Azadi Ka Amrit Mahotsav

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. ISD(DWN) **Genl.I/F. 3(A)/N-W & N/RC/2022 Delhi, dated** 19/7/2022

Sub: Order dated 04.07.2022 passed by the Hon'ble Mr. Justice Anoop Kumar Mendiratta of the Hon'ble High Court of Delhi in Crl. M.C. No. 2885/2022 & Crl. M.A.No. 12026/2022 titled " Shiv Lingam vs. The State and Anr. ".

Letter bearing No. 23653/Crl. dated 12.07.2022 along with the copy of judgment/order dated 04.07.2022 passed by Hon'ble Mr. Justice Anoop Kumar Mendiratta (Delhi High Court), on the above cited subject, is being forwarded (through electronic mode) for information and necessary action/compliance to:-

1. All the Ld. Judicial Officers **(DHJS & DJS)**, **North-West** and **North** District, Rohini Courts, Delhi.

2. The Personal Office, Ld. Principal District & Sessions Judge, North-West & North District, Rohini Courts Complex, Delhi.

3. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

4. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE.

(RAKESH KUMAR-IV)
Additional Sessions Judge
Officer In-charge, General Branch
Rohini Courts Complex, Delhi

Encl: As above

D-2 D/O

HIGH COURT OF DELHI AT NEW DELHI

No. 23653 /Crl. Dated 12/07/22

From :

The Registrar General,
Delhi High Court,
New Delhi.

To:

1. The Ld. District & Sessions Judge, Central Distt., Tis Hazari Courts, Delhi.
2. The Ld. District & Sessions Judge, North Distt., Tis Hazari Courts, Delhi.
3. The Ld. District & Sessions Judge, West Distt., Tis Hazari Courts, Delhi.
4. The Ld. District & Sessions Judge, New Delhi, Patiala House Courts, Delhi.
5. The Ld. District & Sessions Judge, East Distt., Karkardooma Courts, Delhi.
6. The Ld. District & Sessions Judge, North-East Distt., Karkardooma Courts, Delhi.
7. The Ld. District & Sessions Judge, Shahdara Distt., Karkardooma Courts, Delhi.
8. The Ld. District & Sessions Judge, North-West, Distt., Rohini Courts, Delhi.
9. The Ld. District & Sessions Judge, Outer Distt., Rohini Courts, Delhi.
10. The Ld. District & Sessions Judge, South-West Distt., Dwarka Courts, Delhi.
11. The Ld. Distrcit & Sessions Judge, South Distt., Saket Courts, Delhi.
12. The Ld. District & Sessions Judge, South-East Distt., Saket Courts, Delhi.
13. The Ld. Distrcit & Sessions Judge, CBI Distt., Rouse Avenue Courts, Delhi.

Crl. M.C. No. 2885/2022 & CRL. M.A.NO.12026/2022

SHIV LINGAM .....Petitioners

V/s

THE STATE AND ANR. .....Respondents

The above Petition was filed before Hon'ble High Court of Delhi under Section 482 Cr.P.C. for quashing of the impugned order dated 07.06.2022 passed by learned Additional Sessions Judge-09, West, Tis Hazari Courts, Delhi whereby the bail granted to the petitioner vide order dated 06.04.2022 by the learned ACMM, Central, Delhi in FIR No. 370/2020 under Section 448/451/467/468/471/34 IPC registered at P.S: Patel Nagar has been cancelled under Section 439(2) Cr.P.C.

Sir/Madam,

I am directed to forward herewith for immediate compliance and necessary action Contained in the judgment/order dated 04.07.2022 passed in the above case by Hon'ble Mr. Justice Anoop Kumar Mendiratta, of this Court.

Yours faithfully,

11/7/22

Encl : Copy of order dated :04.07.2022
and Memo of Parties.

Admn. Officer (Judl.) Crl.-II
For Registrar General

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IN THE HON'BLE HIGH COURT OF DELHI : NEW DELHI

CRIMINAL M.C. NO. _____/2022

(against the impugned order dated 07.06.2022 passed by the Court of Shri Sunil Kumar Sharma, Additional Sessions Judge-09, West, Tis Hazari Courts, Delhi, in case FIR No. 370/2020, Police Station Patel Nagar, U/S 448/451/420/467/468/471/34 IPC)

In the matter of:-

Shiv Lingam ... Petitioner

Versus

The State & Anr. ... Respondents

MEMO OF PARTIES

Shiv Lingam
Son of Late Sh. Shiv Jyoty,
Resident of RZ-A-3A, Tamil Enclave,
Vijyan Enclave, Dabri, New Delhi ... Petitioner

Versus

1. The State
(N.C.T. of Delhi)
New Delhi.

2. Lata Theo
W/o Late Sh. Elwin Theo
R/o H. No. 2994/2, Ranjeet Nagar,
Near Shiv Chowk, South Patel Nagar,
Delhi-110008.

... Respondents

New Delhi

Dated: 13.06.2022

Filed by:

(Haneef Mohammad)
Advocate for the petitioner
Ch. No. 97, Patiala House Court
New Delhi -110001

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

Order delivered on: 04.07.2022

\+ **CRL.M.C. 2885/2022 & CRL.M.A. 12026/2022 (stay)**

SHIV LINGAM .....Petitioner

Through: Mr.Anif Ahmed, Advocate.

versus

THE STATE AND ANR. ..... Respondents

Through: Mr.M.P. Singh, APP for the State with SI Satyavir Singh, P.S.: Patel Nagar.
Mr.Manoj K. Srivastwa and Mr.Abhijeet Yadav, Advocates for Complainant/ Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

% **O R D E R**

ANOOP KUMAR MENDIRATTA, J. (ORAL)

1. Petitioner has preferred the present petition under Section 482 Cr.P.C. for quashing of the impugned order dated 07.06.2022 passed by learned Additional Sessions Judge-09, West, Tis Hazari Courts, Delhi whereby the bail granted to the petitioner vide order dated 06.04.2022 by the learned ACMM, Central, Delhi in FIR No.370/2020 under Section 448/451/467/468/471/34/IPC registered at PS: Patel Nagar has been cancelled under Section 439(2) Cr.P.C.

2. In brief, as per the case of the prosecution, the petitioner/accused in the present case committed trespass in the house of the complainant during her absence while they had gone to Gujarat due to Covid-19 in June, 2020. Further, the petitioner claimed possession on the strength of false and fabricated documents i.e. GPA dated 13.03.1985, GPA dated 14.12.1999, Conveyance Deed dated 23.05.1997 and Relinquishment Deed dated 28.07.2020. The petitioner was arrested on 09.09.2021 after ascertaining the falsification of the aforesaid documents and has been charge-sheeted for the offence punishable under Sections 448/451/420/468/467/471/34 IPC.

It is further the case of the prosecution as well as Respondent No.2/complainant that while the petitioner was in custody prior to filing of the charge-sheet and after filing of charge-sheet, the bail applications of the petitioner were dismissed by the learned ACMM as well as by the learned Additional Sessions Judge. However, on moving an application under Section 437 Cr.P.C. before the learned ACMM, the petitioner was granted bail vide order dated 06.04.2022 despite the fact that a bail application was already pending before the learned Sessions Court for 08.04.2022. Further, the bail application was disposed of as infructuous by learned Sessions Court only on 08.04.2022 in view of grant of bail by learned ACMM.

3. It may further be noticed that respondent No. 2 (i.e. the complainant in the FIR) challenged the order dated 06.04.2022 passed by the learned ACMM granting bail to the petitioner, by filing an application under Section 439 (2) Cr.P.C. Vide impugned order dated 07.06.2022, the said application was allowed by learned Additional Sessions Judge-09, West, Tis Hazari Courts, Delhi and consequently, the bail granted to the petitioner vide order

dated 06.04.2022 was cancelled with directions to surrender before the learned ACMM, West, Tis Hazari Courts, Delhi on 09.06.2022.

4. The present petition has been preferred by the petitioner against the aforesaid order passed by the learned Additional Sessions Judge whereby the bail granted to the petitioner has been cancelled. It has been submitted by the learned counsel for the petitioner that in fact there was change of factual position since the charge had been framed by the learned ACMM, prior to releasing the petitioner on bail. Further, the learned counsel for the petitioner had orally mentioned the filing of the application before learned Additional Sessions Judge, although the same was not mentioned in the application. It is also claimed that the learned ACMM had the power to grant bail to the petitioner since Section 467 IPC provides for punishment for life or with imprisonment of either description for a term which may extend to ten years.

5. The relevant part of order dated 06.04.2022 passed by the learned ACMM whereby the petitioner was admitted to bail, may be reproduced for ready reference:

> *"This Court heard the rival submissions advanced on behalf of learned defence counsel as well as learned APP for the State and perused the entire material available on record. Record reveals that chargesheet in the instant case has already been filed and no custodial interrogation of applicant/ accused is required. Keeping in view of the facts and circumstances of the present case and considering ' bail is rule and jail is exception ' and the facts and circumstances of the present case, the applicant/accused Shiv Lingam is admitted to bail subject to his furnishing bail bonds/surety bonds in the sum of Rs.20,000/with one surety of like amount*
>
> *Application, is accordingly allowed and disposed of."*

6. In the aforesaid context, the observations of learned Additional Sessions Judge in order dated 07.06.2022 as observed in para 7, 18 & 19 of the order dated 07.06.2022 are apt to be noticed, whereby the order granting bail to the petitioner was set aside :-

> *"7. The record also shows that various bail applications of the accused/respondent no. 2 were repeatedly dismissed not only by the Court of Ld. ACMM (West) but also by the Ld. Sessions Court. The pendency of his bail application dated 24.03.2022 before Ld. Sessions Court for adjudication on 08.04.2022 also remains undisputed. However, during the pendency of the aforesaid bail application before the Ld. Sessions Judge, the accused/respondent no. 2 was granted bail on 06.04.2022 by the Court of Ld. ACMM (West).*
> .....
> *17. However, in the present case, the accused/respondent No. 2 is neither under the age of 16 years nor is a women nor is sick or infirm, rather there are reasonable grounds to believe that the offences alleged have been made out against the accused/respondent no. 2 as the charge under Sections 448/451/467/468/471 has already been framed against him.*
> *18. In view of the aforesaid discussions, considering the facts that the accused/respondent no. 2 had obtained the aforesaid bail order dated 06.04.2022 by playing fraud upon the Court of Ld. ACMM (West) by concealing the factum of pendency of his aforesaid bail application before the Ld. Sessions Court and thereby tried to pollute the stream of justice and also the fact that the Court of Ld. ACMM (West) was not empowered to grant bail to the accused/respondent no. 2 being charged with the offence punishable with imprisonment of life, therefore, the order dated 06.04.2022 of the Ld. ACMM, (West) vide which the bail was granted to the accused/respondent no. 2 deserves to be set aside being non est."*

7. On the face of record, learned Additional Sessions Judge while cancelling the bail rightly took into account the deliberate concealment of the

pendency of bail application before the learned Sessions Court as well as the factum of rejection of earlier bail applications of the petitioner. It was also observed that since the petitioner had been charge-sheeted for the offence punishable with life imprisonment for fabrication of valuable securities which is punishable with life imprisonment, the Court of learned ACMM was required to be cautious at the time of granting bail in terms of the ratio laid down by the Hon'ble Apex Court in ***Prahlad Singh Bhati Vs. NCT Delhi* (2001) 4 SCC 280.**

8. However, learned counsel for the petitioner after partly addressing the arguments, requests for permission to withdraw the present petition and undertakes to surrender before the learned Trial Court in view of *prima facie* observations of this court regarding the impropriety in which the bail application had been allowed vide order dated 06.04.2022.

9. In view of the prayer made by the learned counsel for the petitioner, present petition is permitted to be withdrawn without any observations on the merits of the case.

10. However, before parting with the petition, it may be observed that a disturbing trend of entertaining the bail applications, by some of the subordinate courts, despite the pendency of bail application for consideration before the higher courts has been noticed. Also, at times, the orders are mechanically passed without any substantial change of circumstances and in complete disregard to the observations or the factors which weighed with the higher court in declining the bail.

11. The subordinate courts are bound by the judicial discipline and propriety, having regard to the hierarchal system of the courts. Further, the concerned courts need to give due consideration, if the bail application

preferred by accused already stands rejected by the higher courts on merits. Though at the same time, it may be observed that an accused whose bail application has been rejected, is not precluded from filing subsequent application for grant of bail in case of change in circumstance or factual position. In case the subsequent application is allowed, the Court has a duty to record the fresh grounds which persuade it to take a view different from the earlier applications preferred on behalf of the accused. Reliance may be placed upon ***Kalyan Chandra Sarkar & Ors. v. Rajesh Ranjan & Ors*** **2005 Cri.L.J.944.**

12. The learned ACMM in the present case was accordingly expected to give due consideration to the grounds which weighed with the Court in rejecting the earlier bail applications of the petitioner and should not have considered the application in a routine manner during pendency of 'application for bail' before the Sessions Court, as apparently no substantial change of circumstances stands revealed in order dated 06.04.2022.

13. It may also be observed that if the record of earlier orders rejecting the bail application is concealed by the petitioner, then inevitably the Judicial Officer concerned may remain under an impression that no bail application had been considered earlier by any court. In the aforesaid eventuality, since the fraud vitiates all proceedings, the consideration of the bail application, would be no exception.

As such, judicial wisdom forecasts a duty on concerned court to make enquiry as to pending bail application, if any, with courts in hierarchy or rejection of any bail application by higher court, to avoid any miscarriage of justice. The consideration of bail application by subordinate court despite pendency of an application with the higher court or without consideration of

grounds of rejection of earlier application by higher courts, may be an utter disregard to judicial discipline.

In view of above, it is directed that the trial courts shall make an endevour to ascertain from the petitioner/accused concerned regarding the pendency of any other bail application before the higher forum or rejection of any earlier bail application, before considering the bail application in accordance with law. This would ensure that the doctrine of judicial discipline and propriety is upheld and would avoid any bench hunting.

14. The petition is accordingly disposed of. Nothing stated hereinabove shall tantamount to expression on the merits of the case.

15. The Registrar General of this Court is directed to ensure that a copy of this order is circulated to all the Judicial Officers in the subordinate courts in Delhi, for information.

ANOOP KUMAR MENDIRATTA
(JUDGE)

JULY 04, 2022/A

TRUE COPY
11/7/22
Examiner