

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16877 of 2016

ORDER:

This petition is filed under Section 439 (2) Cr.P.C. for cancellation of bail granted in favour of respondents/A.1 to 6 and A.8 by I Additional Junior Civil Judge, Gurazala in CrI.M.P.No.5056 of 2016 in Crime No.79 of 2016 of Karampudi Police Station, Guntur District for the offences punishable under Sections 147, 148, 307, 324 and 509 read with 149 IPC on various grounds viz., (1) the offences referred to above are non-bailable and without notice to the Assistant Public Prosecutor, the petition was disposed of by the Magistrate, granting bail to the accused before it; 2) that while granting bail to the accused, the Magistrate came to the specific conclusion that a false case was foisted against them; 3) that after enlarging the petitioners on bail, when they started threatening the petitioner herein, he lodged a complaint before the police complaining threats and a copy of which is filed before this Court, but no crime is registered so far.

2. During hearing, learned counsel for the petitioner herein reiterated all the three grounds, whereas respondents' counsel contended that the petitioner herein was in the Court at the time of granting bail and no notice was issued as Assistant Public Prosecutor was staying at Vinukonda of Guntur District, which is 30 kilometers away to the Court where the accused were produced. Sri P.S.P. Suresh Kumar, learned counsel for the petitioner, contended that the accused were produced before the Magistrate at his residence on Sunday and thereby, the question of presence of the petitioner herein in the Court does not arise.

3. As seen from proviso 4 to sub section (1) of Section 437 Cr.P.C., which was inserted by Criminal Law Amendment, 2005 w.e.f 23.06.2006, no person, shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub section without giving an opportunity of hearing to the public prosecutor.

4. In the present case on hand, the Magistrate specifically recorded that the Assistant Public Prosecutor is not residing in the Headquarters and staying at Vinukonda. The finding recorded by the Magistrate while granting bail to the accused believing the representation of the counsel for the accused that they are suffering from ill-health, without issuing notice to the Public Prosecutor and affording an opportunity of hearing as provided under proviso 4 to sub section (1) of Section 437 Cr.P.C., which is mandatory, is grave illegality. On this ground alone, the bail granted by the Magistrate to the accused in CrI.M.P.No.5056 of 2016 in Crime No.76 of 2016 is liable to be cancelled.

5. The other ground urged before this Court is that the Magistrate is not supposed to record the specific finding that the case is foisted one and that the offences are not punishable with death imprisonment or imprisonment for life. For the offence under section 307 IPC, the maximum punishment is 10 years with fine. Merely because the offences are not punishable with death penalty or life imprisonment, the petitioners before the Magistrate cannot be enlarged on bail when proviso (4) to Section 437 Cr.P.C. mandates affording opportunity of hearing to the Public Prosecutor where the offence punishable with imprisonment for seven years or more.

Therefore, granting bail to the petitioners therein on the ground that the offences committed by them are not punishable with imprisonment for life is against the purport of proviso 4 to sub-Section (1) of Section 437 Cr.P.C. Further, recording a finding that the case is foisted one at the stage of granting bail is an error apparent on the face of the record. At best, the Court is required to record its satisfaction *prima facie*, that the petitioners before it did not commit any offence, but not to arrive at conclusion that the case was foisted against them. Therefore, the said finding is liable to be set aside and accordingly, the finding recorded by the Magistrate that a 'case is foisted one' while granting bail, is set aside.

6. The other contention raised before this Court is that after enlarging the accused by the Magistrate on bail, they started threatening the petitioner herein with dire consequences, a copy of the report lodged with the police is produced before this court, but the police did not register the case till today. If really, the threat is true, it is a ground to cancel the bail and in the absence of any satisfactory proof of threat, based on the allegation in the report itself is not sufficient to cancel the bail. While granting bail, the Court at best requires to follow various guidelines laid down by the Apex Court reported in **Gajanand Agarwal v. State of Orissa**¹, which reads as follows:

- 1) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
- 2) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- 3) Prima facie satisfaction of the Court in support of the charge.

¹ (2007) 14 SCC 537

But, the Court below stepped out and recorded a finding that the case was falsely foisted against the accused, which is erroneous on the face of it. Furthermore, while dealing with the application for bail, it is necessary for the Court to record reasons and consider the other circumstances and factors mentioned, *prima facie*, for granting bail particularly, where the accused was charged of having committed serious offence in **Lokesh Singh Loha v. Union of India and others**². The Magistrate, instead of following those guidelines even without recording the satisfactory conclusions, *prima facie*, that the petitioners before it did commit no offence, by cryptic order made a an observation that the case is falsely foisted.

7. A bail can be cancelled in certain circumstances contemplated under Section 439 (2) Cr.P.C. A High Court or Court of Session may direct that any person who has been released on bail be arrested and commit him to custody. But, no specific circumstances are prescribed for cancellation. A bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances had rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial as held by the Hon'ble Supreme Court in **Dolat Ram v. State of Haryana**³. Further in paragraph 4 of its judgment, the Honourable Supreme Court observed that rejection of bail in a non-bailable case at the initial stage and cancellation of the bail so 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 bail, already granted. Interference or attempt to interfere with due course of administration

² AIR 2009 SC 94

³ 1995 (1) SC 127

of justice or evasion or attempt to enable the due course of justice, or abuse of the concession granted to the accused in any manner are some of the grounds which must weigh in the mind of the High court, while canceling the bail already granted to an accused person. The possibility of the accused's absconding is yet another reason justifying the cancellation of the bail.

8. Thus, bail cannot be granted mechanically, when once bail was granted except where there are supervening circumstances for cancellation of bail granted by the Court.

9. In any view of the matter, the order of cancellation of bail shall never be passed in a cryptic or mechanical manner. In the present case, the Magistrate exercised its jurisdiction to grant bail in a case where the offence is punishable with imprisonment for a period of ten years normally dealt with by the Sessions Court. But, the Magistrate is empowered to grant bail to a person charged with an offence punishable with death or imprisonment for life as held by this Court in **Ashireddygari Narasimhareddy and another v. State of A.P.**⁴, Merely on the ground of granting bail in a serious crime by the Magistrate, the bail cannot be cancelled.

10. The Magistrate without issuing notice to the Assistant Public Prosecutor as required under proviso 4 to sub-Section (1) of Section 437 Cr.P.C., which is mandatory, a specific finding has been recorded by the trial Court that the case is falsely foisted against the accused; and the intervening circumstances like threatening the petitioner herein with dire consequences after obtaining the bail, I deem it appropriate to cancel the bail, by exercising the power under Section 439 (2) Cr.P.C.

⁴ 2000 (1) ALT (Cri.) 570 (AP)

11. In view of the above discussion, this petition is allowed cancelling the bail granted to the respondents herein/A.1 to A.6 and A.8 by an order, dated 27.11.2016, in CrI.M.P.No.5056 of 2016 in Crime No.79 of 2016 passed by the I Additional Junior Civil Judge, Gurazala and direct the Magistrate to commit the respondents herein to prison and complete the trial expeditiously. However, liberty is given to the respondents herein to move an appropriate application before the Court of Sessions Court for grant of bail, if advised.

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

JANUARY 25, 2017
YVL

M.SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 25.01.2017

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