

X vs The State & Anr on 27 January, 2025

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:27.01.

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CRL.M.C. 6243/2019

X

.....Peti

Through:

versus

THE STATE & ANR

.....Respond

Through:

Advocates who appeared in this case:

For the Petitioner :Ms. Sunita Arora, Advocate (DHCLSC)
alongwith Petitioner-in-Person.

For the Respondent : Mr. Naresh Chahar, APP for the Stat
Mr. Chirag Jamwal, Advocate (Through
V.C.) with Mr. Ajit Amar & Mr. Akashd
Kakkar, Advocates for Respondent No.2
5.
SI Mukesh Kumari (P.S. R.K. Puram).

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed seeking cancellation of the bail granted to Respondent No. 2 vide order dated 20.08.2019, passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi ('Trial Court'), in SC No. 306/2019 arising out of FIR No. 39/2019 for offences under Sections 376/506/509/120B/195A of the Indian Penal Code, 1860 ('IPC'), registered at Police Station RK Puram.

Brief Facts:

2. The FIR in the present case was lodged following a complaint by the petitioner, who alleged that in the year 2007, Respondent No. 2 had called her to Papad Wali Gali, Ambedkar Basti, under the pretext of offering her a job. During the meeting, Respondent No. 2 allegedly coerced the petitioner into a non-consensual physical relationship and threatened her with dire consequences, including death, if she disclosed the incident to anyone.

3. The statement of the petitioner under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') was recorded by the learned Metropolitan Magistrate on 01.02.2019, wherein the petitioner detailed the sequence of events involving Respondent No. 2. She stated that in the year 2007, the

accused established forceful physical relations with her and threatened to kill her if she disclosed the incident to anyone. Two years later, in 2009, the accused began following her persistently, which led the petitioner to complain to the family members of the accused. Despite these circumstances, the petitioner eventually befriended the accused, believing his assurances of marriage.

4. The petitioner further described a continued pattern of harassment and coercion by Respondent No. 2, emphasizing that he coerced her into non-consensual physical relations multiple times while simultaneously threatening her along with his family members. This persistent intimidation caused the petitioner severe mental distress.

5. She further alleged that on an unspecified date, Respondent No. 2 took her to a temple where he performed rituals including applying sindoor and tying a mangalsutra, giving her the impression of a marriage ceremony. However, she later discovered that Respondent No. 2 had engaged another woman. When she confronted him, he allegedly refused to marry her, citing pressure from his family members. The same led to registration of the present FIR.

6. Respondent No. 2 was arrested on 20.05.2019 and was admitted on bail by the impugned order.

7. The learned Counsel for the petitioner submitted that Respondent No. 2 was granted bail despite the seriousness of the allegations and the gravity of the offence. It was contended that Respondent No.2 had misused the liberty granted to him by threatening the complainant and attempting to influence the witnesses.

8. The learned counsel submitted that the learned ASJ erred in granting bail to Respondent No. 2 and acted unjustly while not appreciating that Respondent No. 2 had obtained her consent for the physical relationship by giving a false promise of marriage. She emphasized that at no point was the petitioner a consenting party to the physical relationship with Respondent No. 2. She argued that the learned ASJ failed to appreciate the circumstances under which the alleged acts occurred and overlooked crucial aspects of the case, including the coercion and manipulation employed by Respondent No.

2. She contended that such an erroneous observation undermines the gravity of the allegations and grants undue benefit to the accused.

9. She argued that the learned trial court failed to consider the gravity of the offence and the likelihood of tampering with evidence, which are critical factors for consideration while granting bail. She submitted that the impugned order is devoid of any reasons which implies non-application of mind.

10. The learned counsel submitted that the FIR was registered based on the facts dictated by SI Jyoti and did not fully reflect the petitioner's version of events. She further stated that Respondent No. 2, along with his brother, mother, and an individual named Vinod, had repeatedly issued threats, pressuring her to compromise the matter. They also allegedly used abusive and inappropriate language during these interactions.

11. She submitted that after the bail was granted to Respondent No.2, subsequent complaints dated 30.08.2019, 11.11.2019, 16.11.2019, and 23.01.2020 were given to the police and Delhi Commission of Women (DCW), with regard to intimidation to the petitioner, however, no action was taken by the authorities. She submitted that the conduct of the accused person does not entitle him to be released on bail and bail granted by the learned Trial Court ought to be cancelled.

12. Conversely, the learned Counsel for Respondent No. 2 contended that the bail was granted after a detailed examination of the facts and Respondent No.2 had fully cooperated with the investigation. It was also submitted that there was no cogent evidence of any threat issued by Respondent No.2 and that the allegations were speculative.

13. The learned counsel argued that the petitioner's allegations were inconsistent and lacked credibility. It was submitted that the petitioner had changed her statements on multiple occasions to suit her convenience. Specifically, the petitioner initially claimed that the first incident of sexual assault occurred in the year 2007 but later revised this in her statement under Section 164 of the CrPC to allege that it took place in the year 2001, when she was a minor. The learned counsel contended that this inconsistency demonstrated an attempt to falsely implicate Respondent No. 2 under the Protection of Children from Sexual Offenses Act, 2012 ('POCSO Act').

14. The learned counsel further argued that the petitioner did not lodge any complaint or FIR for over a decade after the alleged incident, which raises doubts about the authenticity of her claims. It was also highlighted that the petitioner and Respondent No. 2 had maintained a friendship and that physical relationship, if any, between them cannot be alleged to be forced. The allegations of coercion or a false promise of marriage were, therefore, baseless and unsubstantiated.

15. Additionally, the learned counsel contended that there was no medical or scientific evidence to corroborate the petitioner's claims. The allegations against other respondents, including family members of Respondent No. 2, were described as vague and unsupported by any substantive evidence.

16. Lastly, the learned counsel submitted that after the conclusion of investigation, charge sheet has been filed, trial is going on and Respondent No.2 has cooperated in the investigation and is also cooperating in the trial. He submitted that Respondent No.2 has not misused the liberty so granted to him.

Analysis :

17. It is trite law that an order granting bail ought not to be disturbed unless there are strong reasons and overwhelming circumstances 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.

18. 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 (parimateria to Section 483 (3) of the BNSS) in the case 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(2) 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 Gujarat* [(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)

19. 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)

20. The primary grounds for seeking the cancellation of bail include the misuse of liberty, attempts to influence and threatening the witnesses, and the seriousness of the offence. It is a well-established legal principle that bail cannot be cancelled merely on the basis of re- appreciation of evidence by any court. In this case, there is no evidence to suggest that Respondent No. 2/accused has misused the liberty granted to him under bail. On the contrary, the learned Trial Court, in its order dated 20.05.2019, duly noted the petitioner's disrespectful, aggressive, hostile, violent, and abusive behaviour towards Respondent No. 2 during the proceedings. This observation underscores the absence of any misuse of bail on the part of Respondent No. 2.

21. In the present case, the petitioner has alleged that Respondent No. 2 issued threats and engaged in acts of intimidation following his release on bail. The petitioner claims to have filed multiple

complaints, dated 30.08.2019, 11.11.2019, 16.11.2019, and 23.01.2020, with the police and the Delhi Commission for Women (DCW), asserting that no action was taken by the authorities in response to these complaints.

22. This Court, by order dated 22.01.2024, directed the police to file an affidavit detailing the actions taken on the petitioner's complaints regarding the alleged intimidation. The police submitted that the records pertaining to the complaints dated 30.08.2019, 11.11.2019, and 16.11.2019, as well as their corresponding replies, had been destroyed pursuant to record destruction orders (No. 6251- 6256/HAR/SWD) dated 21.11.2023. This was in accordance with standard administrative procedures for the disposal of old records.

23. The police further addressed the petitioner's complaint dated 23.01.2020, wherein she expressed apprehensions about threats from the accused while travelling to court on 24.01.2020. In response, the petitioner was promptly provided with the contact information of a police official and assured police protection for her journey from the jurisdiction of PS R.K.Puram to the court and back. This indicates that appropriate measures were taken to address her concerns regarding safety.

24. It is evident that the authorities have duly noted and acted upon the petitioner's complaints within their administrative framework and capabilities. The petitioner's submission that no action was taken against her allegations of intimidation thus lacks substance. The police records and steps taken, including providing police protection, demonstrate their responsiveness to her concerns, undermining the credibility of her claims of inaction.

25. In *Deepak Yadav v. State of U.P.* : (2022) 8 SCC 559, the Hon'ble Apex Court has emphasised that bail once granted, should not be cancelled in a mechanical manner. Cancellation of bail must be on very cogent and overwhelming circumstances.

26. It is important to acknowledge that much water has flown since Respondent No.2 was admitted on bail, and the trial has made substantial progress. Given that the charges have already been framed, the petitioner's defense will be examined through the course of the trial, based on the evidence presented. At this stage, any detailed commentary on the merits of the allegations would be premature and would cause prejudice to the parties.

27. It is pertinent to note that the learned Trial Court, while framing charges against Respondent No.2, observed certain inconsistencies in the allegations made by the petitioner, which ultimately led to the discharge of Respondent Nos.2-5. This Court, in a separate judgment pronounced today, has upheld the discharge of Respondent Nos. 2-5.

28. At this stage, there is no material on record to indicate that Respondent No.2 has misused the liberty granted to him by way of bail. Furthermore, it is not the case of the prosecution that the accused has failed to participate in the trial or attempted to obstruct the course of justice.

29. Since the trial has progressed and is at the stage of evidence, this Court finds no valid reason to interfere with the impugned order.

30. 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.

31. In such circumstances, considering the aforesaid discussion, liberty granted to Respondent No.2 cannot be taken away after more than 4 years. In view of the above, the present petition is dismissed.

32. It is made clear that the observations made by the learned Trial Court or in the present order are only made for the purpose of deciding the application for bail and not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

AMIT MAHAJAN, J JANUARY 27, 2025