

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 1137 of 2015

ORDER:

The present Criminal Petition is filed by the State seeking cancellation of bail granted to the respondent in Criminal Petition No.13625 of 2014 dated 12.11.2014.

The respondent along with 28 others were shown as accused in Crime No.97 of 2014 of Talamanchipatnam Police Station, registered for the offences punishable under Sections 120 (B) and 307 read with 34 IPC. This Court while releasing the respondent and 28 others on bail, the respondent was directed to be released on bail on his executing a bond for Rs.5,000/- with two sureties for a like sum each to the satisfaction of the Judicial Magistrate of First Class, Jammalamadugu, Kadapa District with a further condition that the respondent shall not enter into Talamanchipatnam village and stay at Jammalamadugu and to appear before the Station House Officer, Jammalamadugu I Town Police Station, twice in a week i.e. on every Monday and Saturday in between 3.00 p.m. and 6.00 p.m. until further orders. Subsequently on 06.12.2014 this Court relaxed the condition of respondent not entering into Talamanchipatnam village and also stay at Jammalamadugu and appear before the investigating officer twice in a week, but however it was observed that the respondent shall make himself available to the investigating agency as and when required. Thereafter, the respondent herein is said to have involved in Crime No.111 of 2014 of T.Patnam Police Station, registered for the offences punishable under Sections 147, 148, 427 and 302 read with 149 IPC. The averments in the report would show that accused Nos.1 to 6, who are resident of G.Uppalapadu and related to the in-laws of Chinthakayala Subramanyam (LW6). Since the accused are close relatives of the in-laws of LW.6, they started claiming the land to an extent of 1 ½ acre from LW.6. Thus, misunderstandings arose between two families. In the month of August, 2013, the deceased Srinivsaulu, one Chintakayala Sekhar (LW8) and Thupaki Narsimhulu (LW8) attacked accused Nos.3 and 4 and inflicted injuries. In respect of the same, a case in Crime No.79 of 2013 came to be registered. On 09.12.2014 at about 12.00 noon the informant, Illuri Venkata Rami Reddy (LW2) and Vusu Obulesu (LW.3) and the

deceased engaged an auto bearing No.AP 04 TT 1962 belonging to LW.4 and went to Yerragudi village. On the same day, while they were returning back to the village, the auto driver took the auto to the cart track which leading to the fields of G.Uppalapadu village, there the informant got down from the auto and went near by field of Thupaki Narasimhulu (LW.8) by saying the deceased, LW.3 and auto driver that they will come soon and asking them to be present there till their arrival. At about 4.30 p.m. while Vusu Obulesu, deceased Srinivasulu and auto driver were present in the auto, accused Nos.1 to 6 armed with sticks and stones came towards auto. Accused Nos.2 and 3 are alleged to have pelted stones on the auto by raising cries to kill the deceased and damaged the wind screen. Anticipating danger, Vusu Obulesu along with the deceased and auto driver got down from the auto, accused Nos.1 to 6 surrounded the deceased, accused No.1 is alleged to have dealt blows with Medithoka (plough tail) on the head of deceased causing severe bleeding injuries, accused No.4 is alleged to have dealt blows on the deceased. Accused Nos.2, 3, 5 and 6 are alleged to have pelted stones towards the deceased and auto. It is alleged that the entire head of the deceased was broken and there is profuse bleeding. On the basis of the report given by the informant a case in Crime No.111 of 2014 came to be registered. The incident in the said case took place on 09.12.2014 i.e. after relaxation of condition imposed on the petitioner.

The learned Public Prosecutor submits that since the petitioner has violated the terms and conditions of bail by involving in other offence within three days after relaxing the condition, seeks cancellation of bail.

Learned counsel for the respondent-accused submits that though the respondent was granted bail in the month of November, 2014, he never involved himself in any offence and the present incident was a dispute between two families with regard to property and the respondent has been falsely implicated. She submits that the respondent was already released on bail in the above crime and if really he has violated the conditions of bail, the Court would not have granted bail to him.

In ***Sanjay Chandra v. Central Bureau of Investigation*** the Apex Court held as under:

“In bail applications, generally, it has been laid down from the earliest

times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands, that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

In ***Subhendu Mishra v. Subrat Kumar Mishra*** the Apex Court held as under:

".....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 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."

In ***Kanwar Singh Meena v. State of Rajasthan***, the Apex Court held as under:

"While cancelling bail under Section 439 (2) Cr.P.C. the primary

considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant materials indicating *prima facie* involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc., would not deter the Court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact of the society.

From the Judgments of the Apex Court referred to above, it is clear that while cancelling bail under Section 439 (2) Cr.P.C. the Court has to see whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade or attempt to evade the due course of justice or misused the bail granted. The Apex Court also held that the High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. From the above position of law it is clear that bail once granted should not be cancelled in mechanical manner. The Court has to see whether the accused is likely to tamper with evidence, evade process of law and whether he has violated the terms and conditions of bail.

A perusal of the material on record would show that the bail was granted to the respondent on 12.11.2014 and the present incident took place on 09.12.2014 after relaxation of conditions on 06.12.2014. It is true that the dispute between two families, who were related to each other, relates to some property dispute. It is not the case of the prosecution that the respondent has any way tampered or attempted to tamper the evidence in the crime in which he was released on bail or the case in which the conditions were relaxed. The accused in the present case and the witnesses to the second crime are totally

different. Therefore, strictly speaking it cannot be said that the respondent has violated the conditions of bail by influencing the witnesses or tried to evade the process of law. The record also discloses that the second crime was registered on 09.12.2014 and the respondent was granted bail in the above crime. Therefore, the question of canceling the bail granted to the respondent may not arise.

Having regard to the circumstances stated above and in view of the judgments referred to above, the Criminal Petition is dismissed. But however, the respondent is directed to stay at Jammalamadugu Village and report before the concerned Police Station twice in a week i.e. on every Monday and Thursday between 10.00 a.m. and 5.00 p.m. until further orders.

C. PRAVEEN KUMAR, J

.04.2015

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