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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CRL.M.C. 3636/2022  
DAYA WATI

..... Petitioner

Through: Mr. Shyam Manohar, Mr. Rohitash  
Kumar, Mr. Abhishek, Advs.

versus

THE STATE NCT OF DELHI AND ANR

..... Respondent

Through: Mr. Pradeep Gahalot, APP for State,  
Mr. Sachin Chopra, Ms. Divya  
Chugh, Mr. Karan Babuta, Mr. Rahul  
Sharma, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**23.08.2022**

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1. This is a petition seeking cancellation of bail to the accused by challenging the impugned order dated 07.06.2022 in FIR No. 102/2022 u/s 302/365/34 IPC.

2. The petitioner is the mother of the deceased Vishal @ Moni and it is stated that on 15.04.2022 at about 04:00 PM, the son of the petitioner, namely Vishal went out on his motorcycle to submit his assignment in Mittrao Village. At about 07:50 PM, Vishal called his friend Chandru @ Sonu on his mobile no.8510016697 about his abduction and life under threat. Then at about 08:14 PM, the deceased Vishal @ Moni called his mother on her mobile no.7834831515 and told his mother "*Mummy Baramabno Ne Mujhe Uthawa Diya Hai Mujhe Bacha Lo, Mujhe Jhadoda Ki Traf Le Kar Jaa Rahe Hain, Mujhe Jaan Se Marna Chahte Hain, Mujhe Bacha Lo*", then thereafter the father of the deceased Vishal @ moni

received a call on his mob No- 9911313482 and the deceased told his father "*Papa Mujhe Mar Diya Mujhe Bachalo*" then thereafter the husband of complainant called 100 number and informed the police.

3. On 16.04.2022 at 11.32, DD NO- 0056A was registered at the PS- Jaffarpur Kalan, regarding missing person report through the parents of the deceased and on 17.04.2022, an FIR No. 102/2022 was registered u/s 365/34 IPC.

4. On 17.04.2022, the dead body of deceased Vishal was seen and the police sent the body for post-mortem. The viscera report is awaited and the post-mortem report is pending on account of the viscera report.

5. The respondent No. 2, Nagesh was arrested and charged u/s 365 and 302 IPC.

6. On 07.06.2022, the learned Sessions Judge-02, Dwarka Court while granting bail to respondent No. 2 has held:-

*“Ld. Additional PP for State has strongly opposed the bail application and submitted that the allegations against applicant are serious in nature. That if granted bail, applicant may jump the bail or may influence the witnesses or may tamper the evidence. It is prayed that the applicant may not be granted bail.*

*Accused in the present case has been arrested on 22.04.2022 on the basis of interrogation and his confessional statement. Case against the applicant is only based on circumstantial evidence. Investigations in the present case are complete. Allegations against applicant does not indicate any active role of applicant in commission of offence. No fruitful would be served by keeping applicant behind the bar for indefinite period. Bail application is allowed.”*

7. Mr. Manohar, learned counsel for the petitioner has challenged the order on numerous grounds.

8. He states that the order is a cryptic order devoid of any reasons especially in case where the allegations are u/s 302 IPC.

9. He further states that before passing the order, no notice was issued to the petitioner. The petitioner was not heard and given the right to oppose the bail.

10. He further states that respondent No. 2 has only spent 45 days in judicial custody before he was granted bail.

11. He further states that the investigation is still undergoing and hence there is a wrong observation by the Sessions Court to say investigations in the present case are complete.

12. He further submits that the call made to the mother of the deceased is in the nature of a dying declaration and cannot be ignored.

13. On the other hand, Mr. Chopra, learned counsel for respondent No. 2 has drawn my attention to the status report filed by the police in the 156 application and more particularly to state that the petitioner have been shifting their stand and improving their version.

14. He states that as per the status report filed in the Court of MM Court No. 7, Dwarka, it has been stated "*Kair gaon near Hardev Panna ki Chopal, NJF. Caller Bol rha h ki padosi ne mere bete ke sath Bahut Marpeet ki h jo injured hai, mera beta nahi mil raha hai.*"

15. He further states that as per the same status report, there are no visible injury marks.

16. He further states that in the same status report it is also stated that in his trouser, a pouch containing *Ganja* was found and it is a case where the deceased had died of drug overdose.

17. Mr. Chopra further states that the post-mortem report is yet to be

received.

18. He further states that the CDR report, as and when received, would show that respondent No. 2 was nowhere near the vicinity of the deceased or near the place of incident.

19. Mr. Chopra further states that there is nothing incriminating against respondent No. 2.

20. In case respondent No. 2 was in judicial custody, he would be entitled to bail u/s 167 Cr.P.C. as a period of 90 days has already passed.

21. He states that he has cooperated with the investigation in all possible way and he cannot be made responsible for delay in investigation.

22. Mr. Chopra further placing reliance on Section 25 of the Evidence Act states that he has made a confessional statement before the police but it cannot be held admissible in law as there is no recovery from respondent No. 2.

23. He further states that there are no eye-witnesses to the incident and it is entirely based on circumstantial evidence.

24. I have also heard Mr. Gahalot, learned APP for the State that the investigation in the matter is still pending. The viscera report is yet to be received from the FSL.

25. He further states that there is a phone call made by the deceased to his mother and he states that even though the status report states that on 15.04.2022, a scuffle had taken place, but Mr. Gahalot states that only a verbal altercation had taken place.

26. I have heard learned counsel for the parties. I am of the view that the order dated 07.06.2022 needs to be set aside.

27. It is a case where the victim, Vishal has been found dead. He had

made a call to his mother alleging that he is being taken by the Brahmano and respondent No. 2 was referred to as Brahman in the locality.

28. The investigation in the matter is yet to be completed. The viscera report is yet to be analysed by the FSL. The post-mortem report has also not been filed.

29. It will be relevant to quote para 23, 24, 25, 27, 30 and 31 of judgment of '**Deepak Yadav vs. State of UP**' (Crl Appeal 861/2022).

*23. In a recent pronouncement of this Court in the case of 'Y' Vs. State of Rajasthan & Anr. authored by one of us (Hon'ble N.V. Ramana, CJI), it has been observed as under :-*

*“22. The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that “the facts and the circumstances” have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.*

*23. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In the case of Mahipal (Supra), this Court observed as follows:-*

*25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the*

*opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.”*  
(emphasis supplied)

24. For grant or denial of bail, the “nature of crime” has a huge relevancy. The key consideration which govern the grant of bail were elucidated in the judgment of this Court in **Ram Govind Upadhyay Vs. Sudarshan Singh**, wherein it has been observed as under: -

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

25. Similarly, the parameters to be taken into consideration for grant of bail by the courts has been described in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav And Another** as under: -

“11. 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 course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*

- (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) prima facie satisfaction of the court in support of the charge.”*

***B. Recording of reasons for grant of bail by the High Court of the Sessions Court***

27. A two-Judge Bench of this Court in **Ramesh Bhavan Rathod (Supra)** held that the duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court, is exercised in a judicious manner. The operative portion of the judgment reads as under:-

*“35. We disapprove of the observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties “do not press for a further reasoned order”. The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application under Section 439 of Cr.P.C would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. **But the Court granting bail***

*cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in which a succession of orders in the present batch of cases has recorded that counsel for the "respective parties do not press for further reasoned order".*

*If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.*

**36. Grant of bail under Section 439 of the Cr.P.C is a matter involving the exercise of judicial discretion.** *Judicial discretion in granting or refusing bail – as in the case of any other discretion which is vested in a court as a judicial institution – is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice.”*

### **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 And Others Vs. State of Haryana 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.*

30. As already noted, a bare perusal of the order dated 07.06.2022 shows

that the Sessions Court has failed to give any substantial reasons for granting bail except the fact that the case is based on circumstantial evidence.

31. The finding, that investigation in the present case is complete, is also faulty, as the status report filed in this Court dated 07.08.2022 notes that the investigation in this case is being conducted and nowhere has it been stated that the investigation in the present case is complete.

32. The fact that there is only circumstantial evidence against respondent No. 2 is also not finding favour with me as the circumstantial evidence against the respondent No. 2 is of overwhelming weight. The same cannot be ignored in light of the fact that a call has been made by the deceased to his mother as well as the father, clearly incriminating respondent No. 2.

33. The nature of complaint is very serious in nature where the accused were specifically mentioned in the written complaint filed by the parents of the deceased.

34. Bail in such a heinous crime of murder requires the utmost attention and serious engagement of the court. It cannot be treated lackadaisically as done in the present case.

35. The fact that the respondent No. 2 would be entitled to a 90 day default bail u/s 167 Cr.P.C. is also not helping respondent No. 2 as respondent No. 2 was granted bail on 07.06.2022 after spending 45 days in jail. The provisions of Section 167 Cr.P.C. would be applicable only if the accused has been in jail for a continuous period of 90 days.

36. In this view of the matter, I am of the view that the allegations against respondent No. 2 are of very serious nature u/s 302 IPC. In addition, the order granting bail is devoid of any reasons.

37. The order of 07.06.2022 is set aside and the bail granted to respondent

No. 2 is hereby cancelled.

38. Respondent No. 2 is granted 10 days time to surrender.

39. The petition is allowed.

40. *Dasti* under the signature of Court Master/ Private Secretary.

**JASMEET SINGH, J**

**AUGUST 23, 2022/dm** [Click here to check corrigendum, if any](#)