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

+ **CRL.M.C.1829/2017**

Judgement reserved on: 3rd November, 2017
Judgement pronounced on: 20th November, 2017

SHIVALI SHARMA Petitioner

Through: Mr. Shalinder Dhaiya, Advocate along
with petitioner in person.

versus

STATE & ANR Respondents

Through: Mr. Mukesh kumar, APP with SI
Virender Kumar, P.S. K.N.K.Marg.
Mr. Sumit Choudhary with Mr. Kartik
Gadi, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 439(2) read with Section 482 of Code of Criminal Procedure, 1973 (hereinafter after referred as 'Cr.P.C.') *the petitioner has assailed cancellation/setting aside of the impugned order dated 27.04.2017* passed by learned Additional Sessions Judge, Spl. Fast Track Court, Rohini Courts, Delhi whereby respondent Nos.2 have been granted anticipatory bail in case FIR No.145/2017 under Sections 354/354-A/509/506/323/34 IPC registered at P.S. K. N. Katju Marg, Delhi.

2. The contextual matrix of the case as set out in the petition is that on 25.03.2017 , the petitioner along with her younger sister Bhumika aged 10 years and her son Aarav Sharma aged 2 ½ years were coming on foot to her parental house from Shani Bazar, sector-15, Rohini, Delhi. When they reached at the T- Point near Vidya Bharti school, 3-4 persons namely Devi Prashad, Yogesh Rana, Devender Kakkar, known to the petitioner as they reside in her parent's neighbourhood, and his wife's nephew/Aakash Sharma(not known to her from before). Aakash Sharma/respondent no.2 came forward and hit/pressed her on her chest with his hand by stating that he would not leave her that day. Then, respondent no. 2 took off his clothes and started to force himself on the petitioner but was saved by the public. Meanwhile, petitioner's father reached at the spot to save her but was beaten up by the respondent no. 2 and the co-accused. The petitioner and her father were medically examined in the hospital, her statement was recorded in the hospital and FIR was registered under Section 354/354-A/509/506/323/34 IPC. The petitioner named numerous complaints to DCP on receiving threats from the respondent no. 2 and his family members. Vide order dated 10.04.2017, Anticipatory Bail application of respondent no. 2 was dismissed but vide order 27.04.2017, the second Anticipatory Bail application was granted by the learned ASJ. Aggrieved by the order dated 27.04.2017, the petitioner has filed the present petition.
3. Learned counsel for the petitioner contended that the Trial Court has erred in passing the order dated 27.04.2017, as the same is based on conjectures and surmises; that the first application for

anticipatory bail filed on behalf of respondent Nos.2 dismissed by learned ASJ and that the second application seeking anticipatory bail was not maintainable as there was no change of circumstances at the time of passing of impugned order dated 27.04.2017; that the main plea taken by the respondent no. 2 that previously many cases were registered against the petitioner cannot be the sole ground for the grant of bail as the same was urged by him even during the application of the first Bail application; that the nude photographs of the accused taken in public presence justifies the case of the prosecution that the accused attempted rape on the complaint and the learned ASJ has erred in ignoring this fact; that the photograph of her father reflecting injuries sustained by him is also on record; that the petitioner and her family members are threatened by the respondent no. 2 and complaints are lodged in that behalf; that the learned ASJ has not marked her presence and also did not record her submissions with regard to the objections raised by them; that the respondent no. 2 is required for custodial interrogation as his clothes are not recovered. In these circumstances, the grant of anticipatory bail in such serious offences should be set aside.

4. Per contra, learned counsel for respondent Nos.2 contended that the respondent no. 2 herein was the actual victim as he was beaten up by the petitioner and her family members and the other co-accused(s) were not present at the spot; that during such brawl, the clothes were forcibly torn and the alleged photographs were taken; that the petitioner is herself an accused in at least four FIRs lodged by different people of the locality; that respondent no. 2 is not a

previous convict; that the respondent no. 2 has joined the investigation when called for by the police officials and has abided by all the requirements of the grant of anticipatory bail as prescribed by law; that the respondent no. 2 is an educated boy aged 23 years having a whole career ahead. Accordingly, the contentions of the petitioner are without any merit and liable to be set aside.

5. Learned counsel for the respondent no. 2 has relied upon judgments in *Puran v. Rambilas* reported in (2001) 6 SCC 338, *Panchanand v. Digambar* reported in (2005) 3 SCC 143, *Yuvraj Gaud v. State of Madhya Pradesh* reported in 2004 CriLJ 4576, *Joginder Kumar v State of U.P. & Ors* reported in (1994) 4 SCC 260.
6. Mr. Mukesh Kumar, the APP for the State supported the argument raised by the petitioner and contended that the learned ASJ erred in granting bail to the respondent no. 2 without appreciating the facts properly.
7. The submissions made by the both the parties have been considered and the records have been perused.
8. After considering the facts and circumstances of the present case, it is pertinent to first see the grounds for cancellation of anticipatory bail granted by the court concerned. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of courses. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of merit of the case is not required to be undertaken.

9. In '*Kamar Singh Meena vs. State of Rajasthan*', reported in (2012) 12 SCC 180, it was observed that:

“wherein it was observed that while cancelling bail under Section 439(2) of Cr.P.C., 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 the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice.”

1. In *Onkar Gulati vs. State & Anr.* reported in 1998 CriLJ 1320 in which the Court observed as under:-

“6. It is a well established principle of law that it is easier to grant bail in a non bailable case. However, once a bail is granted it cannot be cancelled merely on a request from the side of the complainant unless and until the complainant shows that the same is being misused and it is no longer conducive in the interest of justice to allow him any further to remain on bail. Once a man has been set at liberty through an order of a Court he cannot be deprived of the same unless the complainant makes out a case for cancellation of the same. There is a consensus amongst different High Courts and the Hon'ble Supreme Court on this points that a bail once granted can be cancelled only in those discerning few cases where it is shown that a person to whom the concession of bail has been granted is misusing the same by subverting the course of justice i.e. efforts are being made to suborn the witnesses, threats are being extended to the witnesses and they are being intimidated not to appear against the accused persons and in case they do so they will have to bear dire consequences. The bail can also be

cancelled in case the accused on bail fails to appear before the court at the time of the trial and thus there is an abuse of the process of the court.”

10. Moreover, it is well settled that enlargement of bail is the rule and committal to jail is an exception.
11. In the case in hand, the respondent no. 2 was granted anticipatory bail on his second bail application vide order dated 27.04.2017. The petitioner herein seek cancellation of the said order. However, after perusal of the grounds for cancellation of bail, it is necessary to peruse the same in that aspect as per facts and circumstances of the present case. As per settled law the cancellation of bail depends upon facts and circumstances of the case as well as on the developments unveiled after grant of bail. In the present case, after the grant of grant of anticipatory bail by the concerned court, the respondent no. 2 has joined the investigation on 29.04.2017 and was formally arrested. All the other co-accused has also joined the investigation along with the respondent no. 2. There is no allegation that during this period he had tried to influence or threaten the witnesses. The mobile phone seized during the investigation has been sent to FSL and even the MLC report of Ms. Shivali /petitioner and Sh. Atul Kumar/Father stated the result as ‘Simple’.
12. After the glance at the status report, it is observed that the grounds necessary to cancel the grant of bail is not made out. In the aforesaid circumstances, even when there is a serious charge levelled against the appellant, that by itself should not be the

reason to deny anticipatory bail when the matter is examined keeping in view other factors enumerated above. The discretion vested with the court under 482 Cr.P.C should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

13. On the basis of the above facts, it is observed that there is no need for any interference in the impugned order passed by the Trial Court and hence, the petition is accordingly dismissed.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 20 , 2017

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