

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.5691 OF 2017

ORDER:

This petition is filed under Section 439 (2) Cr.P.C. to cancel the bail granted to the respondent-A2, vide order, dated 09.12.2016 in CrI.M.P.No.2989 of 2016 on the file of the I Addl. Metropolitan Sessions Judge, Hyderabad, in Cr.No.243 of 2016, P.S. Kanchanbagh, Hyderabad.

2. Heard learned counsel for the petitioner-de facto complainant, learned counsel for the respondent-A2, learned Public Prosecutor representing the State and perused the record.

3. Learned counsel for the petitioner-de facto complainant would submit that the petitioner herein and the respondent-A2 are husband and wife. The victim is their son. The respondent-A2 addicted to bad vices and developed extra marital relationship with A1. When his elder son by name Rayal Faisal Mohammed witnessed the illegal relationship between the respondent-A2 and A1, the respondent-A2 indulged in commission of offences under Sections 120-B, 307, 341, 342, 506 IPC and 23 of J.J. Act. The allegations against the respondent-A2 are heinous. It is a rarest of rare cases. All the acts of the respondent-A2 are brutal, barbaric and diabolic in nature. The respondent-A2 making all possible efforts to destroy the evidence and creating havoc in the mind set of the victim. The Court committed grave error in granting bail to the respondent-A2. The respondent-A2 is threatening the victim. Thereafter, she filed cases against the petitioner herein relating to matrimonial disputes. The respondent-A2 is also visiting the school of the victim to tamper the

evidence by terrorizing the victim. She is also approaching the independent witnesses etc., to do so. In the circumstances, it is difficult to save the victim boy and ultimately prayed to allow the application as prayed for.

4. On the other hand, learned counsel for the 1st respondent-A2 would submit that the 1st respondent-A2 was mentally and physically harassed and was abused and a false case of this nature was registered against her. All the allegations levelled against the respondent-A2 are false. She did not make any efforts to win over either the victim or any other witnesses. The allegations made in this petition are only as a counter-blast to the case filed against her and ultimately prayed to dismiss the petition.

5. Learned counsel for the petitioner-de facto complainant relied on a decision reported in **FINANCIAL SOFTWARE AND SYSTEMS (P) LTD V PAWAN KUMAR GUPTA AND OTHERS**¹, wherein it is held that the frame of sub-section (2) of Section 439 indicates that it is a power conferred on the courts to cancel the bail, on an application by the State or by the aggrieved person or suo motu by the High Court. Therefore, it cannot be said that this application is not maintainable.

6. The point for determination is whether the bail granted to the respondent-A2, vide order, dated 09.12.2016 in CrI.M.P.No.2989 of 2016, on the file of the I Addl. Metropolitan Sessions Judge, Hyderabad, can be cancelled?

7. As per the submissions made by the Public Prosecutor, the respondent-A2 did not make any effort to threaten the victim and win over the other witnesses in the

¹ 2016 LAWSUIT (HYD) 780

subject crime. It is also submitted that the respondent-A2 did not violate any conditions.

8. A letter, dated 24.03.2017, said to have been given to the Deputy Commissioner of Police, Hyderabad, making similar allegations stating that the victim is highly in secured and ultimately making a request to provide protection to the victim etc., The parties to the dispute made grave allegations against each other. No doubt, the allegations against the respondent-A2 are serious in nature. At this stage, except the copy of the letter, dated 24.03.2017, there is no other record to substantiate the same. The truth or otherwise of the allegations can only be decided after due trial. In the circumstances of the case, it is not appropriate to hold that the respondent-A2 had violated the terms and conditions of the bail. In the above CrI.M.P.No.2989 of 2016, the Sessions Court granted regular bail to the respondent-A2 assigning reasons. While granting bail, the Sessions Court observed that the respondent-A2 was in judicial custody on 01.10.2016. By the date of the order, she was in imprisonment for more than two months and assigned valid reasons to consider the bail of the respondent-A2. The Sessions Judge rightly exercised the discretion in grant of bail in favour of petitioner. Therefore, in the circumstances of the case, it is not appropriate to vary the order of bail granted in favour of the respondent-A2.

9. In the result, the Criminal Petition is dismissed.

DR.SHAMEEM AKTHER, J

DATED: 21ST DAY OF NOVEMBER, 2017

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