

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6002 of 2014

ORDER:

This Criminal Petition is filed under Sections 437 and 439 Cr.P.C by the petitioner/accused No.2 in Crime No.153 of 2006, on the file of the Station House Officer, Makloor Police Station, Nizamabad District registered against him for the offences punishable under Section 399 IPC and Section 25(10B)(a) of Indian Arms Act, 1959.

2. Heard the Learned Counsel for the Petitioner, the Learned Additional Public Prosecutor for the Respondent-State and perused the material placed on record.

3. This accused is No.2 among 5 or more accused in the above crime registered against them for the offences punishable under Section 399 IPC and Section 25(10B)(a) of Indian Arms Act, 1959. The police after completion of investigation filed charge sheet under Section 173 Cr.P.C. and the learned committal Magistrate under Section 209 Cr.P.C. has taken cognizance of the offence against the accused and based on that final report, the case was committed to the Court of Session under Section 209 Cr.P.C. where the Sessions Case No.116 of 2014 was allotted before the Court of Sessions of Nizamabad and made over to the Court of Assistant Sessions Judge, Nizamabad. It is as per the record shows that there was a regular bail order granting bail in favour of accused persons. It is needless to say from perusal of Chapter 33 Cr.P.C. from Sections 436 to 450; but for in Section 436 Cr.P.C. where the offence is bailable of the accused entitlement to bail as of right even had the concession and any NBW issued for any breach of conditions or absence, under Sections 70-73 Cr.P.C. as the case may be, the offence though otherwise bailable, the moment NBW issued and executed it becomes non-bailable and after execution, accused got no right to claim as if still a bailable offence, which is crystal clear from the wording of Section 436 Cr.P.C. From this, leave about the provision of anticipatory bail under Section 438 Cr.P.C. subject to the compliance of the conditions or factors for consideration laid down in Clauses 1 to 4 in

making out the exceptional case for such entitlement; Section 437 Cr.P.C. deals with application for bail and consideration regarding non-bailable offences and Section 439 Cr.P.C. deals with the special powers of the High Court or Court of Session in filing of application for consideration of a non-bailable offence. The wording of Section 439(2) Cr.P.C, is very clear, equally from the wording of Section 437(5) Cr.P.C. that the bail can be cancelled by the Court even once granted by ordering arrest and commit him to custody. There must be a specific order once bail is granted either under Sections 439 or 437 Cr.P.C., in cancelling the bail till then the bail for all purposes in force as the regular bail is co-terminus with final result of the case and not before but for the power conferred to cancellation of bail, meanwhile any violations of the conditions of the bail or the like. Having regard to the same, mere issuance of a NBW contemplated by Section 70(1) Cr.P.C. pending its execution or even after execution it does not tantamount to cancellation of a bail in a non-bailable offence once already granted in the absence of any such condition specific in the order granting bail. Here the remedy once the accused jumped for bail or failed to attend as per the terms and conditions of the bail by non-compliance from NBW issued if not recalled before execution, since its execution or recall it is in force, on execution only to deposit the amount of the bond executed by accused equally by sureties and on such deposit of the amount or after submission of the bonds and payment of any amount out of it as penalty by payment by accused, in such event again enforcing against the sureties does not arise, he has to submit fresh bonds. Here, instead of so doing the accused No.2 who is the petitioner herein moved a fresh bail before the trial Court (Assistant Sessions Judge). Fresh bail application is not maintainable *per se* for nothing to show earlier bail order ceased its force or cancelled otherwise as mere issuance of NBW or its execution *per se* does not tantamount if no such condition for cancellation of bail in the order of bail from the above provision supra. When such is the case, having went unsuccessful in moving the second bail application instead of paying the penalty for the bonds earlier executed and submit fresh

solvency by the accused before the concerned Court, from dismissal of that application by the learned trial Judge the petitioner/A.2 cannot knock the doors of this Court by moving the bail application saying that the bail application thereby is not maintainable because of the bail order no way shows cancelled or ceased its force, but for the remedy to seek to recall of NBW if at all pending and in this case since executed, by payment of the penalty for the bonds forfeited and to submit fresh solvency as per Chapter 33 Cr.P.C.

4. Subject to the observations, the bail application is rejected.

Dr. B.SIVA SANKARA RAO J,

16th June 2014
PNV