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**(2011) 12 DEL CK 0414**  
**In the Delhi High Court**  
**Case No : Criminal Rev. P. 559 of 2011**

Ved Prakash Saini

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

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**Date of Decision :** 13-12-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 362  
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468

**Citation :** (2012) 2 ILR Delhi 153

**Hon'ble Judges :** Suresh Kait, J

**Bench :** Single Bench

**Advocate :** Amarinder Saran, with Mr. Prasoon Kumar and Mr. Somesh Jha, for the Appellant; Navin Sharma, APP for State with Inspector Ashok Kumar, Crime Branch in Person and Mr. Sanjay Rath, for complainant, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Suresh Kait, J.

CrI. M.A. No. 19266/2011 (exemption)

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

CrI. Rev. P. 559/2011

1. Notice issued.
2. Mr. Navin Sharma, learned APP accepts notice on behalf of State.
3. With the consent of learned counsel for parties, matter has been taken up for disposal.
4. Vide instant petition, the petitioner has sought to set aside the order dated 07.12.2011 passed by the Sessions Court in Bail Application No. 156/2011 titled "State v. Mahip Singh Saini @ M.S. Saini" whereby learned Sessions Judge, In-

charge, North-West, District Rohini, Delhi on suo moto notice has cancelled the bail of the petitioner extended to him vide order dated 26.08.2010.

5. The facts of the case in brief are that pursuant to the complaint lodged by Naresh Kumar, present FIR was registered at police station Model Town against the petitioner and co-accused person. On 12.02.2008, the petitioner was taken into custody by the police on the allegations that he impersonated himself as Rajender Kumar and Charanjeet Singh and in furtherance of such act has put his signature upon some sale documents by which a property bearing No.D-46, Ishwar Colony was transferred in the name of Smt.Nirdosh Saini, the petitioner being in the chain also pasted his photograph on some of the documents. On 14.05.2008, the petitioner during his custody applied for regular bail before framing of charge. The said bail application was dismissed by this Court vide order dated 14.05.2008.

6. After gap of about one year i.e. on 11.05.2009, petitioner again moved bail application before this Court and the same was dismissed as withdrawn with liberty to take recourse before learned Trial Court as the charges were to be framed.

7. Thereafter, after a span of another year and two months i.e. on 18.07.2009, charges were framed u/s 419/420/467/468/471/120-B Indian Penal Code and during this period the petitioner remained in custody.

8. Thereafter, the petitioner moved the bail application before learned Sessions Judge, Rohini Courts, which was accepted vide order dated 26.08.2010 on account of the fact of prolonged custody and trial will take long time and statement of petitioner that he has no concern with the property in question and will not claim any right, title or interest in the said property in which the petitioner has been allegedly involved as alleged by the prosecution.

9. Thereafter, on 24.12.2010, upon the bail application of the co-accused, Mahip Singh Saini, the very same Court issued suo moto notice for cancellation of bail being granted to present petitioner.

10. Vide order dated 18.07.2011, after appreciating the records and grounds taken by the petitioner, learned Sessions Judge withdrew the said notice.

11. Again on 24.11.2011, a suo moto notice for cancellation of bail was received by petitioner. Vide impugned order dated 07.12.2011, learned Sessions Judge has cancelled the bail of the petitioner, which was granted to him on 26.08.2010 by the very same Court.

12. Mr. Amarinder Saran, learned Senior Advocate, appearing for petitioner submits that it was argued that the main accused was Mahip Singh Saini, who was involved in several cases and the petitioner / accused has clean antecedents and not involved in any other case. It was further argued that the trial will take long time and out of 42 cited witnesses, only 03 witnesses have been examined so far. It is further argued that the power of learned Magistrate is to award

maximum 03 years of imprisonment, whereas since the petitioner has already undergone 21/2 year's incarceration and the real beneficiary were Mahip Singh Saini and his wife Smt.Nirdosh Saini, and latter has already been granted bail.

13. I note learned Sessions Judge in his order dated 26.08.2010 has already recorded the submission of learned APP who opposed the bail application that the petitioner has impersonated as Charanjeet Singh and prepared an agreement. Thereafter, obtained arbitration award from Gorakhpur, UP. Pursuant to which, execution petition was also filed which was dismissed vide order dated 02.07.2010 by learned Civil Judge - 01, North, Delhi.

14. Learned Sessions Judge after recording the submission of learned counsel for petitioner, granted bail to the petitioner vide order, as mentioned above.

15. I note that in the impugned order, same learned Sessions Judge on the bail application of co-accused Mahip Singh Saini has also decided whether the bail granted to petitioner should be cancelled or not.

16. After hearing learned counsel for petitioner, learned District Judge has recorded in the impugned order that the petitioner was granted bail vide order dated 26.08.2010. It is also recorded that the bail application filed on behalf of co-accused Mahip Singh Saini and bail application No.605/2008 of the petitioner was dismissed by High Court and subsequently bail was granted to the petitioner by Sessions Court.

17. Learned District Judge has further recorded that at the time of bail order, the very important piece of evidence i.e. report of PW7 Senior Finger Print Expert was pointed out by prosecutor, which was not earlier argued and analysed. It has been confirmed by the expert witness that the thumb impression found on different documents were of petitioner who put the thumb impression as of Charanjit Singh/ Rajender. Learned District Judge has also recorded that as per the prosecution case, the petitioner appeared in different Courts under name of Charanjit Singh/Rajinder, who was identified by co-accused Mahip Singh Saini. They forged the documents and were part of the conspiracy for obtaining the possession of the immoveable property belonging to the complainant i.e. Naresh Kumar.

18. On the above discussion, learned District Judge was of the opinion that the report of the hand writing expert and also the fact that at the time of granting bail to the petitioner, it was argued on 26.08.2010 that the power of learned Magistrate is to award maximum punishment of three years and the petitioner was in custody for 2 1/2 years, while in fact the trial was before learned ACMM, whose power is to award imprisonment for more than 03 years. And also one of the fact i.e. offence u/s 467 Indian Penal Code charged against the petitioner, which is punishable with life imprisonment. Accordingly, the bail granted to the petitioner on 26.08.2010 been cancelled.

19. Mr. Amarinder Saran, learned Senior counsel for petitioner has pointed out

that in the bail application, upon which order dated 26.08.2010 has been passed, in the cause title it is clearly mentioned as under:-

FIR No.14/2005

U/s 419/420/467/468/471/120-B IPC

P.S. Model Town

D.O.A. 12.02.2008

Therefore, there was no concealment of the fact that the petitioner is being tried for the offence u/s 467 Indian Penal Code and same was in the knowledge of learned District Judge, at the time of passing the bail order.

20. He has further argued that the only submission which he fairly concedes that the punishment for the offence u/s 467 Indian Penal Code can go upto life imprisonment, however, if this was the submission of learned counsel for petition, then learned District Judge should have noticed that the case is u/s 467 Indian Penal Code.

21. He further submitted that this allegation alone cannot be ground for cancelling or taking away the bail which was granted by virtue of order passed way back on 26.08.2010, by issuing suo moto notice. It has been further argued that learned District Judge has no power to recall or rescind from his own order as same is barred u/s 362 Cr.P.C.

22. To buttress his argument, he has relied upon Subhendu Mishra v. Subrat Kumar Mishra & Ors 2000 SCC (CrI) 1508 wherein in para No.4, the observation made by the Apex Court in Dolat Ram and Others Vs. State of Haryana, were reiterated as follows:-

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."

23. Further, learned counsel for petitioner submits that there is no concealment

of fact by petitioner. Any wrong submission of an advocate cannot be construed as concealment of facts by client. However, the petitioner has not concealed anything, rather he has mentioned each and every provision of offence alleged in the FIR against petitioner.

24. Mr. Navin Sharma, learned APP on the other hand submits that there is no infirmity in the impugned order passed by learned District Judge because of the fact that the petitioner had concealed the material facts and had misrepresented that learned Magistrate has the maximum power to inflict three years imprisonment and the petitioner had already undergone 2 1/2 year's incarceration.

25. He further submitted that case was pending trial before learned Additional Chief Metropolitan Magistrate, Delhi who has the power to impose maximum imprisonment upto seven years, not before the Metropolitan Magistrate.

26. Learned APP further, submitted that petitioner is the main culprit as he hatched the conspiracy and impersonated as Charanjit Singh / Rajender and prepared an agreement and thereafter obtained arbitration award from Gorakhpur, UP. Pursuant thereto, execution petition was also filed which was dismissed on 02.07.2010 by learned Civil Judge. However, pursuant to the execution petition, so dismissed, possession of the property had been received by the petitioner in the presence of Mahip Singh Saini, under the garb of Order 21 CPC as the precept was got transferred to Delhi Courts from Gorakhpur, UP for execution.

27. By summing up his submission, learned APP submits that Section 362 Cr. P.C. does not preclude learned District Judge from passing the impugned order as that Section is only meant for that the Court not to alter its order or judgment, if that has been passed in disposing of a case.

28. In rejoinder, learned counsel for petitioner submits that bail order is not an interlocutory order and its final order; the considerations for cancelling the bail order are in total different than to granting of bail, therefore, learned District Judge should not have passed the impugned order.

29. I note that the grounds mentioned in the order while cancelling the bail of the petitioner, granted vide order dated 26.08.2010 on each and every fact. Both the learned counsel appearing in the matter argued and learned District Judge was aware of the fact that instant case is also u/s 467 Indian Penal Code also registered at police Station Model Town and being investigated by Crime Branch. The cases investigated by Crime Branch are usually tried only by the ACMM and not by the Magistrate. There was no concealment of the facts at the time of granting bail vide order dated 26.08.2010. Moreso, the petitioner has, already undergone 2 1/2 years in custody and the maximum punishment if convicted by the ACMM would be 07 years.

30. Keeping the total period undergone by petitioner and the power of learned

ACMM, I deem it appropriate to set aside the impugned order dated 07.12.2011, passed by learned District Judge.

31. Consequently, the bail order dated 26.08.2010 restored. Petitioner be released from custody on the earlier bail bond(s) and terms and conditions, imposed earlier at the time of granting bail vide order dated 26.08.2010.

32. Copy of order be sent to the Jail Superintendent, for compliance.

33. Accordingly, Criminal Revision Petition No.559/2011 is allowed and stands disposed of.

34. In view of above order in the petition, Criminal M.A. No.19265/2011 for stay does not warrant any further adjudication. Accordingly, it stands disposed of.