

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

% **Reserved on : 23.08.2021**
Pronounced on : 06.01.2022

+ **CRL.M.C. 1308/2021**

VISHAL BHUTANI Petitioner
Through: Mr. Vijay K. Gupta, Advocate.

Versus

STATE AND ANR. Respondents
Through: Dr. M.P.Singh, APP for the State with
SI Anand Pratap PS Laxmi Nagar.
Dr. L.S. Chaudhary, Advocate with
Mr. Ajay Chaudhary and Mr. Vishesh
Kumar, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

CRL.M.C. 1308/2021 and CRL.M.A. 6719/2021(stay)

1. This is a petition filed by the petitioner under section 439(2) Cr.P.C. seeking setting aside/ cancellation of order dated 17.04.2021 by which respondent no.2 i.e. Manjeet Singh was granted bail in case FIR no. 301/2020 u/s 420/448/406/467/468/471/34/120B IPC registered at P.S. Laxmi Nagar, Delhi.

2. Brief facts of the case are that the complainant Sh. Vishal Bhutani had filed a complaint against Manjeet Singh (respondent no. 2 herein), Sunil Daral and Manisha Daral W/o Sunil Daral all R/o F-193, Vijay Chowk, Laxmi Nagar, Delhi for forgery, cheating, trespassing and house breaking and other penal offences at PS Laxmi Nagar, Delhi, wherein complainant had stated that he is the owner of the property bearing No. F-193/551, Vijay Chowk, Laxmi Nagar, Delhi (measuring 350 Sq. Yds.) and he purchased the same from Smt. Shilpi Gupta W/o Ram Mohan Gupta and Sh. Ram Mohan Gupta S/o Late Shri Gian Chand Gupta vide sale deed duly registered vide Regd. No. 3125, Addl. Book No. 1, Volume No. 1049, pages 169 to 178, dated 29.06.2017 and Regd. No, 5004, Addl. Book No. 1, Volume No. 879, pages 41 to 50, dated 26.06.2017 respectively, (measuring 175 Sq, Yds.). The complainant had constructed four floors along with stilt parking at the aforesaid plot from his own resources then he entered into the agreement to sell and purchase with the alleged Smt. Manisha Daral W/o Sunil Daral R/o F-9, Vijay Chowk, Laxmi Nagar, Delhi with regard to the 3rd floor of the above said property and executed the sale deed in favour of Smt. Manish Daral for the 3rd floor of the aforesaid property vide Reg. no. 1,867, Book No. 1, Vol. No. 1,252, on page 16 to 26, dated 28.03.2018, Sub Registrar VIIIA and received a total sum of Rs.1,17,00,000/-. Lateron, he entered into the agreement to sell and purchase with the alleged Smt. Manisha Daral w/o Sunil Daral R/o F-9, Vijay Chowk, Laxmi Nagar, Delhi with regard to the 2nd floor of the above said property and executed the sale deed of 2nd floor

in favour of the Smt. Manish Daral vide Reg. No. 4,476, Book No. 1, Vol. No. 1,353, on Page 97 to 107, Dated 28.07.2018, Sub Registrar VIIIA and received a total sum of Rs.1,30,00,000/-. It was further submitted by the complainant that at the time of selling of aforesaid 2nd and 3rd Floor of the said property, some construction work was yet to be completed but the alleged persons pressurized him to execute the sale deed and further asked they would execute an another agreement in favour of the complainant for the completion of renovation work and agreed to pay a sum of Rs.1,46,00,000/-, in this regard, an indemnity & declaration was executed by the accused Manisha Daral and her husband Sunil Daral in favour of the complainant, wherein it was mentioned that 84 Lacs was already paid to the complainant whereas Six Post Dated Cheques against the payment of remaining 62 Lacs were issued by the accused persons. It is further submitted by the complainant that he had already sold out the upper ground floor to some other person and the 1st floor of the building was vacant and he installed his locks on the first floor.

3. He further stated that the completion of renovation work was much before the due date and handed over the possession of 2nd & 3rd Floor to the accused persons but when the said cheques were present in bank on their due date, the same were dishonoured by the bank due to the reason of stop payment and therefore, the complainant had sent a legal notice to the accused persons. It is further alleged by the complainant that on 03.08.2019, he received a notice from the Hon'ble Court of Smt. Suchi Laler, Civil

Judge, Karkardooma Courts, Delhi wherein it was stated that an application was filed by the alleged Sunil Daral and Manjeet Singh Daral (respondent no. 2 herein) by which they had claimed that complainant had executed an agreement to sell and purchased with them on 04.09.2017 with regard to the 1st Floor of the above said property against the agreed considerable amount i.e. Rs.1,05,00,000/- out of which a sum of Rs.94 Lacs had already been paid to the complainant whereas remaining 11 Lakhs had to be paid. It is also submitted by the complainant that the amount stated to be paid by accused persons to the complainant was with regard of the renovation work done by him at 2nd and 3rd Floor of the above said property. It is submitted by the complainant that the agreement to sell and purchase submitted by the alleged persons before the Hon'ble Court is forged and the alleged persons illegally entered into the premises of the complainant i.e. 1st Floor, F-193, Vijay Chowk, Laxmi Nagar, Delhi by breaking the lock.

4. On receiving the aforesaid complaint, an enquiry was conducted and after the completion of enquiry, the present FIR was registered at PS Laxmi Nagar, Delhi and investigation was taken up. Vide order dated 17.04.2021 respondent no. 2 i.e. Manjeet Singh was granted regular bail by Ld. ASJ-02 Karkadooma Courts.

5. I have heard learned counsel for the petitioner/complainant, learned APP for the State and learned counsel for the respondent no. 2. I have also perused the status report filed on behalf of the State.

6. It is submitted by the counsel for the petitioner that the Ld. ASJ while passing the impugned order on application for grant of bail to Respondent no.2 under section 439 of Cr.P.C. treated bail matter as trial proceedings. It is further submitted that Investigation file of the IO was not called and perused to deal with investigated facts to appreciate contentions of the parties. He further submitted that the status report of investigation in the matter has not been considered by the Learned ASJ who devised its own procedure. It is also submitted that Learned ASJ should have perused, appreciated and considered facts that co-Accused Manisha Daral has been absconding & proceedings under sections 82, 83 of Cr.P.C. is pending against her, Respondent no.2 is brother in law of Manisha Daral and brother of other co-accused Sunil Daral and thus, are family members, interfering in the investigation. It is further submitted that till date the original copy of forged agreement to sell dated 04.09.2017 is not produced before the IO for investigation. It is also submitted that one witness of the said forged document Mr. Darshan Sharma has already made a statement before IO that he had no knowledge about the said agreement to sell and his signature on the said document. Lastly, it is prayed by the counsel for the petitioner/complainant that bail granted to respondent no. 2 i.e. Manjeet Singh vide order dated 17.04.2021 be cancelled.

7. On the other hand, it is submitted by the counsel for the respondent no. 2 that one of the ground taken by the petitioner is that the respondent no. 2 is very much likely to tamper with the evidence/influence witnesses.

However, there are no allegations against the respondent no. 2 that he ever tried to tamper with the evidence or any of the witnesses of the case had complained about the respondent no. 2 influencing them in any manner whatsoever. It is further submitted that the respondent no. 2 has root in the society and there is no apprehension of absconding. It is further submitted that there is no likelihood of tampering with the evidence or influencing the witnesses and it is further submitted that accordingly the Learned A.S.J. has rightly granted bail to the respondent no. 2 after duly considering the facts of the case. It is further submitted that the cancellation can only be done in cases of supervening circumstances which are totally lacking in the present case.

8. In this regard, Three Judges Bench of Hon'ble the Supreme Court in ***State (Delhi Administration) vs. Sanjay Gandhi*** 1978(2) SCC 411 has made the following elemental distinction in defining the nature of exercise while cancelling bail:

"Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail already granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial."

9. Further, the Hon'ble Supreme Court in *Dolat Ram v. State of Haryana* (1995) 1 SCC 349 has also laid down guidelines to Courts while deciding the question of **cancellation of bail already granted. Para 4 of judgment reads as follows:**

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) 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... 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non bailable case in the first instance and the cancellation of bail already granted.”

10. It is settled that once bail granted should not be cancelled in a mechanical manner without there being any supervening circumstances which are 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.

11. In the instant case, the chargesheet has already been filed. It is also pertinent to mention here that there are no allegations of any tampering or influencing of the witnesses. There are also no allegations that the respondent no. 2 is at flight risk or there is any likelihood of absconding. The petitioner has not been able to make out a case of supervening circumstances on the basis of which the bail granted to the respondent no. 2 should be cancelled and nothing has been brought on record to show that the respondent no. 2 has a towering personality that his mere presence out on bail would in any manner thwart the further investigation (if any) of the case or that he is in any manner threat to the fair trial of this case. Nothing has been brought on record that the respondent no.2 in any manner has violated the terms and condition of the order granting him bail. The co-accused namely Manisha Daral has already deposited a sum of Rs. 62 lacs with the learned Trial Court and the said amount has already been ordered to be

released to the complainant. So, I see no reason for cancellation of bail of respondent no. 2 in the present case. Therefore, relying upon the judgments *State (Delhi Administration) vs. Sanjay Gandhi (supra) & Dolat Ram v. State of Haryana (supra)* and also that all the facts and circumstances, required for an order of cancellation of bail to be passed are missing in the present case, the petition along with pending application, is dismissed.

RAJNISH BHATNAGAR, J

JANUARY 6, 2022

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