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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Delivered on: 12th April, 2021

+ CRL.M.C. 12/2021, CRL.M.A.29/2021

VIKAS MITTAL

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Amit Shukla, Ms Neha, Mr.
Deva Shukla, Mr. Kshitij
Agnihotri, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr.M.S.Oberoi, APP for State
with SI Arun Kumar, Cyber
Cell/North West Distt.
Mr.B.Badrinath and Mr.Karan
Sharma, Advocates for
complainant/R-2.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This order may be read in continuation of my earlier order dated 18.03.2021. The petitioner was granted interim bail vide order dated 01.08.2018 by the learned ASJ for the period of two months on medical grounds but he filed an application for extension, which application was dismissed by the learned ASJ on 01.10.2018. The petitioner did not surrender. The NBWs were thus issued against him on 09.10.2018 as he failed to surrender on dismissal of the application for extension of the interim bail and he approached this Court and it disposed of the application on 22.10.2018 asking him to surrender. However, he failed to surrender and a notice was issued to his surety, who rather deposited

the surety amount on 18.03.2019. Thereafter the process under Section 82/83 Cr.P.C. was issued. The petitioner was then arrested on 27.07.2020 and bail was granted to him on 06.08.2020.

2. A bare perusal of the order dated 06.08.2020 reveals the learned APP for the State had opposed his bail application stating interalia there are chances the applicant *may again jump bail*, if granted, *likewise his past conduct*.

3. Hence, his past conduct, though not, specifically, discussed in the order dated 06.08.2020, *certainly* was argued on behalf of the State but considering the fact the co-accused person were already granted bail by the Courts below, and one of the co-accused *viz.* Vinit Mittal was granted anticipatory bail and as the applicant was no more required for investigation purposes, he was ordered to be released on bail on his furnishing personal bond/surety of Rs.50,000/- and was directed *a)* to deposit his passport with the court and *b)* not to leave the country without the prior permission of the Court.

4. The respondent No.2 being not satisfied with the order on bail, moved an application under Section 439(2) Cr.P.C. for cancellation of the said bail granted vide order dated 06.08.2020.

5. I have perused the application for cancellation of the bail which primarily speaks of the past conduct of the accused *viz.* having failed to surrender despite his interim bail being cancelled; his surety amount being deposited; and process under section 82/83 Cr.P.C. having been issued.

6. Admittedly, the bail order dated 06.08.2020 was reversed and the bail was cancelled vide impugned order dated 26.11.2020 *primarily* on

his past conduct *viz.* failure to surrender after expiry of his interim bail. The relevant portion of the impugned order is:

"Ld. ASJ (N/W) while dismissing the bail application vide order dated 1/10/2018 had gone to the facts of the case in detail and observed that such kind of heinous offences amounts to misuse of the judicial process and has to be dealt with seriousness lest it erodes the faith of the public in the entire judicial system. The accused Vikas Mittal/Non-applicant has not only fled away after seeking interim bail on medical grounds but also failed to fulfill his undertaking before Hon'ble High Court of Delhi for surrendering before the ld. Trial Court. Such kind of conduct of the accused/non-applicant Vikas Mittal should have been taken into account by Ld.C.M.M. (N/W) while disposing the bail application."

Though there is no such subsequent conduct of tampering with the evidence or threatening the witnesses etc. as contended by ld. Counsel for the non-applicant/accused but keeping in view his previous conduct there is likelihood that he may not make himself available for trial. In criminal Jurisprudence, accused have been given many rights but at the same time rights of the complainant cannot be overlooked altogether who may ultimately loose faith in the judicial system."

7. Though the learned ASJ noted there is *no subsequent conduct of tampering with the evidence or threatening the witnesses* yet keeping in view his *previous* conduct that he may not make himself available, cancelled his bail by impugned order.

8. The learned APP for the State has referred to *Kanwar Singh Meena v. State of Rajasthan*, (2012) 12 SCC 180 wherein it was held if the Court granting bail *ignores* the relevant material indicating *prima facie* involvement of the accused or takes into account *irrelevant* material which has no relevance to the grant of bail to the accused, the Sessions Court or the High Court would be justified in cancelling the bail.

9. The learned APP argues the impugned order was justified and hence the petition against it be dismissed.

10. No doubt bail can be cancelled in case where the order granting bail suffers from infirmities resulting in miscarriage of justice or if it is granted by the court ignoring the relevant material or where it is granted on material which has no relevance to the issue of grant of bail but a bare perusal of the order dated 06.08.2020 would reveal the entire material was perused by the learned MM before the grant of bail. The order of the learned MM granting bail to the appellant cannot be termed as *perverse* as learned MM was conscious of the fact *the investigation was complete* and *the custody of the petitioner was not required*. The learned CMM was also aware of the previous conduct of the petitioner of not surrendering in time and also that co-accused person were granted bail and one of them got anticipatory bail. Thus, it cannot be said relevant material for grant of bail was never considered. Rather the impugned order shows despite there being no subsequent conduct of tampering with the record or threatening of the witnesses *yet* keeping his previous conduct in mind viz. there is likelihood he may not be available for trial, his bail was cancelled. The impugned order admittedly was passed on an apprehension of the learned Sessions Court but it was no cogent ground to cancel the bail, hence, the impugned order suffers from infirmity and is accordingly set aside.

11. In *Directorate of Enforcement vs. Ratul Puri* 2020 SCC Online Del 97 it was held:

"28. In case of Dolat Ram and others vs. State of Haryana: (1995) 1 SCC 349, it is observed by the Hon'ble Supreme Court that "very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking the grounds of cancellation of bail, broadly are interference or attempt to interfere with the due course of administration of

justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of accused absconding is yet another reason justifying the cancellation of bail. However, 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.”

32. It is settled that once bail granted should not be cancelled in a mechanical manner without considering any supervening circumstances which is not conducive to fair trial. It cannot be cancelled on a request from the side of the complainant/investigating agency unless and until it is established that the same is being misused and it is no longer conducive in the interest of justice to allow the accused any further to remain on bail. No doubt, the bail can be cancelled only in those discerning few cases where it is established that a person to whom the concession of bail has been granted is misusing the same. However, all those facts are missing in the present case.”

12. Even otherwise, the petitioner is in Judicial custody since 27.10.2019. Thus the order dated 26.11.2020 is set aside. I restore the order dated 06.08.2020 and admit him to bail with the condition(s) imposed per order dated 06.08.2020 of the learned MM.

13. Petition stands disposed of. Pending application(s), if any, also stands disposed of.

YOGESH KHANNA, J.

APRIL 12, 2021

VLD