

**S.M. Muddassir Vs. State**

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**Court :** Delhi

**Decided On :** Apr-15-2002

**Reported in :** 2002VAD(Delhi)81; 2002CriLJ3430; 98(2002)DLT129; 2002(63)DRJ27

**Judge :** K.S. Gupta, J.

**Acts :** Indian Penal Code (IPC) - Sections 120B, 406, 409, 420, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 161, 397, 401 and 482

**Appeal No. :** CrI. Rev. 83/2002

**Appellant :** S.M. Muddassir

**Respondent :** State

**Advocate for Def. :** Anil Soni, Adv.

**Advocate for Pet/Ap. :** D.C. Mathur, Sr. Adv. and; Anis Ahmed, Adv

**Disposition :** Revision petition dismissed

**Judgement :**

**K.S. Gupta, J.**

1. This revision petition by the accused is directed against the order dated 7th February 2002 of an Additional Sessions Judge cancelling the bail granted by him

by the order dated 20th October 2000.

2. Facts giving rise to this petition, in brief, are these. FIR No. 43/2000 under Sections 420/406/409/468/471/120B IPC PS New Friends Colony was registered on the complaint made by one K.R. Singh. The allegations made therein were that complaint had been cheated by Al Falah Group of Companies and its Chairman and directors to the tune of Rs. 95 lakhs which they collected from him under various schemes. After registration of case, about 350 more complaints were received from other investors against said Al Falah Group of Companies and its directors alleging cheating and misappropriation of their amounts of approximately Rs. 7.5 crores. First chargesheet was filed on 26th April 2000 in which only 3 directors were chargesheeted. Petitioner who was one of the directors of company and shown in column No. 2 in that chargesheet, was arrested on 5th September 2000 and admitted to bail on 20th October 2000. In second chargesheet filed on 31st March 2001, petitioner has been arrayed as one of the accused. In the meantime an application dated 18th December 2000 was filed seeking cancellation of bail of the petitioner and by the order dated 7th February 2002 his bail has been cancelled.

3. Submission advanced by Sh. D.C. Mathur for petitioner was that the petitioner is a lecturer in Department of Civil Engineering, Jamia Milia Islamia, New Delhi and was a dormant director of Al Falah Group of Companies. First chargesheet filed against 3 co-accused was before the court at the time bail order dated 20th October 2000 was passed. Bail in terms of impugned order was cancelled ignoring the well established principles of law. In support of submission, reliance was placed on the decision in State (Delhi Administration) v. Sanjay Gandhi, : 1978 CriLJ952 ; Mohan Singh, Advocate v. Union Territory, Chandigarh, : 1978 CriLJ844 ; Dolat Ram and Ors. v. State of Haryana, : (1995)1SCC349 and Onkar Gulati v. The State and Anr. 1998 (1) JCC 100 (Del). On the other hand, it was contended by Sh. Anil Soni for respondent that on 20th October 2000 on which date the petitioner was admitted to bail, I could not reach the court and instruct APP as he was busy in conducting investigation in another case. In terms of said order the bail was not granted on merits but on concessional statement made by APP. Taking note of incriminating evidence appearing against the petitioner, bail

had been rightly cancelled by the impugned order by the same Additional Sessions Judge who granted the bail. Reliance was placed on the judgment in Rama Mhatre v. Dattatraya Janu Vayale and Ors. .

4. Copy of aforesaid bail order dated 20th October 2000 is placed on page 76. This order notices the statement made by APP that petitioner is the brother-in-law of main accused who is the Chairman of company; that main accused made the petitioner director and although petitioner is working as lecturer he was not actively involved in the company of main accused. Taking note of this statement, petitioner was admitted to bail on furnishing personal bond in the sum of Rs. 30,000/- with one surety in like amount. To be only noted that this bail order was passed on the basis of concessional statement made by APP and not on merits. Copy of yet another order dated 7th February 2002 is placed at pages 57 to 60. A bare perusal thereof would go to indicate that bail of petitioner was cancelled on merits after observing that APP did not bring forth all the facts at the time bail was granted on 20th October 2000. It would be profitable to refer to Ram Mahatra's case (supra) at this juncture. Bail granted to the respondents by the order dated 15th February 1980 by an Additional Sessions Judge was sought to be cancelled by the complainant-petitioner. In Paras 7 and 8 (at pages 1607-08) which are material, it was held:-

'It must be stated at the outset that the learned Addl. Sessions Judge observed in his order that the learned public prosecutor for the State has 'very fairly submitted' that the State had no objection in view of the instructions furnished to him by the Investigating officer to release these accused-applicants on bail and that in view of that 'fair concession' he granted the application for bail. Whether the Investigating officer was right in instructing the Public Prosecutor that he should not oppose the application for bail, if at all he had so instructed, and whether the learned Public Prosecutor was right in acting on these instructions and further whether the learned Additional Sessions Judge was justified in ordering the release of the accused on bail in such a concession would be considered by me a little later. Suffice it to say for the present that the learned Addl. Sessions Judge made the impugned order on the concession made by the learned Public Prosecutor. He does not appear to have applied his mind to the material collected in the course of

the investigation or to relevant considerations and the provisions of law which should be taken into consideration while granting or rejecting an application for bail. This is, therefore, not a case where an application for bail was granted on merits. It is, therefore, not necessary to consider the various principles and consideration which the court has to bear in mind while cancelling the bail already granted by the court below.

8. The Supreme Court has in the case of State v. Sanjay Gandhi (reported in : 1978 CriLJ952 ) observed that the rejection of bail when bail is applied for is one thing and cancellation of bail already granted is quite another, that it is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. These observations would obviously not apply to the instant case because as stated earlier the learned Addl. Sessions Judge allowed the bail application merely on concession being made by the learned Public Prosecutor. It is, therefore, necessary for me to see whether the respondents Nos. 1 and 19 deserve to be released on bail, having regard to the material collected in the course of the investigation and relevant provisions of law.'

5. Considering the incriminating material, bail granted to respondents 1 to 19 was cancelled in the said case.

6. Copy of aforementioned application seeking cancellation of bail dated 18th December 2000 is placed at pages 77 to 84. Facts which showed active role of the petitioner as director of said company, have been given therein thus:-

(1) That the petitioner executed sale deed for purchase of Plot No. 137, Udyog Vihar, Phase-I, Gurgaon, one of the major properties of AL FALAH Developers Ltd.

(2) That in his supplementary statement dated 17th August 2000 M.N. Ansari stated that petitioner took 24 memberships (12 of Sports and country club and 12 of Golf and country club) of M/s. Sterling Holiday Resorts (I) Ltd, B-10, Sector 16,

NOIDA, UP.

(3) That in addition to statement of said M.N. Ansari, there are statements of other investors to the effect that petitioner used to sit in company office and induced them to invest in the company and offered high returns on their investments.

7. Said plot No. 137 is shown to have been purchased for Rs. 90 lakhs. Explanation of petitioner is that at the time of execution of sale deed for purchase of said plot other active directors of company were not available and memberships of two clubs were granted as it was one of the conditions of Housing society that anybody who purchased 4 bed rooms flat shall be entitled to become member of the clubs developed by M/s. Sterling Holiday Resorts (I) Ltd. Be that as it may, the fact remains that sale deed for purchase of said plot No. 137 was executed and memberships of two clubs obtained through the petitioner. Besides M.N. Ansari who earlier worked as Deputy General Manager of Al Falah Developers Ltd. other investors including Mrs. Zebun Nisa, Arshad Tasleem, Janeel Ur Rahman, Wajhul Qamar Khan and Mohd. Inam Khan etc under Section 161 Cr.P.C. have stated that directors of Al Falah Group of Companies including petitioner induced them to invest their monies in the companies and assured payment of dividend ranging from 30% to 70% on the investments made.

8. In the impugned order the Additional Sessions Judge has taken note of the statements of investors. I am in agreement with the ratio laid down in Rama Mhatre's case (supra) that various principles and considerations which a court has to bear in mind while cancelling bail already granted would not apply where bail is not granted on merits. None of the aforesaid decisions relied on behalf of petitioner have any application to this case. As noticed above, bail was granted to the petitioner on concessional statement made by APP. First chargesheet towards the end notices that petitioner was absconding, more evidence was being collected and supplementary chargesheet was to be filed after his arrest and completion of investigation. In my view, impugned order cancelling bail does not suffer from any jurisdictional error which may call for interference under Sections 397/401 and/or Section 482 Cr. P.C.

9. Consequently, revision petition is dismissed being without any merit.

10. Petitioner will surrender before the trial court by tomorrow.

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