



2025:DHC:132



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

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Judgment delivered on: 08.01.2025

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**CRL.M.C. 5176/2024****GURMIT SINGH**

.....Petitioner

Through: Mr. Tushar Mahajan, Mr. Sharan Mehta, Mr. Bhavaan Mahajan and Mr. Tanmay Surana, Advs.

versus

**STATE GOVT OF NCT OF DELHI & ANR.** .....Respondents

Through: Mr. Aman Usman, APP for State with SI Vandana, PS. Moti Nagar.  
Mr. Indraaj Singh and Mr. Kamal Singh, Advs. for R-2.

**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)**

1. The present petition has been filed by the petitioner under Section 482 CrPC read with Section 439(2) CrPC seeking cancellation of anticipatory bail granted to the respondent no.2 *vide* impugned order dated 12.07.2023.
2. The learned counsel for the petitioner has impugned the order granting bail to the respondent no.2 on two counts. Firstly, the petitioner/complainant was not put to notice before granting bail to the respondent no.2. Secondly, the gravity of the offence was not considered.
3. In support of his contention, the learned counsel places reliance on the decision of the Hon'ble Supreme Court in *Jagjeet Singh vs. Ashish Mishra alias Monu & Anr, (2022) 9 SCC 321*.
4. On the other hand, the learned counsel for the respondent no.2/accused submits that the FIR was registered on 16.07.2017 whereas the chargesheet



came to be filed on 31.07.2021, without arresting the respondent no.2/accused in the present case.

5. He further invites attention of the Court to the order dated 08.07.2023 of the learned ASJ whereby anticipatory bail was granted to the co-accused Rashpal Singh, to contend that in the said order it has been recorded by the learned ASJ that the I.O has stated that no custodial interrogation of the accused/applicant is required.

6. He further submits that bail in the present case was granted by the learned Trial Court on 12.07.2023 whereas the application seeking cancellation has been filed in February 2024 and the same was rejected *vide* order dated 01.06.2024. He submits that no supervening circumstance has been pointed out by the petitioner for seeking cancellation of bail.

7. I have heard the learned counsel for the petitioner, as well as, the learned counsel for the respondent no.2 and have perused the record.

8. It is not in dispute that the charge sheet in the present case was filed by the police without arresting the respondent no.2 in the present case.

9. The law is well settled that where prosecution does not require custody of the accused, there is no need for arrest when the case is sent to the Magistrate under Section 170 Cr.PC. Further, there is not even a need for filing a bail application. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in *Satender Kumar Antil Vs. CBI & Anr., (2022) 10 SCC 51*. The relevant part of the decision reads thus:

*“43. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P. [(2022) 1 SCC 676]. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and*



*thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the Magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application.”*

(emphasis supplied)

10. In view of the above legal position, there was no reason for the respondent no.2 to even file a bail application seeking anticipatory bail since the charge sheet had been filed without arrest of any accused in the present case. Concomitantly, there was no need for the Court to put the complainant to notice.

11. Further, the bail was granted to the respondent no.2 as early as on 12.07.2023 and it has not been pointed out that the liberty granted to the petitioner has ever been misused. It is equally well settled that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it is no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying



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the concession of bail during trial<sup>1</sup>. Thus, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail that has already been granted. As noted above, no such circumstances have been pointed out in the present case.

12. For the aforesaid reason, this Court does not find any ground for cancellation of bail granted to the respondent no.2.

13. Accordingly, the petition is dismissed.

**VIKAS MAHAJAN, J**

**JANUARY 8, 2025/dss**

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<sup>1</sup> Deepak Yadav vs. State of U.P, (2022) 8 SCC 559.