

Swati Patel vs The State & Anr. on 30 January, 2024

Author: Swarana Kanta Sharma

Bench: Swarana Kanta Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 10.01.
Pronounced on: 30.01.

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CRL.M.C. 2630/2021
SWATI PATEL

Through: Mr. B.P. Sharma, Advocate

versus

THE STATE & ANR.

Through: Mr. Manoj Pant, APP for
State with SI Lovely Pr
P.S. Connaught Place, D

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA
JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking cancellation of anticipatory bail granted to respondent no. 2, in case FIR bearing no. 162/2021, registered at Police Station Connaught Place, Delhi, under Sections 376/376(2)K/506/201/120B of Indian Penal Code, 1860 ('IPC') vide order dated 25.09.2021 passed by learned Special Judge, PC Act, CBI-23, Rouse Avenue, District Court, New Delhi ('Sessions Court').

2. Brief facts of the case, as disclosed from the impugned order, are that the accused/respondent no. 2 herein was a sitting Member of Lok Sabha from Lok Janshakti Party and the petitioner/prosecutrix was a political worker of Lok Janshakti Party, and had joined the same in December, 2019. Both the accused and the prosecutrix had lodged cross FIRs against each other. In the first FIR bearing no. 27/2021, P.S. Parliament Street, lodged by the accused against the prosecutrix, the allegations of extortion were levelled against the prosecutrix. In the FIR lodged by the accused, it was alleged that in the month of February, 2019, prosecutrix had met the accused at his residence in New Delhi as a political worker and had offered her assistance in the political field. Thereafter, both had exchanged the telephone numbers and had started spending time together. Thereafter, on 16.06.2020, the prosecutrix had insisted that she wanted to visit the accused and had

given an impression to him that she really likes him. On 18.06.2020, the accused had gone to the house of the prosecutrix in Ghaziabad and there, she had seduced him to have physical relations with her. Thereafter, on couple of occasions, the accused and complainant had physical relations at her residence in Ghaziabad. In the month of August, 2020, the accused had come to know that the prosecutrix was already in relationship with one Amar. This fact had come to the knowledge of accused when he had received a call from Amar from the mobile phone of the prosecutrix. It is further alleged in the said FIR, that after the accused had come to know about the relationship of prosecutrix with Amar, he had started maintaining distance with the prosecutrix and used to avoided making calls and sending messages to her. Thereafter, the prosecutrix along with her friend Amar had started sending threatening messages along with screenshots of video footage prepared by the prosecutrix during one of his visits at her residence in Ghaziabad. The prosecutrix and Amar had threatened the accused to upload the obscene video and pictures taken by the prosecutrix on social media platform in case Rs. 1 Crore was not paid to the prosecutrix. Both of them had also threatened to implicate him in a false case of rape. The accused under pressure and fear of being defamed in public had given Rs.2 lacs in cash in three-four installments to the prosecutrix, however, the demands of the prosecutrix did not end. Therefore, the accused was compelled to lodge the FIR bearing no. 27/2021, P.S. Parliament Street against the prosecutrix and her friend Amar for offence of extortion. Along with the complaint, the accused had also provided the copy of WhatsApp chats and transcription of audio recordings. The accused in the said FIR, who is the prosecutrix in the present FIR, was granted anticipatory bail in that case. As revealed, after three months of lodging of the FIR, prosecutrix herein had sent a complaint dated 31.05.2021 through speed post to SHO, P.S. Parliament Street, New Delhi and thereafter, had further sent a complaint dated 28.06.2021 to the SHO, P.S. Connaught Place, New Delhi alleging that the prosecutrix had gone to meet the accused in his Western Court office in February, 2020 where she was offered a glass of water and after drinking the same, she had started feeling dizziness and had become unconscious. On regaining consciousness, she had found her head on the shoulder of accused and when she had asked the accused as to what had happened, he told her that she had felt dizziness. Thereafter, in the month of March, 2020, she had again gone to the office of accused where he had started touching prosecutrix inappropriately, and when she objected to the same, the accused had shown a video to her in which accused was making physical relations with her. In the said video, face of the prosecutrix was clearly visible whereas face of the accused was hidden. Thereafter, accused had offered to marry her and threatened her that in case she did not comply with his demands, he will publish the obscene video of the prosecutrix. It was further alleged that on the basis of threat of uploading the obscene video of prosecutrix on social media, applicant/accused had physical relations with her on number of occasions at her residence in Ghaziabad. It is stated that to further threaten her and further to compel her to remain in physical relationship with him, accused also got removed banners and posters of the prosecutrix against which the prosecutrix had made a complaint in writing on 08.01.2021 to the President of Lok Janshakti Party. However, no action was taken on the said complaint. Therefore, prosecutrix left the said Party in February, 2021 and joined another political party i.e. Janta Dal United. It was also alleged that accused had got a false FIR lodged against the prosecutrix and during the course of investigation, police had conducted raid at her house and had seized her laptop and mobile phones, and she was also made to sign some blank papers in the police station. Based on the complaints dated 31.05.2021 and 28.06.2021, the SHO of PS Connaught Place had initiated inquiry into the allegations made by prosecutrix which had been made after 16-17

months of delay. After inquiry, the police had concluded that allegations made by the prosecutrix did not inspire confidence and no cognizable offence was disclosed, and no action was taken on the complaint of the prosecutrix. Thereafter, the prosecutrix had approached the court of learned ACMM-1, RADC, New Delhi by filing an application under Section 156(3) of Cr.P.C. On 14.07.2021, after calling Action Taken Report from PS Connaught Place, the learned ACMM had directed the SHO, PS Connaught Place to register an FIR against the accused/respondent no. 2. Accordingly, the present FIR was registered against the accused for commission of offence of rape, criminal intimidation and destruction of evidence, and the investigation was conducted.

3. Vide order dated 25.09.2021, which has been impugned before this Court, the accused/respondent no. 2 was granted anticipatory bail by the learned Sessions Court.

4. Learned counsel for the applicant i.e. the prosecutrix argues that the respondent no. 2 was granted anticipatory bail by the learned Sessions Court in a serious offence. It is stated that the learned Sessions Court has failed to consider that the respondent no. 2 has been constantly threatening the petitioner herein and that on 11.09.2023, glass of her car was broken and some documents were stolen along with some money, and the matter was also reported to the police. It is stated that her new car was also dragged and damaged by a huge stone by motorcyclists who could not be traced. It is further submitted that respondent no. 2 is also delaying the trial of the case. It is also stated that the learned Trial Court has examined/allowed cross-examination in contravention of guidelines issued by the Hon'ble Apex Court, in the open Court. It is also argued that the petitioner is a young social worker and that she had not imagined that by the administering stupefying substance to her, she will be sexually assaulted. It is argued that just because the accused is a Member of Parliament, the police as well as the Court below has not followed the law. It is further argued that FIR No. 27/2021 was registered against the prosecutrix by the accused on 10.02.2021, only in order to silence her, though she was granted anticipatory bail in that case. It is stated that due to the influence of the accused, who is a highly influential MP, the accused has escaped the law and was granted anticipatory bail. It is stated that the respondent no. 2 is still posting contents on social media presenting himself to be innocent and projecting that the victim is a blackmailer, extortionist and a honey trapper, and therefore, the bail granted to the accused be cancelled.

5. Learned counsel for respondent no. 2, on the other hand, argues that bail in this case was granted by a well-reasoned order passed by the learned Sessions Court, after considering all the facts and circumstances of the case. It is stated that accused/respondent no. 2 was falsely implicated in this case by the petitioner, and the present FIR was lodged after the respondent no. 2 had first got an FIR registered against the petitioner for her alleged acts of extortion. It is further submitted that police had filed a closure report in this case after completion of investigation, however, the learned Trial Court had issued summons against the accused, and thereafter, those summons were also quashed by the superior court. In these circumstances, it is prayed that present application be dismissed.

6. This Court has heard arguments addressed on behalf of learned counsel for the petitioner as well as learned APP for the State and has perused the material available on record.

7. The law regarding cancellation of bail stands well-settled through judicial precedents of the Hon'ble Apex Court, which also lay down the principles and circumstances under which the bail granted to an accused can be cancelled. In this regard, the observations of Hon'ble Apex Court in *Deepak Yadav v. State of Uttar Pradesh* (2022) 8 SCC 559, on law regarding cancellation of bail, are reproduced as under:

"... C. Cancellation of Bail

30. 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). A two- Judge Bench of this Court in *Dolat Ram v. State of Haryana* (1995) 1 SCC 349 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 accused absconding

(v) Likelihood of/actual misuse of bail

(vi) Likelihood of the accused tampering with the evidence or threatening witnesses.

31. 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:--

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

b) 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.

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

d) Where bail has been granted on untenable grounds.

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

f) 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.

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

32. In *Neeru Yadav v. State of Uttar Pradesh* (2014) 16 SCC 508, the accused was granted bail by the High Court. In an appeal against the order 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:--

"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 and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court"

8. The law on point was also summed by the Hon'ble Apex Court in case of *P v. State of Madhya Pradesh* 2022 SCC OnLine SC 552 through following observations:

"24. As can be discerned from the above decisions, for cancelling bail once granted, the Court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial. To put it differently, in ordinary circumstances, this Court would be loath to interfere with an order passed by the Court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the Appellate Court..."

9. As held by Hon'ble Apex Court in *Central Bureau of Investigation v. Subramani Gopalakrishnan* (2011) 5 SCC 296, 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. Similarly, it would also be relevant to take note of the following observations of Hon'ble Supreme Court in *Mehboob Dawood Shaikh v. State of Maharashtra* (2004) 2 SCC 362:

"8. ...It is, therefore, clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to."

10. In the present case, the accused/respondent no. 2 was granted anticipatory bail, in a nutshell, on the following grounds: (i) that there is unreasonable delay in lodging the FIR by the prosecutrix, (ii) the present FIR has been lodged by the prosecutrix as the counterblast to the FIR no. 27/2021, P.S. Parliament Street lodged by the accused against the prosecutrix way back in February, 2021, (iii) admission made by the prosecutrix that the relationship between her and the accused was consensual as per the transcript and audio recordings dated 27.08.2020 played in the court, (iv) there was no requirement of custodial interrogation of accused, (v) absence of any entry in the Western register of Western Court, New Delhi regarding the visit of the prosecutrix on the date of incident and thereafter, in the month of March, 2020 despite her specific assertions that she had made entry in this regard in the register. Learned Sessions Court had also observed that the accused had clean antecedents and the IO had confirmed that there was no other case pending against him. The Court had also observed that there was remote likelihood of accused of repeating the similar or any other offence as he is a sitting Member of Lok Sabha and he will not jeopardize his chance to get re-elected by committing similar or any other offence. Learned Sessions Court also held that the discussion made in the order regarding the absence of entries, etc., and the audio recording and transcript thereof played in the court showed that she was trying to threaten the applicant to defame him by circulating his pictures and videos which were in her possession, and the same prima facie established that there was possibility of false implication of the accused, and thus, the accused was granted anticipatory bail.

11. Having taken note of the law on cancellation of bail, this Court notes that as far as the contention of the learned counsel for the prosecutrix that the learned Sessions Court had granted anticipatory bail to the accused as he was a sitting Member of Parliament is concerned, this Court notes that the order for grant of anticipatory bail is a detailed and reasoned order. Even if the accused is a sitting Member of Parliament, the same is not the criteria or reason for grant of bail to the accused. In preceding paragraph, this Court has already discussed the reasons given by the learned Sessions Court while granting bail to the accused. The anticipatory bail order was passed on the basis of material collected and placed on record i.e. the audio recordings and the transcript thereof which have been discussed in the order itself along with other material regarding an FIR regarding extortion registered against prosecutrix prior in time. Therefore, in this Court's opinion, there is no infirmity in the order dated 25.09.2021 passed by learned Sessions Court.

12. As regards other grounds raised by the petitioner/prosecutrix that her car was attacked by the accused, no material has come on record which would show that such acts were committed by the respondent no. 2 or by other persons at his behest. The prosecutrix herein has also alleged that the accused was posting inappropriate messages and content against her on the social media even after, however, nothing has been filed on record to substantiate the same. Needless to say, the accused has to abide by the conditions which have been imposed upon him by way of impugned order.

13. The bail in this case was granted in the year 2021 vide order dated 25.09.2021, by a detailed order. There is no subsequent event shown to this Court which warrants any interference with the order granting bail to the accused persons. Considering the same, this Court is not inclined to cancel the anticipatory bail granted to the accused which should not be cancelled on mere asking as an individual's right to liberty is a crucial right which cannot be interfered with lightly.

14. However, the prosecutrix will be at liberty to approach the Witness Protection Committee, in case of any threat being extended to her. The SHO of concerned Police Station will also ensure that prompt action is taken, upon receipt of any complaint, if any threat is extended to the prosecutrix, in accordance with law.

15. In view of the foregoing discussion, the present petition stands dismissed.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J JANUARY 30, 2024/zp