

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 1383 of 2016

ORDER:

The present Criminal Petition is filed by the State under Section 439 (2) of Cr.P.C. seeking cancellation of bail granted to the respondents by this Court in Criminal Petition No.6280 of 2015 dated 21.07.2015 on the ground that the accused are not co-operating with the investigating agency and are not assisting the police in completing the investigation.

A perusal of the averments in the First Information Report would show that a case in Crime No.115 of 2015 of Jinnaram Police Station, Medak District, came to be registered against the accused for the offences punishable under Sections 420 and 468 IPC. The averments in the said report would show that the informant along with one B.Ramkoti Reddy established a company in the name and style of RMS Research Labs Private Limited at Sy.Nos.346 and 348, Domadugu Village, Bonthapally, Jinnaram Mandal, Medak District. At that time the son of the informant by name G.Harshavardhan and son-in-law T.Ravi Kumar were employed in USA as Software Engineers and with their hard earned money the informant started the company. About three crores were said to have been invested by the son and son-in-law of the informant. The informant took B.Ramkoti Reddy as working partner of the company though the said B.Ramkoti Reddy has not made any investment except providing hardware for establishment of the company. The informant is said to have given 50% share in the company to the said B.Ramkoti Reddy. It is stated that till 2004-2005 the company

made substantial development but from the year 2005-2006, the said Ramkoti Reddy started showing losses. It is stated that the said Ramkoti Reddy intentionally concealed all factual information with an intention to deceive and cheat the informant and his family members. When the son and son-in-law came over to India they became suspicious and requested the Chartered Accountant to cross check the details by collecting the relevant papers from the Registrar of Companies. It was found that the shareholding of the informant was diluted to less than 25% from 50% by creating, forging and manipulating the documents. It is stated that the share holdings of the informant was reduced by transferring his shares in a systematic manner in the board meetings said to be held during last 13 years. The said shares were transferred in the name of the family members of B.Ram Koti Reddy. Having regard to the fact that the signatures of the informant are forged and that the entire documents are manipulated causing huge loss to the informant and others, the present report came to be lodged.

By an order dated 21.07.2015, this Hon'ble Court while holding that the dispute among the directors of the company can be agitated before the competent authority, granted anticipatory bail to the accused on certain terms and conditions. The accused were directed to appear before the Station House Officer concerned as and when required and further if the investigating agency requires relevant documents for the purpose of investigation, the accused were directed to produce copies of the same and if necessary, give their signatures for the purpose of sending the same for the opinion of the handwriting expert.

Nearly 7 to 8 months later, the present Criminal Petition came to be filed by the State seeking cancellation of anticipatory bail granted to the accused, on the ground that the accused are not co-operating with the investigating agency.

A counter came to be filed by the respondents/accused opposing the same. It is stated that pursuant to a notice dated 20.07.2015 issued under Sections 91 and 161 Cr.P.C. which was received by the accused on 29.07.2015, the accused submitted all the documents on 07.08.2015 and an acknowledgment was also obtained from the investigating agency. It is stated that from 07.08.2015 till date the accused did not receive any notice from the investigating officer. It is further stated that the entire case rests upon the documentary evidence and all the documents which are filed before the Registrar of Companies, Central Excise, State Departments and Income Tax Department are uploaded and are available online. Hence, the question of tampering the documents does not arise. It is further stated that the matter is also seized by the Civil Court since the informant filed O.S.No.9 of 2015 before the VIII Additional District Judge, Medak for permanent injunction restraining the defendants therein from alienating the suit schedule property. Having regard to the same it is stated that there are no merits in the application and the same is liable to be dismissed.

It is well established law that different yardsticks have to be adopted for cancellation of bail and interference with an order granting bail. The Court should take into consideration the post bail conduct and supervening circumstances for deciding as to whether it requires cancellation of bail.

In ***Dolat Ram and others v. State of Haryana***^[11], 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.”

The yardsticks which are to be applied for granting bail and for cancellation of bail are not seriously disputed by the learned Public Prosecutor. His only grievance is that the accused are not furnishing the information required by the investigating agency and unless the said information is furnished it may not be possible to proceed further with the investigation.

One fact which is to be noted is that if the accused have not furnished information as required by the police, the Court cannot compel them to produce such material, even assuming that such material is available with the accused. It is an established law that no one can be compelled to give evidence against him, which violates Article 20 (3) of the Constitution of India.

To the argument that no documents are produced, the

learned counsel for the accused placed on record the notice dated 20.07.2015 issued under Sections 91 and 160 Cr.P.C., and the documents which are submitted to the investigating officer which were acknowledged by the Circle Inspector of Police. It is his case that beyond those documents, no other documents are available with the accused. All other documents are available in the office of District Registrar are on the website. Therefore, it is contended that the allegation of suppressing the material by the accused is incorrect.

As observed earlier even assuming for the sake of argument that the accused have failed to furnish certain information which is against them, the Court cannot force them to produce the same.

Learned Public Prosecutor relied upon the judgment of the Apex Court in Criminal Application No.1963 of 2008 (***The State of Maharashtra v. Mrs. Nirmal Sanjiv Sharma and another***). In the said case, the Apex Court was dealing with the issue of cancellation of bail granted by the Subordinate Court. Various decisions were referred to in the said judgment. The ground which was urged before the Apex Court is that the Sessions Court totally erred in not taking into consideration the material placed by the prosecution while granting bail. Under those circumstances, the Court cancelled the anticipatory bail granted to the petitioner therein and directed him to surrender before the Court.

The situation on hand is totally different. It is a case where a learned Single Judge of this Court granted anticipatory bail to the accused based on the material available on record. If

the prosecution was aggrieved by the order granting anticipatory bail they should have approached the Apex Court questioning the very grant of anticipatory bail. Therefore, cancellation of bail on the ground that the Court has not considered the material on record may not be permissible. As observed earlier, this Court can only cancel the bail when the respondents have violated the conditions of bail either by tampering with the evidence/material or interfering with the investigation or not co-operating with the investigating agency.

In ***Sudhir v. State of Maharashtra and another***^[2] which was also relied upon by the learned Public Prosecutor, was a case where the judgment of the Bombay High Court bench at Aurangabad, canceling the anticipatory bail granted by the Additional Sessions Judge, Jalgaon, was carried to the Apex Court, wherein the Apex Court after referring to ***Gurubaksh Singh Sibbia v. State of Punjab***^[3] case, ***State of A.P., v. Bimal Krishna Kundu***^[4], ***Siddaram Satlingappa Mhetre v. State of Maharashtra***^[5] and ***Bhadresh Bipinbhai Sheth v. State of Gujarat***^[6] upheld the order of the High Court. Even the said case may not apply to the case on hand for the reasons that the issue before the Court was whether the petitioners therein are entitled for grant of anticipatory bail or not. As the petitioners were found not entitled for the said relief, the High Court cancelled the anticipatory bail granted by the Sessions Judge. As stated earlier the situation before this Court is totally different.

The learned Public Prosecutor also placed reliance on the

judgment of the Apex Court in ***Union of India v. Ratan Mallik @ Habul***^[7] in support of his plea that custodial interrogation is necessary to elicit the truth. But it is to be noted that the above referred case was dealing with offences punishable under Section 8/27A and 8/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It was a case where the High Court granted bail on the ground that the appellant has been convicted under Sections 8/27-A and 8/29 of the N.D.P.S.Act for ten years R.I. and also fine. Nothing was recovered from the possession of the appellant and the appellant was in jail from 05.09.2003. It was urged that three years have already lapsed and there is no chance of the appeal being heard within a period of seven years. Dealing with the said aspect, the Apex Court held that these circumstances may be relevant for grant of bail in matters arising out of conviction under IPC but are not sufficient to satisfy the mandatory requirements as stipulated under Section 37 (1) (b) of the N.D.P.S.Act. It was further held that merely because, nothing was found in possession of the respondent, it could not be said, at this stage that the respondent was not guilty of the offence for which he had been charged and convicted. It has been further held that the order passed ignoring the mandatory requirements of Section 37 of the N.D.P.S.Act cannot be sustained. Infact, it was a case where the Apex Court was considering the case where the High Court dealt with an application for bail after conviction of the accused. Under those circumstances, the Apex Court cancelled the bail.

I am afraid the said judgment relied upon by the learned Public Prosecutor may not apply to the case on hand. On the other hand, in ***Hazari Lal Das v. State of West Bengal and***

another ^[8]

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.”

In view of the judgment referred to above, it is to be seen whether the bail granted to the accused needs to be cancelled.

As observed earlier, the ground which is urged by the learned Public Prosecutor is that the accused are not co-operating with the investigation and not bringing forth the material which is in their custody and if the same is not done it would be very difficult for the prosecution to proceed further with the investigation.

From the judgments referred to above, it is clear that non-answering the queries raised and not furnishing the information as sought for by the prosecution could not be a ground to cancel the bail granted. At the most an adverse inference can be drawn by the Court during the course of trial. If the investigating authority feels that the presence of the accused is very much essential for further progress in the investigation, definitely, they have a remedy by issuing necessary notices as done earlier and proceed further with the investigation. As observed earlier,

cancellation of bail would arise if the accused totally refuses to co-operate with the investigation in spite of notices being issued to them, which does not appear to be so in the instant case. Hence, I see no grounds to cancel the bail granted.

With the above observation, the Criminal Petition is disposed of.

C. PRAVEEN KUMAR, J

29.04.2016
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[\[1\]](#) (1995) 1 SCC 349

[\[2\]](#) (2016) 1 SCC (CrI.) 234

[\[3\]](#) (1980) 2 SCC 565

[\[4\]](#) (1997) 8 SCC 104

[\[5\]](#) (2011) 1 SCC 694

[\[6\]](#) (2016) 1 SCC 152

[\[7\]](#) (2009) 2 SCC 624

[\[8\]](#) AIR 2010 (SC) 91