

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.9867 of 2014

ORDER:

The informant filed the present application under Section 439 (2) Cr.P.C. seeking cancellation of bail granted to respondent Nos.2 and 3/A1 and A4 in CrI.M.P.No.835 of 2014 by the Additional Judicial First Class Magistrate, Alamur, West Godavari District.

The allegations in the charge sheet are as under:

The petitioner herein lodged a private complaint against A1 and A4, which came to be registered as Crime No.22 of 2014 for the offences punishable under Sections 420, 506, 406 r/w 34 I.P.C., and the same was referred to police under Section 156(3) Cr.P.C.

By an order dated 28.03.2014, the learned Magistrate granted regular bail to A1 and A4 on their executing personal bonds for Rs.15,000/- with two sureties for like sum each to the satisfaction of the said Magistrate. Further, they were directed to appear before the Station House Officer, Alamur Police Station, for a period of four weeks or till filing of charge sheet, whichever is earlier and also directed them not to threaten/induce/ promise the witnesses till the disposal of the case.

Challenging the same, the present petition is filed for cancellation of bail.

Learned counsel for the petitioner mainly submits that the bail granted to A1 and A4 has to be cancelled for the reason that in

respect of same crime, a bail application was filed at Rajahmundry, by suppressing the pendency of the same at Alamur. It is further submitted that A1 and A4 are not having any agricultural lands as stated in the order; that they are eking out their livelihood by cultivation and that they have to cut their crops, is also absolutely false.

Learned counsel for the respondent opposed the application contending that circumstances does not warrant cancellation of bail, as the accused did not violate conditions of bail.

In **Dolat Ram and others v. State of Haryana**^[1], the Apex Court held as under :

“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. 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.”

In **Union of India v. Hassan Ali Khan and another**^[2] the

Apex Court held as under :

“40. As far as Mr.Bagaria’s submissions regarding Section 439(2) CrPC are concerned, we cannot ignore the distinction between an application for cancellation of bail and an appeal preferred against an order granting bail. The two stand on different footings. While the ground for cancellation of bail would relate to post-bail incidents, indicating misuse of the said privilege, an appeal against an order granting bail would question the very legality of the order passed. This difference was explained by this Court in State of U.P. v. Amarmani Tripathi^[3]

In Hazari Lal Das v. State of West Bengal and another^[4], the Apex Court while dealing with the aspect of cancellation of bail held as under :

“7. There is nothing on record that there has been interference or attempt to interfere with the due course of administration of justice by the appellant. It also does not appear from the record that the concession granted to him has been abused in any manner. No supervening circumstances have surfaced nor shown justifying cancellation of anticipatory bail. The judicial discretion exercised by the Sessions Judge in granting the anticipatory bail has been interfered with by the High Court in the absence of cogent and convincing circumstances. We are, thus, satisfied that the impugned order cannot be sustained.”

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. In

case of cancellation of bail, the Court has to see the post bail conduct of the accused.

The Apex Court has time and again held that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive a fair trial to allow the accused to retain his freedom, by enjoying the concession of bail during the trial.

The case on hand shall be dealt with, keeping in view the law laid down by the Apex Court.

A perusal of the material on record would disclose that two bail applications were filed in respect of the same crime. On 26.03.2014 an application for bail was filed before the Court of Judicial First Class Magistrate at Alamur and another application was also filed at Rajahmundry on 27.03.2014. The bail application filed before the Court at Alamur was allowed on 28.03.2014 on certain conditions. Subsequently, the bail application, which was pending at Rajahmundry was withdrawn. The circumstances pointed out by the counsel for the petitioner does not show that accused have intentionally filed two applications simultaneously before two Courts. If really it was their intention to mislead/cheat, they would have kept quiet in filing second petition till disposal of the first petition.

In view of the above, filing of two applications on two different dates, cannot be a ground to cancel the bail granted.

The second ground raised by the learned counsel for the petitioner herein is that A1 and A4 are not having any agricultural

land, as such, the plea put forward while obtaining bail that the crops were ready to cut and it would be destroyed if they are not released on bail is false. Except stating that the petitioners are not having any land, no certificate from any Authorities is filed by the petitioner to show that A1 and A4 are not having any lands. It is further contended that A1 and A4 are not cooperating with the investigating agency. The learned Public Prosecutor on instructions disputes the same. He submits that the petitioners are co-operating with the agency. If really the presence of A1 and A4 is necessary, the police are at liberty to summon them, as and when required.

Accordingly, this Criminal Petition is disposed of directing A1 and A4 to cooperate with the investigation and make themselves available, as and when required by the police.

Miscellaneous petitions pending, if any shall stand closed.

C. PRAVEEN KUMAR, J

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[\[1\]](#) 1995(1) SCC 349
[\[2\]](#) (2011)10 SCC 235,
[\[3\]](#) (2005)8 SCC 21
[\[4\]](#) (2009) 10 SCC 652