



2025:DHC:1331



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 28.02.2025*+ **CRL.REV.P. 727/2024**

PRAMOD KUMAR JOSHI

.....Petitioner

Through: Mr. Sarthak Mudgil, Ms. Bhairabi Das, Mr. Vedic Thukral and Mr. Aditya Sharma, Advocate

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the State with Inspector Rajesh Meena, P.S. Palam Village

**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. By way of this revision petition filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], the petitioner seeks to assail the order dated 22.02.2024 [hereafter '*the impugned order*'] passed by the learned Additional Sessions Judge (FTC), Dwarka Courts (South-West), Delhi [hereafter '*learned ASJ*'] in CS No. 295/2018.

2. The present petition arises from an incident that had resulted in registration of FIR No. 17/2018 at Police Station Palam Village, Delhi, on 14.01.2018, for offences punishable under Section 302 of



the Indian Penal Code, 1860 [hereafter ‘IPC’] and Sections 25/27 of the Arms Act, 1959. The case was registered on the complaint by Ms. Nishika, a 10-year-old girl, who had reported the brutal murder of her mother, Ms. Deepa (35 years), and her brother, Rishi (15 years), allegedly at the hands of her paternal uncle – the petitioner herein. The petitioner was arrested on 29.01.2018, and upon completion of the investigation, chargesheet was filed. Subsequently, charges were framed against the petitioner for offences under Sections 302/120B of IPC, along with Sections 25/27/54/59 of the Arms Act.

3. It is the petitioner’s case that on 13.01.2020, the child witness and complainant (PW-1) was duly examined and cross-examined before the learned Trial Court. However, she did not support the prosecution’s case and specifically deposed that the assailants were two tall individuals with their faces covered with cloth. Relying on this testimony, the petitioner filed an application for regular bail on 14.05.2021 before the learned ASJ (Vacation Judge), citing not only PW-1’s deposition but also the prevailing Covid-19 situation and the Guidelines issued by the High Power Committee (HPC).

4. By way of an order dated 20.05.2021, the learned ASJ (Vacation Judge) admitted the petitioner to bail. Subsequently, on 17.05.2023, PW-2, namely ‘K,’ was also examined and cross-examined before the Trial Court. However, this witness too did not support the prosecution’s case, and deposed that the description and appearance of the assailants, who had shot the victim’s mother and brother, did not match that of the petitioner.



5. On 15.01.2024, the State moved an application under Section 439(2) of the Cr.P.C., seeking cancellation of the bail granted to the petitioner on 20.05.2021. The State contended that the said order only granted interim bail to the petitioner, though this fact was not specifically mentioned in the order. It was further argued that the order did not discuss the merits of the case and that bail had been granted primarily due to the Covid-19 situation and in light of the HPC guidelines. Therefore, the State sought the cancellation of the petitioner's bail.

6. The State's application was adjudicated upon and disposed of by way of the impugned order dated 22.02.2024, passed by the learned ASJ. After reviewing the contents of the bail application filed on 14.05.2021 and the reasoning in the order dated 20.05.2021, the learned ASJ concluded that the said order granted only interim bail, and not regular bail, to the petitioner. The learned ASJ further held that there was no occasion to cancel regular bail since no such bail had been granted in the first place, thereby clarifying that the order dated 20.05.2021 was merely an interim bail order. Consequently, the petitioner was taken into custody.

7. Aggrieved by the impugned order dated 22.02.2024, the petitioner has approached this Court, arguing that the order is arbitrary and contrary to both the letter and spirit of the law. It is contended by the learned counsel for the petitioner that the learned ASJ has failed to appreciate that the order dated 20.05.2021 granted regular bail to the petitioner, and was passed by a competent judge



duly authorized to pass order under Section 439 of the Cr.P.C. It is further submitted that the learned ASJ has erroneously interpreted the orders dated 20.05.2021 and 05.07.2021, despite both orders being appropriate and justified at the relevant time during trial. It is also pointed out that at the time of granting bail, the complainant had already turned hostile, and thus, the bail in this case was granted on merits as well. Accordingly, it is prayed that the present petition be allowed and the impugned order be set aside.

8. *Per contra*, the learned APP for the State argues that the learned ASJ (Vacation Judge) had, in a double murder case, granted bail without assigning any reason, except for the observation that the accused had previously been released on interim bail. It is submitted that the allegations against the petitioner are grave and serious, and bail could not have been granted without considering the merits of the case. It is contended that the impugned order suffers from no infirmity and correctly holds that the order dated 20.05.2021 was one of interim bail and not regular bail. Therefore, it is prayed that the present petition be dismissed.

9. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material available on record.

10. This Court has carefully examined the impugned order and the circumstances surrounding it. It is evident that the petitioner was granted bail *vide* order dated 20.05.2021. However, nearly three years later, the State has moved an application seeking cancellation of the bail granted to the petitioner. Instead of adjudicating the State's



application strictly on the principles governing cancellation of bail, the learned ASJ proceeded on the assumption that the order dated 20.05.2021 merely granted interim bail to the petitioner. On this premise, the learned ASJ concluded that there was no occasion to cancel regular bail, as no such bail had ever been granted in the first place. This approach, in the considered opinion of this Court, was erroneous.

11. A plain reading of the order dated 20.05.2021 reveals that it does not use the term ‘interim’ at any point. The order clearly states that the petitioner was ‘admitted to bail,’ which, by its very language, implies grant of regular bail. Furthermore, the order does not prescribe any time limit for the petitioner to surrender, nor does it state that the bail was subject to further extension, conditions that are typically found in an order granting interim bail. Instead, it clearly directs the petitioner to be released on bail upon furnishing a personal bond in the sum of ₹30,000/-.

12. It is also evident from the bail application filed on behalf of the petitioner on 14.05.2021 that, although many grounds in the application were relevant for seeking interim bail, the application itself was clearly titled and captioned as ‘regular bail application.’ In the prayer clause too, regular bail had been specifically sought by the petitioner. The prayer clause reads as under:

“PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to grant Regular bail to the applicant/accused in the interest of justice.”



13. Pursuant to this prayer being made, the learned Trial Court was pleased to pass the following order:

“...IO has also stated that there is no previous involvement of the accused in any other case of similar nature. Accused was released on interim bail previously also and had duly surrendered within stipulated time.

Keeping in view the facts and circumstance of the case, accused is admitted to bail subject to his furnishing personal bond in the sum of Rs.30,000/- to the satisfaction of Jail Supttd. concerned...”

14. Therefore, there existed no ambiguity in the nature of relief sought by the petitioner, and the same was duly considered by the Court at the time of passing the bail order, though the order is completely devoid of any reason, fact, argument, consideration, etc., which is desirable while passing a bail order in a case of double murder.

15. It is indeed expected of any Court of law to provide some reasoning while granting bail, particularly in a case of double murder. The bail order dated 20.05.2021, being a brief four-line order, does not record any reasoning or discuss the merits of the case, which, ideally, should have been done – given the gravity of the offence under Section 302 of the IPC. However, the mere absence of a detailed reasoning does not, in itself, alter the nature of the bail granted to an accused. The order clearly states that the petitioner was ‘admitted to bail,’ and once such an order is passed by a competent court, it cannot be later interpreted in a different manner to hold that only interim bail had been granted.



16. Though, the learned ASJ in the impugned order has rightly noted that the order dated 20.05.2021 does not deal with the merits of the case, however, the conclusion that the said order granted only interim bail instead of regular bail is not sustainable. While it may be true that the order did not analyze any arguments or evidence, this omission does not *ipso facto* mean that the bail granted to the petitioner was not regular bail. The learned ASJ, instead of deciding the application for cancellation of bail, effectively reviewed and reinterpreted an order passed by the previous judge.

17. No matter how illogical or unreasonable a successive or concerned court may find an order passed by a vacation judge or a link judge to be, it cannot review or reinterpret such order passed by another judge in a manner that alters its fundamental character. The learned ASJ (Vacation Judge) had, rightly or wrongly, granted regular bail to the petitioner. However, the impugned order, in essence, amounts to a reappraisal of the said bail order, by another ASJ which is not permissible in law.

18. Be that as it may, while this Court acknowledges the seriousness of the offence alleged against the petitioner, but once regular bail was granted in 2021, it could not have been treated as interim bail after three years, particularly when no material was placed on record to support such an interpretation, and the petitioner could not have been taken into custody in connection with the present case.



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19. Accordingly, this Court finds merit in the petitioner's contentions. The impugned order dated 22.02.2024 is, therefore, set aside.

20. Needless to state, the State shall be at liberty to move any fresh application seeking cancellation of bail or setting aside of order granting bail to the petitioner, in accordance with law.

21. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**FEBRUARY 28, 2025/zp**