion of the judgment is reproduced hereunder:

“C. Cancellation of bail

31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

32. A two-Judge Bench of this Court in Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] laid down the grounds for cancellation of bail which are:

- (i) interference or attempt to interfere with the due course of administration of justice;*
- (ii) evasion or attempt to evade the due course of justice;*
- (iii) abuse of the concession granted to the accused in any manner;*
- (iv) possibility of the accused absconding;*
- (v) likelihood of/actual misuse of bail;*
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.*

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an



accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , the accused was granted bail by the High Court. In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under : (SCC p. 513, para 12)

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail....”

28. 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)

29. The learned counsel for the petitioner has primarily questioned the maintainability of the bail application filed by Respondent No.2 before the learned Sessions Court under Section 439 of the CrPC. The core of the objection is that Respondent No.2 was not in ‘custody’ at the time of filing the regular bail application, and therefore the learned Trial Court erred in entertaining the same. It is submitted that in the absence of such custody—either physical or constructive—the application under Section 439 of the CrPC was not maintainable in law, and the grant of regular bail in such circumstances is procedurally flawed.

30. To appreciate this objection, it is necessary to contextualize the factual sequence. Respondent No.2 had earlier been granted pre-arrest bail by the Hon’ble Apex Court *vide* interim order dated 09.08.2023. Pursuant thereto, he had executed bonds as required under the terms of that interim protection. However, on 16.10.2023, the said interim order was recalled, and ultimately, the Special Leave Petition filed by Respondent No.2 seeking pre-arrest bail came to be dismissed *vide*



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final order dated 11.01.2024. Upon dismissal of the pre-arrest bail application, any bond furnished pursuant to the earlier grant of interim protection stood automatically discharged. This legal position is well-settled, as bail bonds are conditional upon the subsistence of the order under which they are executed. Once the parent order ceases to operate, the bond too stands vacated in the eyes of law.

31. It is thus evident that as on the date of filing the regular bail application, i.e., in February 2024, Respondent No.2 was no longer protected by any subsisting pre-arrest bail, nor was he under any judicial or police custody. He had also not moved a formal surrender application seeking to place himself at the disposal of the court. In the strict sense of the term, therefore, he was not ‘in custody’ within the meaning of Section 439 of the CrPC during the proceedings.

32. The requirement that an accused must be in custody before invoking the jurisdiction of a Court of Sessions or the High Court for regular bail under Section 439 of the CrPC has been consistently affirmed in multiple decisions. The Hon’ble Apex Court in *Niranjan Singh v. Prabhakar Rajaram Kharote* (*supra*), clarified that the expression ‘custody’ under Section 439 of the CrPC does not exclusively refer to physical confinement. Rather, it encompasses situations where the accused, though not formally arrested, has submitted himself to the jurisdiction and control of the court—such as by way of surrender—thereby placing himself in the court’s legal custody. It was held as under :



“7. When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.”

33. Had the accused/Respondent No.2 in the present case filed a surrender application or moved for interim bail explicitly seeking leave to remain present under the control of the Court pending consideration of his regular bail, the position might have been different. The learned Trial Court, in such a situation, would ordinarily take him into judicial custody even for a limited duration, thereby satisfying the technical requirement of Section 439 of the CrPC.

34. In the facts of the present case, however, the record does not show that the learned Trial Court took the accused into custody or that he was remanded to judicial custody at any point during the proceedings. The impugned order is also silent on any such act of surrender or custodial submission preceding the grant of bail. From a procedural standpoint, therefore, the bail application was arguably not



maintainable in its strictest sense and suffered from technical infirmity.

35. That said, it is equally important to acknowledge the broader context in which the impugned order came to be passed. The chargesheet in the matter had already been filed. The investigation was complete. Respondent No.2 had cooperated with the proceedings and had remained available to the court. The learned Trial Court heard both parties and passed a reasoned order on merits. The learned ASJ applied his judicial mind to the allegations, the status of the investigation, and the nature of the dispute, and thereafter, granted bail to Respondent No.2. It is not the case that the learned Trial Court acted mechanically or in disregard of material facts.

36. Thus, while there may have been a procedural irregularity in not insisting on either a surrender or interim custody before proceeding to hear the bail application, the order itself cannot be said to be vitiated by illegality or want of jurisdiction. Not every procedural lapse is fatal, especially when no prejudice is caused to the prosecution, and when the underlying judicial order is founded on application of mind.

37. In the present case, there is no allegation that the Respondent No.2 has misused the bail, tampered with evidence, influenced witnesses, or violated any conditions. On the contrary, it has been over a year since the grant of bail and there is nothing on record to suggest that the liberty has been misused. The trial is stated to be progressing.

38. It is trite that liberty of an individual being a precious right under the Constitution, the Courts ought to be wary that such liberty is



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not lightly interfered with. [Ref : *Kailash Kumar v. State of Himachal Pradesh & Anr.* : SLP (Crl.) No. 713/2025]

39. Additionally, the dispute between the parties arises from a matrimonial relationship. While the allegations are grave and are required to be tried in accordance with law, it is also settled that where the accused is a spouse or relative and the matter arises from a domestic setting, courts are expected to exercise a balanced approach.

40. It is not the case of the prosecution that there is a possibility of accused absconding or that he did not cooperate during the investigation.

41. In this backdrop, much water has flown since the passing of the impugned order. The practical reality of passage of time, the absence of any supervening cause, and the nature of the underlying relationship between the parties, all militate against this Court disturbing the settled position at this stage.

42. Accordingly, while this Court takes note of the procedural lapse in not insisting upon interim custody or formal surrender before granting regular bail, the order passed by the learned Trial Court is not liable to be set aside on that ground alone. The order is not perverse, arbitrary, or demonstrative of non-application of mind.

43. In view of the above, this Court does not consider it apposite to entertain the present petition.

44. The petition is, therefore, dismissed.

45. This Court however deems it apposite to clarify that the observations made by the learned Trial Court or in the present order



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ought not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

46. Before parting, this Court must place on record sincere appreciation for the valuable assistance provided to us by the learned *Amicus Curiae*, Mr. Nitesh Rana.

AMIT MAHAJAN, J

APRIL 22, 2025