



2025:DHC:11631



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

% Judgment delivered on:19.12.2025  
Judgment reserved on: 06.12.2025

+ **CRL.M.C. 1272/2022**

**NEELAM MITTAL**

..... Petitioner

versus

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

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Surender Singh Hooda and Mr. Nishi Kant Singh, Advocates.

For the Respondent : Mr. Raj Kumar, APP for the State with SI Naveen Gurjar, PS Special Staff/South Distt. Mr. Pratap Singh, Mr. Ajay Sharma, Mr. Navneet Sharma and Mr. Sukhmandeep, Advocates for R-2.

**CORAM  
HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present petition is filed under Section 482 read with Section 439(2) of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 15.02.2022 (hereafter '**impugned order**') passed by the learned Metropolitan Magistrate ('MM'), South East, Saket Court,



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Delhi whereby the learned MM, in a surrender-cum-bail application granted bail to Respondent No. 2 in terms of Section 437 of the CrPC.

2. Briefly stated, FIR No. 76/2021 dated 11.03.2021 was registered at Police Station Greater Kailash on a complaint given by one SK Mittal for the offences under Sections 420/406/506/34 of the Indian Penal Code, 1860 ('IPC'). The complainant is stated to be engaged in the business of gold jewellery. It is alleged that in October, 2020 one Pradeep came to the office of the complainant and introduced himself as a broker in the jewellery business and represented that he knew many reputed jewelers who could buy jewellery from the complainant on wholesale basis. It is alleged that the said Pardeep also introduced the complainant to Suraj Soni, Rohit and Respondent No. 2 claiming that Suraj Soni and Rohit Kumar were joint owners of M/s. S.R. Jewellers and Respondent No. 2 was their Manager. It is alleged that on the first meeting, the said Suraj Soni and Rohit Kumar demanded two kilogram of gold jewellery, however, the complainant refused to do so considering that the same was a huge quantity.

3. It is alleged that thereafter the complainant gave small quantity of gold jewellery against which requisite payments were made either in cash or in gold within the prescribed time in order to gain the trust of the complainant. Thereafter, it is alleged that the accused persons, in connivance with each other, introduced the complainant to one Prakash (brother-in-law of Rohit) who claimed to be doing business of



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jewellery under the name of BP Jewellers. The complainant was also allegedly introduced to one Baljeet Singh stated to be the partner of M/s. B.P. Jewellers. It is alleged that the said persons as well initially took small quantity of gold jewellery and paid the due amount in time. It is alleged that thereafter, Respondent No. 2 took the manager of the complainant to the office of Gulshan Kumar Singh to confirm that the said Gulshan Kumar was a big seller who used to buy 4-5 kg of gold per week. It is alleged that thereafter Respondent No. 2 induced the complainant to sell gold to the said Gulshan Kumar by offering higher rates than one offered by SR Jewellers. It is alleged that based on the said inducement by Respondent No.2, the complainant supplied 3402.22 grams of 22 carat gold on two occasions on credit basis aggregating to a sum of ₹1.7 crores. It is alleged that against the first consignment payment was duly made to the complainant, however, thereafter the balance payment was not made to the complainant. The same led to the registration of the FIR.

4. By the order dated 31.01.2022, the learned ASJ dismissed the pre-arrest bail preferred by Respondent No. 2 noting that as per the version of the Investigating Officer, Respondent No. 2 was the main associate of the accused persons. It was noted that co-accused persons Gulshan Singh and Baljeet Singh were declared proclaimed offenders on 09.11.2021 which indicated that they were fleeing from justice. It was further noted that considering the allegations, there appeared to be a criminal conspiracy between Respondent No. 2 and the other



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accused persons which could only be unveiled by way of custodial interrogation. It was noted that Respondent No. 2 is also involved in FIR No. 963/2018 registered at Police Station Phase III, Gautam Buddh Nagar, Uttar Pradesh and FIR No. 83/2021 registered at Police Station Krishna Nagar, Delhi involving offences under Sections 420/467/468/471/120B/406/504/506 of the IPC. It was further noted that the case property had to be recovered. Consequently, considering the aforesaid circumstances, the learned ASJ dismissed the pre-arrest bail preferred by Respondent No. 2 *vide* order dated 31.01.2022.

5. Subsequently, an application seeking pre-arrest bail was also filed before this Court. Thereafter, Respondent No. 2 filed an application seeking withdrawal of the pre-arrest bail application preferred before this Court on the ground that he had laid his hands on some material which was beneficial to his case. On that occasion, the learned counsel on behalf of Respondent No. 2 sought withdrawal of the application stating that he wished to move the Sessions Court to seek appropriate remedies. Consequently, *vide* order dated 14.02.2022, the pre-arrest bail application of Respondent No. 2 was dismissed as withdrawn by this Court with liberty to Respondent No. 2 to move to the Sessions Court to seek appropriate remedies in accordance with law.

6. Subsequently, on 15.02.2022, by the impugned order, in a surrender cum bail application filed by Respondent No. 2, the learned MM granted bail to Respondent No. 2 in terms of Section 437 of the



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CrPC. The learned MM noted that Respondent No. 2 had joined the investigation on five occasions. It was noted that there was no ground to arrest Respondent No. 2 till a disclosure statement in custody was made by co-accused Gulshan Singh to the effect that after receiving gold from the complainant, co-accused Gulshan Singh used to give away the gold to Respondent No. 2. It was noted that during the course of the arguments, no material could be produced by the State to corroborate the disclosure of co-accused of Gulshan Singh implicating Respondent No. 2. It was noted that no independent witness incriminating Respondent No. 2 could be produced by the investigating agency. It was noted that no application was made to seek the consent/approval of the arrest of Respondent No.2 on the basis of the available evidence from the competent authority in terms of the Standing order No. 173/2021, Commissioner of Police, Delhi. It was noted that Respondent No. 2 had joined the investigation on all occasions whenever called for by the Investigating Officer. It was also noted that apart from the uncorroborated disclosure statement of co-accused Gulshan Singh made during police custody, there was no material to connect Respondent No. 2 with the alleged offence.

7. The learned counsel for the petitioner submitted that the impugned order is perverse and is liable to be set aside. He submitted that the impugned order passed by the learned MM is akin to the relief that can only be granted to the accused by the learned Sessions Court or this Court in exercise of power under Section 438 of the CrPC.



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8. He submitted that Section 437(1) of the CrPC empowers a Magistrate to consider a bail application in a non-bailable offence only when the accused is (i) arrested, or (ii) detained or (iii) appears or (iv) is brought before the Court. He submitted that in the case of *Sri Bhramar alias Bhramarbar Mahapatra & Anr. v. State of Orissa : 1981 SCC OnLine Ori 109*, the Hon'ble Orissa High Court noted that for the purpose of Section 437 of the CrPC, the term "appearance" must indicate that the person is under some form of restraint. He submitted that in the instant case, Respondent No. 2 was never arrested, summoned or detained by the Court and submitted that consequently the grant of bail by the learned MM on the mere appearance of Respondent No. 2 is bad in law. He submitted that in the case of *Subodh Kumar Yadav v. State of Bihar : (2009) 14 SCC 638*, the Hon'ble Apex Court deprecated bail granted by the learned MM on the same day of filing of the surrender cum bail application.

9. He submitted that recently in the case of *Souvik Bhattacharya v. Enforcement Directorate Kolkata Zonal Office – II : (2024) 3 SCC 597* the Hon'ble Apex Court clarified that Section 437 of the CrPC would come into play only when the accused is arrested or detained or when the summons or warrant is issued against the accused for causing him to be brought or appears before the Court.

10. He submitted that even otherwise while Section 437 of the CrPC vests discretion on the learned MM to release a person on bail, such discretion ought not be exercised in a casual fashion. He



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submitted that while considering the surrender-cum-bail application, the learned MM failed to take note of the observation made by the learned ASJ while dismissing the pre-arrest bail application of Respondent No. 2 that his presence was required to unearth the conspiracy hatched by the accused persons. He submitted that the custody of Respondent No. 2 is necessary even after the lapse of time as the recovery of gold and trail of ill-gotten money is yet to be discovered.

11. *Per contra*, the learned counsel for Respondent No. 2 submitted that the learned MM was well within his power to examine the application for regular bail under Section 437 of the CrPC. He submitted that in terms of the judgment of the Hon'ble Apex Court in the case of *Nirmal Jeet Kaur v. State of Madhya Pradesh & Anr : 2004 7 SCC 558* in the absence of any order for pre-arrest bail, the learned MM can examine the application in exercise of power under Section 437 of the CrPC.

12. He submitted that the application for regular bail is maintainable even if the accused is not in the custody of the police and mere physical presence before the Court is sufficient for maintaining an application under Section 437 of the CrPC or under Section 439 of the CrPC. He submitted that Section 437 of the CrPC even otherwise entitles the accused to file an application for bail after appearing before the Court and the police custody of the accused is not a pre-condition.



## ANALYSIS

13. Before delving into the merits of the case, this Court considers it apposite to discuss the law in relation to cancellation of bail and setting aside of an order granting bail. While the former of the two is hinged upon conduct of the accused pursuant to arrest or surfacing of any adverse fact after grant of bail, the latter revolves around such infirmity in the order granting bail that renders the same unjust and unsustainable in law [Ref. *Abdul Basit v. Mohd. Abdul Kadir Chaudhary* : (2014) 10 SCC 754]. The Hon'ble Apex Court in *Mahipal vs. Rajesh Kumar @ Polia and Anr* : (2020) 2 SCC 118 has observed as under :

*“14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this*



determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

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16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted...

(emphasis supplied)

14. In the case of ***Deepak Yadav v. State of U.P. : (2022) 8 SCC 559***, the Hon'ble Apex Court had observed that an order granting bail ought not to be disturbed by a superior court unless there are strong reasons to do so. Adverting to a catena of judgments, the Hon'ble Apex Court had summarised circumstances where bail can be cancelled even in absence of supervening circumstances. The relevant portion of the judgment is reproduced hereunder:

***“C. Cancellation of bail***

***31. 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).*

**32.** *A two-Judge Bench of this Court in **Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237]** 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 the accused absconding;*
- (v) likelihood of/actual misuse of bail;*
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.*

**33.** *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:*

**33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.**

**33.2.** *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.*

**33.3.** *Where the past criminal record and conduct of the accused is completely ignored while granting bail.*

**33.4. Where bail has been granted on untenable grounds.**

**33.5.** *Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*

**33.6.** *Where the grant of bail was not appropriate in the first place given the very serious nature of the charges*



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*against the accused which disentitles him for bail and thus cannot be justified.*

***33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”***

(emphasis supplied)

15. The present case is one where the petitioner has laid challenge to the impugned order of bail on the ground of maintainability as well as merits. It is the case of the petitioner that Respondent No.2 could not have been granted bail under Section 437 of the CrPC without him being under some form of restraint. It is further argued that the impugned order is even otherwise bad in law as the learned MM has failed to appreciate the observations made by the learned ASJ while dismissing the bail of accused, and granted bail on erroneous considerations. Much emphasis has also been laid on the conduct of the accused in preferring the application for bail shortly after withdrawing the application before High Court.

16. It is contested on behalf of Respondent No.2 that his application for bail under Section 437 of the CrPC was maintainable as Respondent No.2 was present in Court. It is further submitted that police custody is not a prerequisite for maintaining an application for bail under the aforesaid provision and much time has elapsed since grant of bail as well. Even if the argument *qua* jurisdiction of the Court to consider the application for surrender-cum-bail is accepted, this Court is of the opinion that the impugned order cannot be



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sustained in law on account of judicial propriety as well as the learned MM being weighed by irrelevant considerations.

17. The chronology of the applications preferred by the accused are of particular relevance. In the present case, the pre-arrest bail filed by Respondent No. 2 was dismissed by the learned ASJ by order dated 31.01.2022, whereafter, an application was filed before this Court in which no interim relief was granted to him. Subsequently, by order dated 14.02.2022, the pre-arrest bail application preferred by Respondent No. 2 was dismissed as withdrawn thereby giving liberty to him to approach the learned Sessions Court to seek appropriate remedies. Peculiarly, instead of approaching the learned Sessions Court, Respondent No. 2 filed a surrender-cum-bail application before the learned MM on the very same day when the pre-arrest bail application preferred before this Court was withdrawn.

18. A bare perusal of the impugned order reflects that even though the learned APP had specifically pointed out that Respondent No.2's bail had been dismissed by the learned ASJ and withdrawn when the High Court was not inclined to give interim protection, the learned MM failed to take the said aspects into consideration.

19. Pertinently, although the application before this Court was withdrawn on the ground that the accused had found some new material which was beneficial to his case, the impugned order is not indicative of any such fresh material having come forth. Moreover, as



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has been noted by this Court on multiple occasions, the counsel tend to withdraw applications only once they find that the Court is not inclined to exercise discretion in their favour. While the said factors may not have been sufficient to interfere with the bail so granted, the glaring lack of deference to the observations made by the learned ASJ in the order of dismissal cannot be ignored.

20. Respondent No.2's bail was dismissed by the learned ASJ on 31.01.2022 after expressly noting that the allegations warrant custodial interrogation and that case property was to be recovered. It was also noted that the accused was involved in another case of similar nature, he was stated to be the main associate of other accused persons and custodial interrogation was required to unearth the criminal conspiracy. Merely 15 days after the said reasoned observations being made by the learned ASJ, the learned MM granted bail to the accused without any change in circumstances. Once the Superior Court (that is, the learned ASJ) had found that the matter was one which required custodial interrogation, the learned MM could not have decided otherwise after a short span of time without any supervening development. It is not the case of the accused that pursuant to dismissal of his bail application by the learned ASJ, his custody was no longer required. Rather, it is apparent that he was seeking protection from arrest before this Court till a day before grant of bail to him by the learned MM. The observations of the learned ASJ



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regarding requirement of custodial interrogation thus were sustaining when the accused was granted bail.

21. The only observation made by the learned MM in regard to the learned ASJ having declined relief is that the accused had offered himself for arrest, which was not made by the Investigating Agency despite opportunity. The learned MM was also weighed by the fact that no application was made to seek consent for arrest of the accused as well.

22. The learned MM has recorded that initially, the police officer in Court agreed to arrest the accused when he surrendered but then requested that the accused be sent to judicial custody as arrest could not be effected without permission of Joint Commissioner of Police. It was also pointed out that the regular investigating officer had not appeared on that day. Thus, it is not so that the investigating agency had refused arrest of the accused for lack of requirement of the same. In the opinion of this Court, even if there was any delay on part of the investigating agency in seeking requisite permission, grant of regular bail in the immediate aftermath of dismissal of the bail application by a Superior Court, where a categorical finding regarding necessity of custodial interrogation was given, is still perverse. The findings of the learned ASJ could not have been so casually shirked by the learned MM. Furthermore, the possibility of delay being caused on account of the unavailability of the investigating officer or due to pendency of



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Respondent No.2's bail application before this Court cannot be negated.

23. Although considerable time has passed and much water has admittedly flown since grant of bail, considering that the bail appears to have been granted on irrelevant considerations of the prosecution not being able to *immediately* effect arrest of the accused and since the same is riddled with non-appreciation of relevant observations made by the learned ASJ, this Court is of the opinion that the impugned order ought to be set aside. This Court is supported by the decision in the case of *M/s Netsity Systems Pvt. Ltd. v. The State Govt. of NCT of Delhi & Anr. : 2025 INSC 1181*, where the Hon'ble Apex Court had cancelled the bail after almost two years by noting that the same was riddled with irregularities. In the said case, the Magistrate had granted bail to the accused under Section 437 of the CrPC after filing of chargesheet despite being aware of the pre-arrest bail dismissal order of High Court, where it was noted that the accused therein had enjoyed interim protection without abiding by the undertaking given to obtain such relief. The relevant portion of the judgment is as under:

*“19. We note that the Order dated 01.02.2023 dismissing the anticipatory bail applications detailed the conduct of the accused and thereafter, considered and dismissed the said petitions on merits. We find the reasoning employed in Order dated 01.02.2023, as recorded by us above, is fully justified in the facts and circumstances. In this backdrop, the ACMM, despite being made aware of the High Court's Order dated 01.02.2023 and even noting the same, proceeded on the simplistic premise that since the Chargesheet had been submitted, no useful purpose would be*



*served by taking the accused into custody, particularly as the stand taken by the IO was that custodial interrogation was not required. Such reasoning, in our view, is untenable, inasmuch as the same glossed over the private respondents' conduct, including undertakings made before a higher Court viz. the High Court.*

*20. We have deliberately adopted a mild mannerism in describing the ACMM's Order dated 10.11.2023, even as the consideration adopted therein borders on the perversity. Bail matters are primarily to be adjudicated on the facts and circumstances, before applying any principle of law. In light of the glaring factual matrix, bail ought not to have been granted...*

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*33. Under ordinary circumstances, where bail has been granted in the absence of glaring facts such as those recorded above, the matter may not warrant reconsideration in light of judicial precedents. However, as the preceding analysis would demonstrate, the case at hand exhibits an exceptional factual prism, impelling a deeper scrutiny beyond the conventional principles governing the subject...."*

(emphasis supplied)

24. Similarly, in the present case, considering that the impugned order is premised on irrelevant considerations and the same is silent on material aspects, the facts are such that warrant interference of this Court. Mere lapse of time and supervening circumstances cannot come to the rescue of the accused in such circumstances.

25. Having found that the impugned order is unsustainable on merits, this Court does not consider it apposite to delve into the question of law in relation to the very maintainability of the application at this juncture.



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26. In view of the aforesaid discussion, this Court considers it apposite to set aside the impugned order dated 15.02.2022. However, as Respondent No.2 has remained on bail for over three years, this Court considers it apposite to grant a period of two weeks to Respondent No.2 to surrender before the learned Trial Court.

27. Needless to say, if Respondent No.2 applies for regular bail, the same shall be considered on its own merits after duly considering the supervening circumstances.

28. The present petition is allowed in the aforesaid terms.

29. It is made clear that the observations made in the present order are only made for the purpose of deciding the present case and the same shall not be taken as opinion on the merits of the case or affect the trial in any manner.

**AMIT MAHAJAN, J**

**DECEMBER 19, 2025**

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