

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 205 of 2016

- Dhani Ram Sahu S/o Hemant Kumar Sahu, Aged About 19 Years
R/o Shikshak Colony, W.No. 01, Gobra Nawapara, District Raipur
Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through Police Station Rajim, District
Gariyaband Chhattisgarh

---- Respondent

For Petitioner
For Respondent/State

Mohd Afroz Akhtar, Advocate
Mr. UNS Deo, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

31/8/2016

1. Heard.
2. The petitioner has preferred this writ petition under Article 226 of the Constitution of India seeking his release on bail under Section 439 of the Code of Criminal Procedure (in short "Cr.P.C.") in Crime No.227 of 2014 registered at Police Station Rajim, District Gariyaband (CG) for the offence punishable under Sections 457, 380, 511, 427 of IPC and 3 & 4 of *Lok Sampati Nivaran Adhiniyam*.
3. At the outset, learned counsel for the State would raise objection that the petitioner's application under Section 439 of Cr.P.C. having already been dismissed by this Court in M.Cr.C.

No.244 of 2015, this writ petition is not maintainable.

4. It is argued by learned counsel for the petitioner that the petitioner is in jail since 20.10.2014, therefore, his right under Article 21 is offended as the petitioner cannot be kept in jail for indefinite period. Learned counsel would also submit that since the accused is presumed to be innocent till he is found guilty in a criminal trial, he has constitutional right to be released on bail during trial.
5. Admittedly, the petitioner's first bail application was dismissed by this Court on 28.01.2015 in M.Cr.C. No.244 of 2015 (Annexure P/1) and thereafter, his second bail application was dismissed on 16.06.2016 in M.Cr.C. No.3130/2016. Thus, the petitioner has already exhausted the remedy available to him in law. If the petitioner is to be released on bail in this writ petition, this Court would be required to act as an appellate Court over the order passed by a Coordinate Bench in a different jurisdiction.
6. Till the order passed in petitioner's application under Section 439 Cr.P.C. holds field, this Court cannot issue a writ of mandamus directing him to be released on bail. Similarly, a writ of certiorari cannot be issued to quash the orders passed by this Court in a different jurisdiction.
7. In the matter of the **Vlth Income-tax Officer, City Circle II, Bangalore VS. K.Y. Pillaiah and sons, AIR 1968 SC 260**, the Supreme Court has held thus in paragraph 6 :

“(6) It must also be remembered that the respondents had under an order of the Commissioner obtained a reference on the first question set out hereinbefore. That question was not pressed before the High Court, and it must be deemed to have been answered against the respondents. That question could not thereafter be re-agitated by the respondents in a petition for the issue of a writ under Article 226 of the Constitution.”

8. Similarly, in the matter of **Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, 1969 (2) SCC 74**, the Supreme Court has held thus in para 8 :

“8. Even on the assumption that the order of the appellate court had not merged in the order of the single Judge who had disposed of the revision petition we are of the view that a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under Section 115 of the Code of Civil Procedure. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the court to prevent abuse of process as also to respect and accord finality to its own decisions.”

9. In an earlier decision rendered by the Madras High Court in the matter of **N. Devasahayam Vs. State of Madras and others, AIR 1958 Madras 53**, it has been held that the High Court

acting in its judicial capacity cannot be said to be an authority subject to the jurisdiction of the High Court itself under Article 226. The following has been held in para 54 :

“(54) Before concluding I must refer to a very faint argument addressed by Mr. Nambiar learned counsel for the respondents in the certiorari petition questioning the jurisdiction of this Court to issue the writ based on the right not being available to control the proceedings of the High Court. Learned counsel urged that the impugned G.O. of 1956 had requested the High Court to refix the seniority in accordance with the Government's decision and as it was the High Court which ultimately gave effect to the reduction, the present Writ Petition must be deemed to be one to quash an order of the High Court. ”

10. Similar principle has been laid down in the matter of **Abul Khair and others Vs. Hon'ble Chief Justice, High Court of Judicature at Allahabad and others, AIR 1971 Allahabad 44.**

11. The law is thus well settled that while exercising writ jurisdiction, the High Court cannot sit over the order or judgment passed by a coordinate Bench in a different jurisdiction nor a writ can be issued to annul the judicial orders of the High Court.

12. It is also settled that writ of certiorari cannot be issued to quash the judicial orders passed by the Courts although the said jurisdiction is available when the orders have been passed by any other quasi judicial body.

13. Since the relief prayed for in this petition is for petitioner's release on bail, for which, the petitioner has already preferred two applications under Section 439 Cr.P.C., which have been dismissed, unless the said orders are set-aside, the petitioner cannot be granted any relief and such jurisdiction to set-aside the judicial order of the High Court is not available under Article 226 of the Constitution of India.

14. Therefore, the writ petition being devoid of any substance, deserves to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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