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

% Date of decision: 06.05.2020

\+ **CRL. M.C. No. 1468/2020**

THE STATE (NCT OF DELHI) ..... Petitioner
Through: Mr. Sanjay Jain, Additional Solicitor General with Mr. Kewal Singh Ahuja, APP for State

versus

SANJEEV KUMAR CHAWLA ..... Respondent
Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Jagjit Nandal, Advocate

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. With the consent of the parties, the matter is taken up for final disposal.

2. This petition has been moved by the State under Section 439(2) read with Section 482 of the Cr.P.C. for cancellation of bail granted vide order dated 30.04.2020 by the learned ASJ, Patiala House Courts, New Delhi to the respondent/accused in FIR No.111/2000 dated 06.04.2000 under Sections 420/120B of the IPC, registered at Police Station Chanakya Puri, New Delhi, which has been investigated by the Crime Branch. According to the petitioner/State, during investigations of an extortion case relating to FIR No.249/1999 dated 13.11.1999 under Sections 387/506 of the IPC registered at Police Station DBG Road Delhi, the Crime Branch came to know that some persons were conspiring to fix the India-South Africa Cricket Test

Series to be played in the months of February to March, 2000 whereunder five One-Day matches and three Test matches were to be played at various places in India. The accused/respondent is alleged to have played a major role in fixing these matches, as it is alleged by the petitioner/State that he was the main link between the players and an alleged Syndicate which was running betting on these matches and had profited hugely from these match fixings as they controlled the outcome of each of these matches.

3. The petitioner/State has alleged that it was the accused/respondent who had given mobile phones and money to the late Hansie Cronje and he had enticed various players to play in a pre-planned manner, thus determining the final outcome of each match. The petitioner/State relied on the statements made by Hansie Cronje and Hamid Cassim before the Kings Commission, which revealed the deep-rooted involvement of the respondent/accused in the entire conspiracy. The Call Detail Analysis also revealed his continuous contact with Hamid Cassim. Further disclosures made by co-accused and the call details of other mobile phones used by the respondent/accused after reaching India on 20.02.2000 also connected him to the crime. After the petitioner/State had initiated extradition proceedings in the U.K., the respondent/accused was arrested on 13.02.2020 and pursuant to orders of this court dated 14.02.2020, he was taken to Tihar Jail No.3 the same day where he was extensively interrogated. A supplementary charge-sheet has also since been filed, which included a statement made by the respondent/accused, but which he refused to sign. The petitioner/State had obtained an order from the learned MM for taking voice sample and specimen handwriting of the respondent/accused, which were to be taken on

28.05.2020.

4. It is seen from the record that on 28.03.2020, the respondent/accused applied for bail in the court of the learned MM, Patiala House Courts, New Delhi, which was declined vide order dated 28.03.2020. Thereafter, on 29.04.2020, he moved the court of the learned Additional Sessions Judge, ('learned ASJ') Patiala House Courts, New Delhi who vide order dated 30.04.2020, granted bail to the respondent/accused directing that he be released on his furnishing a personal bond in the sum of Rs.2 lakhs with two sureties in the like amount to the satisfaction of the concerned learned Duty MM. A further direction was also given that on the very next day following his release from jail, he will give his voice sample and specimen handwriting and the I.O. was to take necessary steps. Further directions were given that the respondent/accused would not leave India without the permission of the court and is to provide his mobile number as well as that of his brother, who was a resident of Delhi, to the I.O. and keep the said phones operational at all times.

5. The present petition has been moved by the petitioner/State being aggrieved by the impugned order dated 30.04.2020 granting bail to the respondent/accused. It is contended by Sh. Sanjay Jain, learned Additional Solicitor General appearing for the petitioner/State that the learned ASJ has failed to appreciate the grave and serious allegations against the accused/respondent, his complicity in the commission of the crime and his key role in it and that he had been evading investigations all these years and the fact that his presence was secured only after a long-drawn extradition proceedings and, therefore, he could not be compared with the co-accused to

be granted bail on parity. It is also submitted that the investigations are not complete as the voice and handwriting samples were yet to be taken. Further, the guidelines with respect to release of under-trial prisoners due to Covid-19 were not applicable in the case of the respondent/accused and this benefit could not have been granted as the accused/respondent was a foreign national and had not spent three months in jail and further the offence was being investigated by the Crime Branch.

6. The learned ASG has argued that in short, the learned ASJ has considered irrelevant factors to grant bail by overlooking all relevant factors. According to the learned ASG, the respondent/accused was ineligible for release on bail as he had left India on an Indian passport a few weeks before the FIR was registered and immediately after his Indian passport was cancelled while he was in the U.K., he sought and was granted British citizenship. Thereafter, since the year 2013, after the charge-sheet was filed against the other accused persons, proceedings for extradition were initiated by the State and it was only in February, 2020 that it was possible to bring the accused back to India. Thus, he was a "*high flight risk*" accused, which fact had been completely ignored by the learned ASJ.

7. It was also submitted by the learned ASG that as the king-pin of the conspiracy and as one co-accused is still absconding, the details of the Syndicate behind the match fixing could be traced only through this accused and, therefore, investigation was still pending and it was an error on the part of the learned ASJ to observe that the investigations were complete and evidence was only documentary as there were 44 public witnesses who were to provide the ocular evidence. It is further argued that all payments to the

players and the agents were paid by the respondent/accused, which reflected that he had great money power and influence, which, it was possible for him, to use to threaten or cajole the 44 public witnesses, of whom seven were most crucial. Therefore, his remaining outside the jail would hamper fair trial. In these circumstances, it was prayed that the order granting bail be set aside and the respondent/accused be not released on bail. In support of his contention that the court should consider cancellation of bail on factors other than the existence of the supervening factor of interference with trial, the learned ASG has relied on the decisions of the Supreme Court in Prakash Kadam and Ors. vs. Ramprasad Vishwanath Gupta and Anr., **(2011) 6 SCC 189**; Dinesh M.N. (S.P.) vs. State of Gujarat, **(2008) 5 SCC 66**; Neeru Yadav Vs. State of Uttar Pradesh and Another, **(2014) 16 SCC 508**; Padmakar Tukaram Bhavnagre and Anr. vs. State of Maharastra and Anr., **(2012) 13 SCC 720** and Kanwar Singh Meena vs. State of Rajasthan and Anr., **(2012) 12 SCC 180**, which shall be discussed herein later.

8. Mr. Vikas Pahwa, learned Senior Advocate appearing for the accused/respondent has submitted that the present petition was liable to be dismissed as there was no evidence to suggest that the respondent/accused was likely to abscond during the complete lockdown with no mode of transport including flights, which have remained suspended. Learned Senior Counsel also submitted that it was wrong to say that the respondent/accused was a wealthy man with large number of properties in the U.K. and across the world and has pointed out that the respondent/accused and his siblings and his sister's in-laws resided in Delhi and have deep roots in society and there was no question of the respondent/accused absconding. Moreover,

during the extradition proceedings, which according to learned Senior Counsel, commenced only on 14.06.2016, till its conclusion on 12.02.2020, the respondent/accused had remained on bail and there had been no occasion for him to flee from justice.

9. Learned Senior Counsel also pointed out that for almost 13 years from 2004 onwards, not a notice, not even through email, had been sent to the respondent/accused by the Investigating Agencies, except for one email to his solicitor for voice sample. Thus, the delay in the extradition proceedings ought not to be attributed to the respondent/ accused. The State took 13 years to file the charge-sheet against those accused who had been arrested in the year 2000 and released on bail within a month of their arrest. It was only after the charge-sheet was filed in the year 2013 that the State could have, in any case, initiated proceedings for extradition and which they did in the year 2016 when the U.K. courts were approached by the State. Merely because the respondent/accused exercised his legal rights to oppose such extradition proceedings, would not indicate that he was thwarting the legal process or avoiding investigations. It was also submitted that as per the Covid-19 guidelines issued by the High Court for release of under-trials in jail to de-congest the prisons, further relaxation covered the cases with imprisonment upto 10 years. Further, merely because the respondent/ accused was a foreign national, he could not be barred from praying for grant of the benefit of these guidelines for release.

10. Mr. Vikas Pahwa, learned Senior Counsel also sought to distinguish the cases relied upon by the learned ASG on facts, to submit that in all those five cases, the allegations were very serious as two related to fake

encounters; one related to anticipatory bail granted in an abetment to suicide of a young bride and a case where the accused was a history-sheeter, which fact had been ignored by the court while granting bail to him. Thus, it is submitted that the reliance on these judgments was misplaced.

11. Though a bunch of citations was filed on behalf of the respondent/accused, viz., decisions in X vs. State of Telangana, **(2018) 16 SCC 511**; CBI, Hyderabad vs. Subramani Gopalakrishnan and Anr., **(2011) 5 SCC 296**; Nityanand Rai vs. State of Bihar, **(2005) 4 SCC 178**; Dolat Ram vs. State of Haryana, **(1995) 1 SCC 349**; Bhagirathsinh vs. State of Gujarat, **(1984) 1 SCC 284**; State (Delhi Administration) vs. Sanjay Gandhi, **(1978) 2 SCC 411**; Directorate of Enforcement vs. Ratul Puri, **2020 SCC Online Del 97**; Gayatri Devi vs. State, **2011 (126) DRJ 15 (Del)** and Anuradha Khemka Nee Bansal vs. Sudarshan Kumar Khemka, **2005 SCC Online Cal 131** reference was specifically made to the decision of the Supreme Court in Dolat Ram's case and the decision of this court in Ratul Puri's case.

12. Learned Senior Counsel submitted that the case of Dolat Ram (supra) clearly enunciated that without a change in circumstance or a supervening factor disclosing interference with the trial, bail could not be cancelled and that considerations for grant of bail were different from the considerations for cancellation of bail and it was impermissible for the court to re-evaluate the material or evidence on the basis of which bail had been granted while disposing of an application for its cancellation. It was also submitted that in the Ratul Puri case involving much graver allegations, the learned Sessions Court had granted bail to the accused and this court had rejected the

application filed by the State for cancellation of bail and there was no ground to cancel bail of the respondent/accused in this case. Written submissions on these lines have also been submitted on behalf of the accused/respondent, which I have perused.

13. The decision of the Supreme Court in Dolat Ram (supra) is the most significant judgement laying down guidelines to courts while deciding the question of cancellation of bail already granted. It would be useful to reproduce the words of the Supreme Court in this regard, as under: -

> *"4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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 the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-*

bailable case in the first instance and the cancellation of bail already granted."

14. Therefore, while deciding the question of cancellation of bail, considerations as spelt out by the Supreme Court have to be borne in mind by the court. Once the court deems it appropriate to grant bail to an accused and thus, allow him some freedom through the concession of bail during trial, it would require very cogent and overwhelming circumstances for the court to withdraw that concession.

15. In the present case also, an assessment has to be made as to whether the respondent/accused is interfering or attempting to interfere in the due course of administration of justice or has abused the concession or there is possibility of his absconding. With regard to the first two circumstances, as rightly urged by learned Senior Counsel, since the State has come up with the petition for cancellation of bail on the very next day of the grant of bail and the respondent/accused was not released before hearing of the present petition, there was no opportunity for the respondent/accused to interfere with trial. Learned Senior Counsel also submitted that assuming the contention of the petitioner/State to be correct that the respondent/accused was a man with great influence and money power, then ordinary prudence would suggest that he would have sought to influence the public witnesses while residing in the U.K. for this long period of 20 years after the registration of the FIR or at least, since the year 2013 when the list of witnesses was disclosed when the first charge-sheet was filed naming the respondent/accused. Learned Senior Counsel pointed out that even during arguments, no such suggestion was made that the respondent/accused had

tried to approach any of these witnesses specifically and a general argument was that he could do so, would be most insufficient to cancel bail.

16. Mr. Pahwa, learned Senior Counsel also submitted that if this court found the conditions imposed by the learned ASJ to be insufficient to ensure that the respondent/accused would not abscond, more stringent conditions could be imposed, but that there was no reason to suspect that he would abscond. Thus, according to him, none of the conditions prescribed by the Supreme Court in Dolat Ram (supra) existed in the instant case and the petition was liable to be dismissed.

17. In Ratul Puri (supra), the contentions raised by the State while seeking cancellation of the bail granted to the respondent/accused therein was rejected even though the FIR was registered not only under Section 420 of the IPC, but under various provisions of the Prevention of Money Laundry Act (PMLA); the investigations were pending; the respondent/accused had moved around bags believed to contain crucial leads and which were hidden; the respondent/accused had deleted emails and IDs of Nokia Samsung accounts and had sought to thwart the investigation; the strong likelihood of the respondent/accused of tampering with the evidence and witnesses due to his past conduct; the existence of the possibility of the liquidation and shifting of the proceeds of the crime to different foreign jurisdiction/entities to destroy the money trail and yet this court had rejected the application of the State for cancellation of the bail while holding as under: -

> *"32. It is settled that once bail granted should not be cancelled in a mechanical manner without considering*

> *any supervening circumstances which is not conducive to fair trial. It cannot be cancelled on a request from the side of the complainant/investigating agency unless and until it is established that the same is being misused and it is no longer conducive in the interest of justice to allow the accused any further to remain on bail. No doubt, the bail can be cancelled only in those discerning few cases where it is established that a person to whom the concession of bail has been granted is misusing the same. However, all those facts are missing in the present case."*

18. According to Mr. Pahwa, learned Senior Counsel, the facts in the instant case are nothing as serious as were alleged against the respondent/accused in Ratul Puri (supra) in which the learned Single Judge had relied upon the judgment in the case of Dolat Ram (supra) to reject the prayer of the State for cancellation of bail already granted and that the respondent/accused in the present case was entitled to similar relief.

19. Per contra, Sh. Sanjay Jain, learned ASG has submitted that the extradition warrant was published in the U.K. in the year 2004 and therefore, the respondent/accused was fully aware of the case against him and having been given British citizenship, he could have had no reason to leave that country as he would have then faced arrest by the Indian Authorities. Moreover, in the extradition order, special amenities were assured to the respondent/accused as he has been given a separate room with all facilities, such as T.V. in the Tihar Jail, and therefore, there was no threat of infection of Covid-19 and the learned ASJ ought not to have considered Covid-19 guidelines for grant of bail to the respondent/ accused.

20. As regards the judgments relied upon by him, learned ASG explained

that reliance was upon principles laid down therein and not on the facts and by the same logic, the respondent/accused would not be able to rely on Dolat Ram (supra) which related to grant of anticipatory bail . Moreover, the judgment in Dinesh M.N.(S.P.) (supra) was rendered by a Three Judge Bench and therefore, prevailed over the decision of the Two Judge Bench in Dolat Ram's case.

21. The learned ASG contended that bail could be cancelled even in the absence of the supervening factors as listed by the Supreme Court in Dolat Ram's case (supra) and where the gravity and nature of the offences and seriousness of the accusations against the respondent/accused were ignored by the court granting bail or irrelevant factors were taken into consideration for grant of bail or when the course of justice may be thwarted due to grant of bail or when bail ought not to have been granted to the accused in the first place, the courts could cancel bail already granted.

22. It was pointed out that despite reference to Dolat Ram (supra), the Supreme Court in Prakash Kadam (supra), had cancelled the bail already granted to the accused. A perusal of the said judgment would reveal that it was a case relating to alleged fake encounters and the Supreme Court took into consideration the seriousness of the allegations and status of the respondents/accused who were policemen who were supposed to uphold the law, but there was sufficient material to show that far from performing their duties, the protectors had become predators. The Supreme Court had also made the following observations: -

> *"18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence,*

> *prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.*
>
> *19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."*

23. In Dinesh M.N. (S.P.) (supra), a three judge Bench of the Supreme Court while dealing with the challenge to the order of cancellation of bail passed by the Gujarat High Court in a case of alleged fake encounter, made the following observations: -

> *"27. We have only highlighted the above aspects to show that irrelevant materials have been taken into account and/or relevant materials have been kept out of consideration. That being so, the order of granting bail to the appellant was certainly vulnerable. The order of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed. However, it is made clear that whatever observations have been made are only to decide the question of grant of bail and shall not be treated to be expression of any opinion on merits. The case relating to acceptability or otherwise of the evidence is the subject matter for the trial Court."*

24. Thus, indicating that the court seized of an application for cancellation of bail could look into the grounds for grant of bail to determine

whether irrelevant material was considered by the court to grant such concession. In para 23 of the same judgment, it was observed as below:

> *"23. Even though the re-appreciation of the evidence as done by the Court granting bail is to be avoided, the Court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the Court for accepting the prayer for bail."*

Thus, the learned ASG submitted that this court ought to look into the question whether bail was granted on relevant material or irrelevant factors had prevailed upon the learned ASJ while granting the bail.

25. The next case relied upon by the leaned ASG is Padmakar Tukaram Bhavnagare (supra), which was a case of suicide and anticipatory bail was sought by the accused therein. In this case , the Supreme Court referred to its decisions in Dolat Ram (supra) and Dinesh M.N. (SP) (supra) and further observed as under: -

> *"13. It is true that this Court has held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. This Court has clarified that these instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail order must be quashed in the interest of justice. (See: Dolat Ram v. State of Haryana,* (1995) 1 SCC 349 *& Dinesh M.N. (S.P.) v. State of Gujarat* (2008) 5 SCC 66*). No such*

> *case, however, was made out to persuade learned Single Judge to quash the anticipatory bail order passed in favour of accused 6 & 7. Order granting anticipatory bail to them, therefore, deserves to be confirmed. We feel that if the conditions imposed by learned Sessions Judge are confirmed, it would be possible for the investigating agency to interrogate the accused effectively."*

Learned ASG submitted that a perverse order granting bail can be quashed in the interest of justice.

26. Reliance has also been placed on the judgment of the Supreme Court in Kanwar Singh Meena (supra), to submit that the bail could be cancelled even in cases where the order granting bail suffers from serious infirmities, resulting in miscarriage of justice and where the court granting bail ignores relevant material. It was so observed in para 10 of the said judgment as below: -

> *"10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous*

> *examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under Section 439(2) of the Code, 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 bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail."*

27. Lastly, the learned ASG relied upon the judgment of the Supreme Court in Neeru Yadav (supra) to submit that the Supreme Court in this case has reiterated concisely the factors that are to be borne in mind by the court while granting the bail. It would be useful to reproduce the relevant paragraphs, are as under: -

"9. In this context, a fruitful reference be made to the pronouncement in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598, wherein this Court has observed that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary, capricious and injudicious, for the heinous nature of the crime warrants more caution and there is greater change of rejection of bail, though, however dependant on the factual matrix of the matter. In the said decision, reference was made to Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280 and the Court opined thus:

> *"(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. [pic]*
>
> *(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."*

> *10. In Chaman Lal V. State of U.P., (2004) 7 SCC 525, the Court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge which are to be kept in mind."*

28. The Supreme Court also reiterated the grounds on which the bail could be cancelled, in paragraph No. 12 of the said judgment, which reads as follows: -

> *"12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."*

29. Thus, the learned ASG submitted that when materials not relevant such as Covid-19 guidelines, have been taken into consideration by the

learned ASJ, the bail order was liable to be set aside.

30. I have heard Sh. Sanjay Jain, learned ASG appearing for the petitioner/State as well as Sh. Vikas Pahwa, learned Senior Counsel appearing for the respondent/accused and have perused the record, the citations relied upon by both the sides, and the written submissions filed on behalf of the respondent/accused.

31. The principles governing grant of bail which the courts have to consider can be enumerated, though not exhaustively, as under:-

a) The gravity and severity of the offence and the nature of accusation;
b) Severity of punishment;
c) The position and status of the accused vis-à-vis the victim and the opportunity to approach the victims/witnesses;
d) The likelihood of the accused fleeing from justice;
e) The possibility of tampering with the evidence and/or the witnesses;
f) Obstructing the course of justice or attempting to do so;
g) The possibility of repetition of the offence;
h) The *prima facie* satisfaction of the court in support of the charge including frivolity of the charge;
i) The peculiar facts of each case and nature of supporting evidence.

32. The factors that need to be considered while dealing with the question of cancellation of bail are different from these considerations. The Supreme

Court has adumbrated in Dolat Ram's case (supra) the following situations as supervening factors that may justify the cancellation of the bail:

a) Interference or attempt to interfere with the due course of administration of justice;

b) Evasion or attempt to evade the due course of justice;

c) Abuse of the concession granted to the accused;

d) Possibility of the accused absconding;

e) Likelihood of/actual misuse of bail.

f) Likelihood of the accused tampering with the evidence or threatening witnesses;

g) Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.

33. However, the various decisions of the Supreme Court referred to and relied upon by the learned ASG and discussed hereinabove, vest courts with the power and discretion to cancel bail even when there are no supervening circumstances. The principles that can be gleaned from these judgements to guide the courts in such situations may be illustratively stated as below: -

a) Where the court granting bail ignores relevant material and takes into account irrelevant material of substantial nature and not trivial nature;

b) Where the court granting bail overlooks the position of the accused qua the victim especially if the accused is in some position of authority such as a policeman and there is *prima*

facie, a misuse of position and power, including over the victim;

c) Where the court granting bail ignores the past criminal record and conduct of the accused while granting bail;

d) Where bail has been granted on untenable grounds;

e) Where the order granting bail suffers from serious infirmities resulting in miscarriage of 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.

34. It is in the background of this law, as laid down by the Supreme Court, that the present petition for cancellation of bail is to be tested. The learned ASG has sought cancellation of the bail primarily on the ground of gravity of offence, which has international ramifications and the application of the guidelines for release in view of the Covid-19 to the respondent/accused. The time taken for getting the respondent/accused before the courts of law in India and the status of citizenship of the respondent/accused, i.e. of being a citizen of U.K., added to the fact that he was moneyed and connected, also rendered the respondent/accused a flight risk.

35. While it is no doubt correct that cancellation of bail is no longer limited to the occurrence of supervening circumstances and in the absence of any such supervening circumstances, the court dealing with an application for cancellation of bail is empowered to consider the soundness of the bail order, it should not act capriciously and without good reason to cancel the bail once granted as liberty of an individual is at stake.

36. The State has every right to be aggrieved with the grant of bail to the accused, particularly when much effort has gone into his production before the court of law. All this seems to be a factor that tilts this case to a degree in favour of the State. The first warrant is stated to have been issued in the year 2004 against the present respondent/accused. 21 days before the FIR was registered, the respondent/accused, who was an Indian Passport holder and an Indian citizen at that time, left for the U.K.. The extradition process took a long time and then the respondent/accused could be extradited only on an assurance given by the Government as to the environment in which the respondent/accused would be detained in Tihar Jail. One cannot therefore doubt the genuineness of the concern of the State that releasing the respondent/accused on bail would lead to a situation where he is able to distance himself and jeopardise trial.

37. At the same time, it cannot also be overlooked that out of the remaining four accused persons, three were arrested in the year 2000 when the FIR was registered. Till date, admittedly, not even the charge has been framed against any one of them. The other three accused persons have been on bail since the year 2000 and 20 years later, they continue to remain on bail with no trial in sight. Even today, the petitioner/State submits that the

investigations are still going on and the voice sample and specimen of handwriting of respondent/accused is also to be gathered. The trial scenario being so stark, liberty of a person cannot be left in limbo only on account of the belief of the State that the respondent/accused is a flight risk.

38. The other contentions raised by the learned ASG that the learned ASJ had considered irrelevant factors while ignoring relevant factors, are not persuasive. When the Supreme Court referred to the standing of the accused, it was not merely referring to the socio-economic status of an accused but rather the ability of such an accused to misuse and abuse their position of power to commit the offence, and/or jinx investigation and trial. Even assuming that the status of the respondent/accused before this court is significant in terms of money and power, there is force in the contentions of Mr. Pahwa, learned Senior Counsel, that for the last twenty years or at least ever since the charge-sheet was submitted in 2013, there is not a whisper that he had been flexing this financial and other power to prevail upon the 44 public witnesses to testify in his favour.

39. The consideration of the prevalence of Covid-19 and the guidelines issued by the High Court have not been irrelevantly considered by the learned ASJ as the guidelines are intended for dealing with under-trials in Tihar and other jails in Delhi and to allow those with no involvement in extreme and heinous cases to obtain bail. Merely because the respondent/accused has been given special facilities in the Tihar Jail, would be no reason to deny him the benefit of the Covid-19 guidelines and for this purpose, for an offence under Section 420 of the IPC, it would be improper to differentiate between an Indian and a foreign citizen. This would be

unlike in cases under the NDPS Act or UAPA or NIA or PMLA or other similar extremely serious cases against the sovereignty of the State. Though the present case had international ramifications and the learned ASG referred to the existence of an alleged Syndicate, these are not aspects which should lead to the conclusion that the learned ASJ has overlooked the gravity of the offence, particularly when the existence of such a Syndicate is still being investigated and it has not been established that the respondent/accused was the head of such a Syndicate, though he has been described as the conduit.

40. Sh. Pahwa, learned Senior Counsel, has also drawn attention of this Court to the fact that apart from this one occurrence where alleged match fixing was attempted or carried out, similar efforts to fix other matches/series of matches have not occurred subsequently in any part of the world including in India, despite numerous cricket matches having been organised all over the world including in India, and, therefore, there exists no threat that the respondent/accused would repeat the alleged offences once he is out on bail.

41. The State has come before this Court for seeking cancellation of bail immediately upon the grant of bail and, therefore, there has been no occasion for a disclosure through action or words, that the respondent/accused has/intends to thwart the process of justice or prevent fair trial. Liberty being precious to human life, bail once granted ought not to be lightly cancelled. The existence of supervening circumstances or other circumstances as listed hereinabove in their absence, must be strictly ascertained by the court before it cancels the bail already granted. The

present case is not one such case where these circumstances exist as discussed above. The State has not succeeded in making out a case for cancellation of bail of the respondent/accused.

42. In an aside, this case brings to the fore the need for investigative agencies and the Government to consider the use of advances in technology to track under-trials in cases of this nature where the State may fear that an accused may flee from trial. Digital and electronic equipment, as presently used in America, ought to be introduced in India, so that a tracking system similar to the GPS Tracking System, can be used to monitor the movement of the accused released on bail, allowing the authorities to gather information all the time while permitting the accused to undertake the usual and ordinary activities of normal life.

43. In the absence of such systems in India, the learned ASJ has adopted the next best course available, by directing the respondent/accused to keep a mobile phone operational at all times. Apart from the brother of the respondent/accused who has also been directed by the learned ASJ to keep his mobile phone operational at all times, this Court directs that both the sureties, who have furnished the surety bonds, shall also furnish the details of their mobile phones to the SHO/IO and keep their mobile phones operational at all times. Further, the respondent/accused shall make a call to the IO/SHO once a day and shall not leave Delhi except with the permission of the Trial Court, which shall dispose of any application moved by the respondent/accused seeking permission to leave Delhi after issuing notice to the State and pass speaking orders thereon. The respondent/accused shall not leave the country till the trial is concluded, which the State shall endeavour

to expedite. The petitioner/State would be entitled to alert all exit/transit points accordingly, to ensure that there is no attempt by the respondent/accused to leave the country.

44. The present petition for cancellation of bail is accordingly dismissed. It is underlined that nothing stated in this order will tantamount to an expression on the merits of the case.

45. A copy of this order be sent to the learned Trial Court/ Duty MM for information as also to ensure compliance of the directions issued vide this order to the respondent/accused and his sureties.

(ASHA MENON)
JUDGE

MAY 06, 2020
Pkb/ak/s