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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 612/2021**

Date of decision: 16th AUGUST, 2021

IN THE MATTER OF:

STATE

..... Petitioner

Through Ms. Meenakshi Chauhan, APP for the
State

versus

AKSHAY DAGAR ALIAS SHAKTI Respondent

Through Mr. Anirudh Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The State seeks to challenge the order dated 04.12.2020 passed by the learned Additional Sessions Judge-03, Dwarka, granting bail to the respondent herein in FIR 125/2018, dated 02.05.2018, registered at Police Station Sector-23, Dwarka for offences under Sections 302, 120B and 201 IPC read with Sections 25, 27, 54 and 59 of the Arms Act.

2. The facts, in brief, of this case are as under:

a) On 02.05.2018, at about 9:55 AM, a PCR call was received regarding firing on a white coloured Swift car near Shiv Mandir, Firmi Road, Village Bannoli, Delhi. The same was recorded *vide* DD No.24A. Police team reached the spot where they found that a white coloured Swift car bearing No. DL3CAH-1805 had hit an

electric poll, both the front window glasses of the car were broken and two injured persons were lying in the front seat of the car. The person on the driving seat was identified as Sandeep Deswal @ Sandeep Mental and another person was identified as Pawan Mann @ Pauna. There were multiple gun-shot injuries on the head and arms of both the persons. There were bullet marks on the car and several empty cartridges were found at the place of the incident. On inspection, a country-made pistol was found inside the car with five live cartridges. FIR No.125/2018 was registered at Police Station Sector-23, Dwarka for offences under Sections 302, 120B and 201 IPC read with Sections 25, 27, 54 and 59 of the Arms Act.

b) Statement of the person who made the call to the Police i.e. Padam Singh (PW-2) and another person Mahipal Singh (PW-1) were recorded under Section 161 Cr.P.C.

c) During the course of investigation and based on the statement of the said two persons the route of the Swift car was analysed. The witnesses had stated that a silver coloured Santro Car, bearing No. DL8CAF0943 and a black colour Discover bike were also seen following the Swift Car. On analysing the route of the vehicles, a CCTV camera was found installed outside Lochav Estate, Village Banmoli. On examination of the CCTV footage, it was found that, as told by the witnesses, a silver coloured Santro Car, bearing No. DL8CAF0943 and a black coloured Discover bike were seen passing the estate. On investigation, the motorcycle which was seen in the CCTV footage was found to be abandoned near Dada Mota Mandir. The motorcycle matched the description as provided by the two eye-

witnesses. The photographs of the motorcycle were taken and the chance prints were developed.

d) The statements of the mother of the deceased, Darshana Devi, and wife of the deceased, Sumitra Devi were recorded under Section 161 Cr.P.C.

e) In her statement under Section 161 Cr.P.C, the mother of the deceased revealed that the deceased was a property dealer and was constructing a flat near Pochanpur Extension, Delhi, in partnership with one Kamlesh. She revealed that she knows Rajiv Dagar @ Monu and the respondent herein as they have visited their house multiple times. She stated that Rajiv Dagar used to come to their house in a Silver coloured Santro Car which belonged to Kamlesh. It was revealed by the mother of the deceased that a dispute arose between the deceased and Rajiv Dagar regarding the development of flats and the cost incurred therein. She also revealed that two days prior to the incident, Rajiv Dagar and the respondent came to their house and threatened the deceased with dire consequences. She states that Rajiv Dagar threatened the deceased with dire consequences if the accounts are not settled by the next day. The mother of the deceased saw the CCTV footage and she identified the two persons who were on the motorcycle. She identified the person who was riding the motorcycle as Rajiv Dagar and the person who was sitting pillion was identified as the respondent herein. The mother of the deceased also stated that the Santro Car seen in the CCTV footage belongs to Kamlesh.

f) The wife of the deceased also gave her statement under Section 161 Cr.P.C wherein she has reiterated her statements as given by the mother of the deceased.

g) During the course of the investigation, on 03.05.2018, Arjun Dalal @ Monu was arrested and the silver coloured Santro car was recovered from his possession. Chance prints were developed.

h) According to the prosecution, the said Arjun Dalal @ Monu was interrogated and he disclosed that he was approached by Rajiv Dagar to kill Sandeep Deswal, the deceased. The disclosure statement of Arjun Dalal @ Monu revealed that Rajiv Dagar gave him Rs.1,00,000/- for the work. He stated that at Pochanpur he was joined by one Manirul and the respondent herein. He revealed that they brought the fire arms for killing the deceased. He revealed that a motorcycle was stolen and a recce of the place, where the plan was to be executed, was conducted by the accused. He revealed that the respondent herein and Rajiv Dagar were on the motorcycle whereas Arjun Dalal and another co-accused Manirul were in the Santro car. It was disclosed that as soon as the Swift car, driven by the deceased, was spotted they cornered the car and started firing upon the car and fled from the spot.

i) Rajiv Dagar was arrested on 05.06.2018. The respondent was absconding. He was declared a proclaimed offender and was arrested in October, 2018 in another case. One revolver was recovered from his instance. It is pertinent to mention here that the respondent had been arrested in FIR No.205/2015 registered at Police Station Dwarka Sector-23 for offences under Sections 302/34 IPC and

Sections 25/27/54/59 of the Arms Act. The respondent was subsequently arrested in the present FIR on 25.10.2018. Charge-sheet was filed before the arrest of the respondent and a supplementary charge-sheet was filed, after the arrest of the respondent, under Sections 302, 120B and 201 IPC read with Sections 25, 27, 54 and 59 of the Arms Act

j) Charges were framed and trial has begun.

k) PW-1 and PW-2 were examined but they both turned hostile. After they turned hostile the respondent filed an application for bail, being Bail Application No.3198/2020. The learned Additional Session Judge *vide* order impugned herein granted bail to the respondent herein.

l) The learned ASJ granted bail to the respondent herein on the ground that the respondent herein was in custody since 18.10.2018, two star witnesses (eye-witnesses) have not supported the case of the prosecution, nothing incriminating has been brought on record by the aforesaid prosecution witnesses, there is no apprehension of the accused tampering with evidence because the CCTV footage and the FSL are scientific evidence and therefore there is no possibility of tampering them and that in the present situation created due to Corona pandemic, the respondent herein warrants grant of bail.

m) It is this order which is under challenge in the instant petition.

3. Heard Ms. Meenakshi Chouhan, learned APP for the State and Mr. Anirudh Yadav, learned counsel for the respondent and perused the material on record.

4. Ms. Meenakshi Chouhan, learned APP for the State submits that the Trial Court has failed to note the following factors which ought to have been considered by the learned Additional Session Judge before granting bail to the respondent herein:

a. The respondent is accused of a heinous offence under Section 302 IPC which entails the maximum punishment i.e. death or imprisonment for life.

b. That the respondent was absconding and he was declared as a proclaimed offender and was only arrested only in October, 2018 in some other case.

c. The wife and mother of the deceased have attributed motive to the petitioner. They have identified the Santro car and the motorcycle used in the crime. They also identified the petitioner as the pillion rider on the motorcycle.

d. The learned APP for the State has brought the attention of this Court to an application filed on 17.10.2019, wherein the witnesses had filed an application for exemption from personal appearance on the ground that they are being threatened and there is a likelihood that the witnesses will be attacked by the accused persons. The learned Court has directed the concerned SHO to make necessary arrangements for the witnesses to appear on the next date of hearing.

e. The learned APP for the State submits that apart from the present case the respondent is involved in three other cases, namely:

- (i) FIR No.205/2015, registered at Police Station Dwarka Sector 23 for offences under Sections 302/34 IPC and Sections 25/27/54/59 of the Arms Act.

- (ii) FIR No.117/2016, registered at Police Station J.P. Kalan for offences under Section 336 IPC and Sections 25/247 of the Arms Act.
- (iii) FIR No.16/2018, registered at Police Station Kalkaji, for offences under Sections 25/54/59 of the Arms Act.

The learned APP for the State submits that none of these factors have been considered by the learned Additional Session Judge before granting bail to the respondent herein and the order granting bail, therefore, should be set aside.

5. *Per contra*, Mr. Anirudh Yadav, learned counsel for the respondent contends that the star witnesses have not supported the case of the prosecution. He states that other than the disclosure statement there is nothing to connect the respondent with the crime. He states that the fact that the respondent went with his cousin to the house of the deceased cannot connect him directly with the case in the absence of any evidence and therefore, no *prima facie* case is made out against the respondent herein.

6. An offence under Section 302 IPC is a heinous offence punishable with life imprisonment or death. The consideration for granting bail under Section 439 Cr.P.C are now fairly well settled and they are:-

- a) Nature and gravity of the offence which is determined by the punishment for that offence;
- b) The position and status of the accused with reference to the victim;
- c) Likelihood of the accused fleeing from justice;
- d) Tampering with evidence and influencing witnesses.

7. It is well settled that an order granting bail ought not to be interfered by the High Court unless there are compelling reasons warranting cancellation of bail.

8. The Supreme Court has time and again laid down the guidelines for cancellation of bail. The Supreme Court in Kanwar Singh Meena V. State of Rajasthan, (2012) 12 SCC 180, observed as under:

“10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions 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 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 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 recognized 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 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.”

9. The Supreme Court in Aslam Babalal Desai v. State of Maharashtra reported as (1992) 4 SCC 272, has observed as under:-

“ 11.....As stated in Raghbir Singh case [(1986) 4 SCC 481 : 1986 SCC (Cri) 511 : (1986) 3 SCR 802] the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (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, (vii) 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. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.”

10. In the facts of the present case, the learned Additional Sessions Judge has failed to consider the fact that the respondent was absconding for five months and had been declared as a proclaimed offender. He was arrested in some other case and later arrested in the case. Therefore, his chances of fleeing from justice cannot be ruled out. He has failed to consider that there is one more case against the respondent wherein he is accused of committing an offence under Section 302 IPC. The learned Additional Session Judge also failed to consider the fact that the mother and the wife of the deceased have moved an application in the Trial Court and have sought protection and protection has been granted to them by the learned ACMM *vide* order dated 18.07.2018. The learned Additional Session Judge failed to appreciate that the murder of the deceased was well planned and well orchestrated. The learned Trial Court has failed to take into account the vital factors which have to be considered while granting bail to the accused warranting interference from this Court.

11. With these observations, the order dated 04.12.2020 passed by the learned Additional Sessions Judge-03, Dwarka, granting bail to the respondent herein is set aside and the bail of the respondent stands cancelled.

12. The respondent is directed to surrender within one week before the concerned Jail Superintendent failing which the respondent is directed to be taken into custody.

13. Accordingly, the petition is disposed of along with the pending applications, if any.

AUGUST 16, 2021
Rahul

SUBRAMONIUM PRASAD, J.

HIGH COURT OF DELHI



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