

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 1700 of 2015

ORDER:

The informant in Crime No.145 of 2013 of Chilakalguda Police Station, filed the present Criminal Petition under Section 439 (2) Cr.P.C. seeking cancellation of bail granted to the first respondent herein in the above crime, registered for the offences punishable under Sections 420 and 506 IPC.

By an order dated 21.10.2013 the learned Special Judge for trial of offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, granted anticipatory bail to the first respondent by directing him to surrender before the X Additional Chief Metropolitan Magistrate, Secunderabad, within a period of ten days from the date of the said order and on such surrender he shall be released on bail on executing self bond of Rs.10,000/- with two sureties for like sum. Further the petitioner was directed to co-operate with investigation and refrain from interfering with the investigation. Subsequently, the petitioner herein filed CrI.M.P.no.4517 of 2014 seeking cancellation of bail. By an order dated 29.01.2015 the learned Judge dismissed the application holding that the order granting anticipatory bail warrants no interference.

A notice sent to the first respondent/accused which was returned as un-claimed.

Learned counsel for the petitioner submits that the attitude of the petitioner in not participating in the application filed for

cancellation of bail either before the trial Court or before this Court itself is sufficient to cancel the anticipatory bail granted to him. According to him, the investigation is not reaching the finality and the same could not be completed due to non-cooperation of the first respondent/accused. He submits that in the absence of any conditions being stipulated in the order granting anticipatory bail, the informant is put to great torture and loss.

A perusal of the material placed before the Court would show that though no conditions were imposed while granting anticipatory bail, the police completed investigation and filed charge sheet against the first respondent for the offences punishable under Sections 420 and 506 IPC. Therefore, the argument of the learned counsel for the petitioner that the police could not complete the investigation and that non-cooperation of the first respondent is causing further delay in the proceedings cannot be accepted. It is to be noted that the order granting anticipatory bail to the first respondent in the month of October, 2013. It was never challenged immediately and the application for cancellation of bail does not anywhere indicate that the first respondent has violated the conditions of anticipatory bail. On the other hand, as stated earlier, the police have completed the investigation and filed charge sheet. In fact, the learned Public Prosecutor on instructions states that they never received any complaint from any quarters with regard to the first respondent either tampering with the evidence or interfering with the investigation thereby violating the conditions of anticipatory bail. Therefore, the main ground urged by the learned counsel for the petitioner seeking cancellation of bail has no locus to stand.

I n ***Sanjay Chandra v. Central Bureau of***

Investigation^[1] 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***^[2] 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***^[3], 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 or evade process of law or whether he has violated the terms and conditions of bail.

Coming to the merits of the case, the averments in the charge sheet discloses that on 07.03.2013 at about 5.00 p.m. the Inspector of Police, received a report in which it is stated that on 13.07.2008 the son of the informant by name Bhagath Kumar and others were traveling in RTC bus bearing No. AP 11 Z 3939 towards ECIL from Secunderabad on Route No.250 ECIL. Due to heavy rush and as there was no space to go inside and come out of the bus, the son of the informant and others were standing on the footboard of the bus. At that time, one auto bearing No.AP 29 U 0164, driven by its driver in a rash and negligent manner came in opposite direction and dashed the passengers who were on the footboard of the bus. Due to which the passengers fell down and received injuries. The son of the informant was shifted to Yashoda Hospital, where he died while undergoing treatment. In respect of the said incident a case in Crime No.437 of 2008 for an offence punishable under Section 304-A IPC came to be registered against the driver of the auto. The owner of the auto ie. First respondent herein handed over the vehicle documents such as Insurance policy bearing No. 630300/31/08/0000318635 valid from 08.05.2008 to 07.05.2009

issued by New India Assurance Company Limited, Bowenpally, Secunderabad. On the basis of the said policy, the informant is alleged to have filed a claim petition vide O.P.No.364 of 2009 on the file of the District Judge, Khammam, seeking compensation of Rs.20.00 lakhs. During the trial in the O.P., the insurance company took the stand that the insurance policy is fake one and the same is not issued by their company. In view of the above, the present report came to be lodged against the owner of the said auto on the ground that he has cheated the informant and causing huge loss by handing over a fake insurance policy.

It may not be proper for this Court to go into the merits and de-merits of the allegations made in the charge sheet. As seen from the record, the first respondent is charged for the offences under Section 420 IPC which is triable by Magistrate and Section 506 IPC which is bailable. The bail order was granted in the year 2013 having regard to the facts and circumstances of the case. There are no allegations showing that the first respondent either violate the conditions of bail or tampered with the witnesses in this crime. As held by the trial Court if really the petitioner is aggrieved about the loss caused to him, it is always open to him to initiate proceedings seeking compensation against the owner of the vehicle. In fact, the owner of the vehicle himself was also made as party to the O.P. proceedings. When there is no violation of conditions of bail and having regard to the nature of allegations made, I see no reason to cancel the bail.

Having regard to the circumstances stated above and in view of the judgments referred to above, I see no reason to cancel the bail granted to the first respondent.

Accordingly, the Criminal Petition is dismissed.

C. PRAVEEN KUMAR, J

30.04.2015

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[\[1\]](#) (2012) 1 SCC 40

[\[2\]](#) 1999 CrI.L.J. 4063

[\[3\]](#) 2013 (1) ALD (CrI.) 85