

CRIMINAL PETITION No. 17054 of 2016

ORDER:

This Criminal Petition under Section 439(2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed for cancellation of bail granted by the learned Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge, Visakhapatnam enlarging A-2 in F.No.DRI/HZU/VRU/48/ENQ-3(INT-2)/2016 on the file of Directorate of Revenue Intelligence, Regional Unit, Visakhapatnam District for the offences punishable under Sections 22, 28 and 29 of N.D.P.S Act on various grounds.

The order was passed by the learned Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge, Visakhapatnam in CrI.M.P.No.3230 of 2016 while dismissing the application filed by A-1,A-3 to A-5, granted bail to this petitioner making certain observations in para 10 of the order.

But, the petitioner without filing application before the Sessions Court for cancellation of bail, straightaway approached this Court for cancellation of bail.

According to the judgment of the Division Bench of this Court reported in Y.CHENDRASEKHARA RAO v. Y.V. KAMALA KUMARI¹, in para 28, it is held as under:

“28. For the foregoing reasons we hold that it is not obligatory under [Section 438](#) to move the Court of Session in the first instance. It is always open to this Court when an application is filed under [Section 438](#), without first moving the Court of Session, to consider all the circumstances, and if the situation warrants, this Court

¹ 1993 Cr.L.J. 3508

can direct the party to move the Court of Session. Passing of such an order in consequence of exercise of discretion is different from insisting upon the party to move the Court of Session in the first instance as an inflexible rule of practice. The existing practice of the Registry in returning applications filed under [Section 438](#) on the ground that the Court of Session is not moved in the first instance, is clearly impermissible in law.”

In view of the principle laid down in the above judgment, though the Sessions Court and this Court having concurrent jurisdiction, this Court has discretion either to entertain such application or not.

Therefore, in the present case, it is appropriate for the petitioner to approach the Court which granted bail for cancellation, if the petitioner is aggrieved. Therefore, giving liberty to the petitioner to approach Sessions Court i.e. the learned Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge, Visakhapatnam, the petition is dismissed by following the principle laid down in para 28 of the judgment supra.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:10.04.2017
ccm

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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ccm