



2025:DHC:2382



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 03.04.2025*+ **CRL.M.C. 8389/2024****MANEESH GUPTA**

..... Petitioner

Through: Mr. Maninder Singh, Sr. Adv. with
Mr. Ajay Kumar Pipaniya, Ms. Nikita
Garg, Ms. Sanjana Nair and Mr.
Harjas Pratap Singh, Advs.

Versus

STATE (GOVT. OF NCT OF DELHI) & ANR Respondents

Through: Mr. Pardeep Gahlot, APP for State
with Insp. Ravi Kumar PS Maurya
Enclave.
Mr. Jaideep Malik, Mr. Ravi Soni,
Mr. Nitesh Dhankar, Mr. Siddharth
Soni, Mr. Tushar Verma and Mr.
Pranav Sharma, Advs. for R-2.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed under Section 483(3) read with Section 528 BNSS against the impugned order dated 21.09.2024 passed by the Court of the learned Additional Sessions Judge-03, North-West District, Rohini Courts, Delhi whereby the respondent no.2 was admitted to regular bail in case bearing FIR No. 330/2021 under Section 302 IPC registered at



Police Station Maurya Enclave. Consequently, a prayer has been made to cancel the bail granted to the respondent no.2.

2. The petitioner is the father of the deceased, who as per the prosecution version, was allegedly killed by the accused/respondent no.2 namely, Mayank Antil on 21.04.2021.

3. The case of the prosecution as borne out from the Status Report is that on 25.04.2021, an information vide DD No.13A at 06:36 a.m. was received at Police Station Maurya Enclave regarding a dead body in SU Park, Pitampura, Delhi.

4. On receipt of information, ASI Sunil (I.O.) along with staff reached at the spot where a male dead body was found in decomposed condition. On inspection of the dead body, injury mark on forehead and right hand was present and one piece of cloth was found tied around the neck of the deceased, who was identified as Saksham Gupta, aged about 18 years son of Maneesh Gupta (petitioner herein).

5. The petitioner had previously lodged a missing report of his son namely, Saksham Gupta vide DD No.48A dated 21.04.2021 at Police Station Maurya Enclave. On the statement of petitioner/complainant, the present case was registered. The petitioner in his statement to the police stated that his son Saksham Gupta went to meet his friend Mayank Antil. He also stated that he checked the Instagram ID 'Saksham-Baniya' of his son Saksham and the last chat was done with account – 'hiroisthe' on 21.04.2021. In the said chat, a mobile no. 9625380043 was mentioned and as per the chat dated 20.04.2021, the other side person had called Saksham to Park Hut of SU Block, Pitampura, Delhi.



6. The petitioner further stated that on 21.04.2024 his wife was also informed by their son Saksham Gupta that he is going to meet his friend Mayank Antil/accused. The petitioner, in effect, leveled allegations of murder of his son Saksham by the respondent no.2/Mayank Antil.

7. Mr. Maninder Singh, the learned Senior Counsel for the petitioner submits that the learned Additional Sessions Judge (for short 'ASJ') while granting bail to the petitioner *vide* impugned order dated 21.09.2024 has ignored the relevant material and evidence on record.

8. Elaborating on his submission, he submits that the incriminating material is available in the form of CCTV visuals and as per the learned Trial Court's observations made during the examination of PW-1, the boy who is seen in the CCTV visuals has a small tattoo under his left ear and the accused also has a similar tattoo at the same spot.

9. He contends that the blood stained bricks were recovered from the crime scene at the instance of the respondent no.2. Besides recovery of Samsung mobile phone of deceased, the Realme Earpods of the deceased were also recovered from the possession of the respondent no.2. The last location of mobile of the deceased and the respondent no.2/accused were found matching with the place of incident on the date of incident i.e. 21.04.2021.

10. He further contends that out of 39 prosecution witnesses, only 08 witnesses have been examined, of which 02 witnesses have turned hostile, who have been influenced by the respondent no.2/accused.

11. He submits that the prosecution witness Manmeet Singh who provided the CCTV footage has yet not been examined and there is grave



apprehension that the respondent no.2/accused may coerce or influence his testimony.

12. He contends that the aforesaid aspects have not been dealt with by the learned ASJ while granting bail to the respondent no.2. He submits that the bail can be cancelled in cases where order granting bail suffers from serious infirmities resulting in miscarriage of justice.

13. He places reliance on the decisions of the Hon'ble Supreme Court in

- i. *Puran vs. Rambilas and Another*, (2001) 6 SCC 338;
- ii. *Brij Nandan Jaiswal vs. Munna alias Munna Jaiswal and Another*, (2009) 1 SCC 678;
- iii. *Kunwar Singh Meena vs. State of Rajasthan and Another*, (2012) 12 SCC 180;
- iv. *Ranjit Singh vs. State of Madhya Pradesh and Others*, (2013) 16 SCC 797; and
- v. *Prakash Kadam and Others vs. Ramprasad Vishwanath Gupta and Another*, (2011) 6 SCC 189.

14. *Per contra*, Mr. Jaideep Malik, the learned counsel for the respondent no.2 submits that in the charge sheet it has been misrepresented that mobile phone of the deceased and the earpods were found from the possession of the respondent no.2/accused, whereas the fact of the matter is that same were found lying near the dead body of the deceased and this fact is evident from the photograph Exhibit as PW-5/D-1, as well as, from the statement of the complainant/PW-5, who himself deposed that he had seen one cigarette box, one match box, chewing gum box and one ear pods box of blue color near the body of the accused.

15. He submits that the Jeet Pal/PW-6 who is witness to personal search of respondent no.2 has denied recovery of Samsung mobile phone and earpods at the instance of respondent no.2.



16. He further contends that a perusal of the testimony of PW-2/Deshraj who was deployed as *chowkidar* of the park where the incident happened shows that he has stated to the effect that the earpods, one mobile phone and some black substance in black polythene was recovered in his presence, which suggests that recovery was made from the park.

17. Inviting attention of the Court to the statement of PW-5/Manish Gupta, he submits that there is evident contradiction in his statement on the aspect of whether he was apprised by his wife that his son had gone with accused/Mayank. He submits that though the FIR mentions that the complainant was apprised by his wife that his son is going with accused Mayank but in the missing report this fact was not mentioned, rather PW-5 had admitted that he was not suspecting involvement of anyone.

18. He further submits that even the mother of the deceased namely, Ms. Sunita Gupta/PW-8 has also confirmed the fact that she had not apprised her husband that their son had gone to park along with accused Mayank when he was going to lodge a missing report.

19. He submits that PW-1/Dharmvir (gardener of the park) also turned hostile and did not support the prosecution case.

20. He, therefore, contends that the circumstances of the present case, do not warrant cancellation of bail as the law is well settled that the 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 the trial.

21. To buttress his contention, he has placed reliance on the following decisions of the Hon'ble Supreme Court:-



- i. *Daulat Ram and Ors. vs. State of Haryana, (1995) 1 SCC 349;*
- ii. *Union of India vs. K.A. Najeeb, Criminal Appeal No. 98/2021;*
- iii. *Mahipal vs. Rajesh Kumar alias Polia and Anr., Criminal Appeal No. 1843/2019;*
- iv. *Ragubir Singh vs. State of Bihar, (1986) 4 SCC 481;*
- v. *State (Delhi Administration) vs. Sanjay Gandhi, (1978) 2 SCC 411; and*
- vi. *CBI, Hyderabad v. Subramani Gopalakrishnan and Others, (2011) 5 SCC 296.*

22. Mr. Pardeep Gahlot, the learned APP has also supported the case of the petitioner.

23. I have heard the learned Senior Counsel for the petitioner, as well as, the learned APP for the State and the learned counsel for the respondent no.2 and have also perused the material on record.

24. At the outset, it may be noted that although on the face of it, both situations i.e., cancellation of bail order and plea challenging the order for grant of bail, seem to be the same yet, the grounds of contention for both are completely different. In application for cancellation of bail, the court ordinarily looks for supervening circumstances. Whereas, in an application challenging the order for grant of bail, the ground of contention is with the very order of the Court. In other words, once bail is granted, the person aggrieved with such order can approach the competent court to quash the decision of grant of bail if there is any illegality in the order. However, where there is no illegality in the order but it is a case of misuse of bail by the accused or some supervening circumstances warranting such cancellation, then the course available is to apply for cancellation of bail¹.

¹ Ansar Ahmad vs. State of U.P. and another, 2023 SCC OnLine SC 974.



25. In the present petition, essentially the challenge is to the order of the learned Additional Sessions Judge, *inter alia*, on the grounds that the same suffers from legal infirmity and is palpably illegal; offence involved is of serious nature and the learned Additional Sessions Judge did not consider the gravity of such offence; there is sufficient evidence against respondent no.2/accused for his incrimination; Therefore, the prayer for cancellation of bail is a consequential relief.

26. Ordinarily, the High Court should not interfere with an order of the learned Trial Court granting bail but at the same time the law is well settled that though, the grant of bail involves the exercise of the discretionary power of the Court, it has to be exercised in a judicious manner and not as a matter of course.

27. The Hon'ble Supreme Court in ***Prasanta Kumar Sarkar vs. Ashis Chatterjee (2010) 14 SCC 496*** had an occasion to assess the correctness of an order passed by the High Court granting bail. The accused therein was facing trial for an offence punishable under Section 302 IPC and his several bail applications were dismissed by the learned Additional Judicial Magistrate. The High Court, however, allowed the bail application filed by the accused. The Hon'ble Supreme Court set aside the order of the High Court and observed as under:

“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.*

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....”

28. Earlier, the Hon’ble Supreme Court in ***Ram Govind Upadhyay vs. Sudarshan Singh, (2002) 3 SCC 598*** had emphasized that not only the nature of accusations but the severity of the punishment if the accusation entails a conviction and the nature of evidence in support of the accusations, are key considerations which govern the grant of bail. The relevant part of the decision reads thus:

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

- (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the*



punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

29. Again, in ***Kanwar Singh Meena vs. State of Rajasthan and Anr., (2012) 12 SCC 180***, the Hon'ble Supreme Court observed as under:

“10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code,



the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

(emphasis supplied)

30. At this juncture, it would be apt to refer to the relevant part of the impugned order dated 21.09.2024 which reads as under:

“9. Arguments heard. Record has been perused.

10. Applicant/ accused was arrested on 21.04.2021. He was 19 years of age at that time. He had clean antecedents and he was not found involved in any criminal activity previously. He is in continuous JC after his arrest in 2021. One of the main objective of detention before conviction is to preserve evidence and to protect the witnesses. In considered opinion of this court, further detention of the applicant is not going to serve any purpose in this case because all the material witnesses have already been examined.



Remaining witnesses are formal police witnesses and the applicant / accused does not appear to be in any position to exercise any influence upon them. As far as the presence of the applicant during remaining trial is concerned, that can be ensured by imposing the condition of sound surety.

*11. Accordingly, the present application is allowed. Applicant / accused **Mayank Antill** be released on bail on furnishing personal bond of Rs.35,000/- with two sureties each of like amount, subject to the condition that he shall not try to influence any of the witnesses of this case and shall attend the trial regular.”*

31. The impugned order when examined in the light of the law laid down by the Hon’ble Supreme Court makes it plain that the learned Additional Sessions Judge has failed to consider whether there is a *prima facie* case made out or reasonable ground to believe that accused had committed the offence let alone the nature and gravity of accusation and the severity of the punishment in the event of conviction. The arguments on merits which have been advanced by the rival parties before this Court, as well as, the evidence which has come on record have also not been adverted to *albeit* for a limited the purpose of deciding the bail application. The grant of bail is premised on factors namely, the long incarceration of respondent no.2, his clean antecedents and the fact that all material witnesses have been examined.

32. This Court finds that it is manifestly incorrect on part of the learned Additional Sessions Judge to have granted bail to the respondent no.2/accused without taking into consideration the relevant facts and circumstances and the evidence available on record especially when the respondent no.2/accused has been charged with a serious offence under Section 302 IPC. The impugned order granting bail to the respondent no.2/accused only on the basis of triple test *viz.* (i) flight risk, (ii) tampering



2025:DHC:2382



with evidence and (iii) influencing witnesses, thus, suffers from the *vice* of non-application of mind rendering it unsustainable.

33. Accordingly, the petition is allowed. The impugned order dated 21.09.2024 passed by the learned Additional Sessions Judge is set aside and the matter is remitted back to the learned ASJ-03, North West District, Rohini Courts for fresh consideration in accordance with law, more particularly keeping in mind observations of the Hon'ble Supreme Court in the decisions as noted hereinabove.

34. The bail application before the learned ASJ is restored to its original number. The parties are directed to appear before the learned ASJ on 21.04.2025. The learned ASJ is directed to hear the accused, the complainant and the State and pass a fresh order in accordance with law within a period of four weeks from the date of receipt of this order.

35. It is further directed that in the meanwhile, no coercive action be taken against the respondent no.2/accused.

VIKAS MAHAJAN, J.

APRIL 03, 2025/dss

Signature Not Verified

Digitally Signed
By: DEEPAK SINGH
Signing Date: 06.04.2025
00:13:40

CRL.M.C. 8389/2024

Page 12 of 12