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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1270 of 2015 ()

AGAINST THE ORDER IN CMP 1789/2015 of J.M.F.C., KASARAGOD
DATED 10-08-2015
REVISION PETITIONER(S)/REVISION PETITIONER/IST ACCUSED:

MAHESH K alias BATTAMPARA MAHESH, AGED 19 YEARS
S/O. DAYANANDAN, BATTAMPARA HOSUE, BATTAMPARA
RAMDAS NAGAR, KUDLU, KASARAGOD.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/.STATE:

1. THE STATION HOUSE OFFICER,
KASARAGOD POLICE STATION
PIN - 671121.
2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 27-10-2015, THIS COURT ON 11-11-2015, PASSED
THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 1270 of 2015
.....

Dated this the 11th day of November, 2015

ORDER

The petitioner is the first accused in Crime No. 1048 of 2014 of Kasaragod Police Station. The petitioner was granted bail by the court below under proviso to Section 167 (2) of the Code, imposing certain conditions. Thereafter, CMP No. 1789 of 2015 was filed by the first respondent before the court below praying for canceling the order of bail, stating that the petitioner violated the conditions of the order granting bail.

2. Heard both sides.

3. The offences alleged against the petitioner in Crime No.1048 of 2015 of Kasaragod Police Station are offences under Sections 143, 147, 148, 341, 449, 120(B), 202, 212, 153 (A) and 302 read with Section 149 of IPC.

4. It appears that at the time of granting bail, the court below directed the petitioner to appear before the Investigating Officer between 10 a.m. and 11 a.m. on every Monday and Wednesday till the filing of the final report. It was further directed by the court below that the petitioner should not get involved in similar offences while on bail.

5. The respondent would contend that the petitioner never appeared before the Investigating Officer on any Monday, as directed by the court below, even though the petitioner used to appear on every Wednesday before the Investigating Officer. That apart, the petitioner was involved in four other crimes after the granting of bail by the court below. Thus, the petitioner violated the conditions of the order granting bail by the court below, and in the said circumstances, the respondent filed the above CMP for cancellation of the bail.

6. The learned counsel for the petitioner has argued that the direction of the court below was not to commit similar offences and not to commit any offence while on bail and since the offences alleged in the subsequent crimes are not similar offences, it cannot be said that there was violation of the condition of the order granting bail. It was further argued by the learned counsel for the revision petitioner, relying on the decision in *James George @ Basaliyos Marthoma Yakob-Pradaman v. State of Kerala* [2015(4) KHC 943], that the provisions under Section 437 (5) of the Code is not meant for cancellation of bail and hence the court below had no power to cancel the bail invoking the provisions under Section 437 (5) of the Code. The learned

counsel for the petitioner has further argued that since the bail was granted by the court below under the proviso to Section 167 (2) of the Code, the court below had no jurisdiction to cancel the bail invoking the provisions of Section 437 (5) of the Code even if it is assumed that the Court is having the jurisdiction to cancel the bail granted under sub-section (1) or (2) of Section 437 of the Code, invoking the provisions of Section 437 (5) of the Code.

7. The records would show that the petitioner was involved in the following crimes subsequent to the granting of bail:-

1)Crime No. 538 of 2015 of Kasaragod Police Station registered under Section 151 Cr.P.C.

2)Crime No.540 of 2015 of Kasaragod Police Station registered under Sections 353, 294 (b) IPC & Section 3 (1) of PDPP Act.

3)Crime No. 472 of 2015 of Kasaragod Police Station registered under Section 117 (e) of KP Act.

4)Crime No. 248 of 2015 of Hosdurg Police Station registered under Sections 143, 147 and 353 read with Sec. 149 IPC and Section 3 (1) of PDPP Act.

8. The offences involved in this case are offences under Sections 143, 147, 148, 341, 449, 202, 212, 120(B), 153(A) and 302 read with Section 149 of IPC. The offence under Section 302 IPC comes under Chapter 16 of the Code, which deals with offences affecting the human body. Section 353 IPC, which is one of the offences in Crime No. 540 of 2015 of Kasaragod Police Station, also falls under the same Chapter. The offence under Section 449 IPC falls under Chapter 17 of the Code which deals with offences against property. Therefore, there is no substance in the argument of the learned counsel for the revision petitioner that the revision petitioner did not commit similar offences after being enlarged on bail in Crime No. 1048 of 2014 of Kasaragod Police Station. That apart, by similar offences, the court below would have never intended that the subsequent offences must be the same offences as involved in Crime No. 1048 of 2014 of Kasaragod Police Station. The petitioner was involved in four other crimes as mentioned above, subsequent to his release on bail in Crime No. 1048 of 2014 of Kasaragod Police Station.

Therefore, there is sufficient justification for the learned Magistrate to cancel the bail. In view of the above reasons, the argument advanced by the learned counsel in this regard cannot be accepted.

9. It is also to be noted that the petitioner was also involved in eleven other crimes of serious nature prior to the registration of the present crime. It is not disputed that the petitioner did not appear before the Investigating Officer on any Monday as directed by the court below. That also indicates that the petitioner violated the conditions of the order granting bail.

10. Now the question to be considered is as to whether the learned Magistrate is having the power to cancel the bail under Section 437 (5) of the Code.

11. In James George (supra), the learned Single Judge held thus:

“The provisions contained under Sections 439 (2) Cr.P.C. and 437 (5) Cr.P.C. are not meant for cancellation of bail; whereas those provisions are meant for arrest of an accused who was

enlarged on bail”.

12. A Division Bench of this Court in Latheef @ Abdul Latheef v. State of Kerala [2011 (2) KLT 231 held thus:

“In the light of the decisions cited supra, there is no doubt in our mind that the Magistrate who granted bail under S.437 (1) and (2) Cr.P.C. has the right to cancel the bail under S. 437(5) of the Cr.P.C. Sec. 437 (5) is the source of power for the Magistrate to cancel the bail granted under Sec. 437 (1) and (2) Cr.P.C.”

It is clear from the above decision of the Division Bench that the Magistrate has power to cancel the bail granted by him invoking the provisions of Section 437 (5) of the Code. Therefore, the argument in this regard fails.

13. Now the question to be considered is as to whether the Court can cancel the bail granted under proviso to Section 167 (2) of the Code invoking the power under Sec. 437 (5) of the Code.

14. The Apex Court in *Bashir v. State of Haryana* [AIR 1978 SC 55] held that the bail granted under Section 167(2) of the Code has the same incidents as the bail granted under Chapter 33.

15. Section 437 comes under Chapter 33 of the Code. Therefore, once the bail is granted under the proviso to Section 167 (2) of the Code, it has the same incidents as the bail granted under sub-section (1) or sub-section (2) of Section 437 of the Code. Consequently, the bail granted under Section 167 (2) of the Code can be cancelled invoking the provisions under **Section 437 (5)** of the Code.

16. The Apex Court in *Reghuvir Singh and Others v. State of Bihar* [AIR 1987 SC 149] held that when an accused is granted bail whether under the proviso to Section 167 (2) or under the provisions of Chapter 33, the only way to cancel the bail is to proceed under Section 437 (5) or 439 (2) of the Code.

17. Thus, it is explicit from the above decisions that even if the bail is granted under proviso to Sec. 167 (2) of the Code, the Magistrate is having power to cancel the bail under Section 437

(5) of the Code. For the above reasons, the argument advanced by the learned counsel for the petitioner in this regard lacks merits.

18. Having gone through the order impugned, I find no reason to hold that the order impugned suffers from any infirmity, warranting interference by this Court.

In the result, this petition stands dismissed.

Dated this the 11th day of November, 2015.

**B. SUDHEENDRA KUMAR,
JUDGE.**

Ari9/11/2015