

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.7749 OF 2017

ORDER:

This Criminal Petition, under Section 439(2) Cr.P.C. r/w Section 482 Cr.P.C., is filed by the State, represented by the Inspector of Police, Anti Corruption Bureau, C.I.U., Hyderabad, to cancel the bail granted to the respondent-accused officer in CrI.M.P. No.510 of 2017 *vide* order dated 19.07.2017 on the file of the Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, in Crime No.2/RCA-CIU-ACB/2017 of Police Station, C.I.U., Anti Corruption Bureau, Hyderabad, registered for the offence under Section 13(1)(e) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act').

2. Heard Sri V. Ravi Kiran Rao, learned Standing Counsel-cum-Special Public Prosecutor for the petitioner-State and M/s. M.A.K. Mukheed, learned counsel for the respondent-accused officer, apart from perusing the material available on record.

3. Learned Special Public Prosecutor for the petitioner-State has made his submissions as follows:

The Government coming to know that the Sub-Registrar has registered Government land by violating the provisions of Section 22A of the Registration Act, 1908, they caused huge loss of revenue to the State exchequer resulting approximately Rs.686 Crores in the shape of stamp duty and registration fee. A case in Crime No.223 of 2017 was registered by Bala Nagar Police against the respondent-accused officer and others for the offences under Sections 409, 418, 420, 423, 467, 468, 471 and 120-B I.P.C., Sections 13(1)(d) and 13(2) of the Prevention of Corruption

Act, 1988 and Section 82 of the Registration Act, 1908. The respondent-accused officer was arrested on 30.05.2017 along with others and remanded to police custody on 31.05.2017 by the XXIV Metropolitan Magistrate, Kukatpally at Miyapur, Hyderabad. On 31.05.2017, Bala Nagar Police conducted searched in the house of the respondent-accused officer and noticed some incriminating material relating to disproportionate assets. When it came to the knowledge of ACB, Telangana, a preliminary enquiry was conducted by the ACB and they found that the respondent-accused officer possessed disproportionate assets. As such, a case in Crime No.2/RCA-CIU-ACB/2017 for the offences under Section 13(1)(e) r/w Section 13(2) of the PC Act was registered against the respondent-accused officer after obtaining necessary permission from the superiors, took up investigation. The ACB officials conducted searches on 14.06.2017. Later, PT warrant was obtained on 16.06.2017 and produced the accused officer on 17.06.2017 before the Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Courts, Hyderabad (for short, 'the Court below'). A petition for police custody of the respondent-accused officer was filed on 20.06.2017 and the custody of accused officer was taken from 23.06.2017 to 27.06.2017. Thereafter, on 19.07.2017, the respondent-accused officer was granted bail. As per the preliminary investigation conducted by the Anti Corruption Bureau, the respondent-accused officer acquired disproportionate assets as detailed below:

Total Assets worth	Rs.4,26,09,746/-
Total probable expenditure	Rs.67,76,062/-
Excess expenditure	Rs.17,76,062/- (Income – Expenditure)
Disproportionate Assets	Rs.4,43,85,798/- (Assets + Excess Exp.)

There is also record to show that the respondent-accused officer purchased other lands and properties running in several crores. There is a procedure to issue notice to the suspects, call for their information and investigate the case. Further, the investigating officers are required to issue notices to the several authorities to collect the evidence with regard to the involvement of this respondent-accused officer in this case. The investigation is not completed. It is still pending. Though a detailed counter was filed, the Court below granted bail to the respondent-accused officer. By way of counter, it is brought to the notice of the Court below that the investigating officer has to collect and record oral and documentary evidence. If the respondent-accused officer is granted bail, he would intimidate the witnesses and threaten them and there is every possibility of influencing various agencies. The investigation conducted so far reveals that the respondent-accused officer purchased property in the name of benamidars and payments were made adopting different *modus operandi*. The prosecution has to analyse several documents, collect more material and record statements of the witnesses. Ultimately, prayed to cancel the bail granted to the respondent-accused officer.

4. On the other hand, learned counsel for the respondent-accused officer submitted as follows:

The first information report lodged in this case reflects no material evidence against the respondent-accused officer much less attracting the offence punishable with imprisonment of maximum seven years. As such, the very arrest of the respondent-accused officer is in contravention of Section 41-A Cr.P.C., which required to be applied. The respondent-accused officer is no way connected with the registration of Government lands. He did not acquire the assets disproportionate to the sources of income. The entire prosecution case is false. All the contentions raised

on behalf of the prosecution are false. The Court below having convinced by the submissions of both sides, granted regular bail to the respondent-accused officer. There are no binami companies as alleged by the prosecution and the respondent-accused officer is not responsible for any of the offences alleged against him. The respondent-accused officer is not an influential person. There is no possibility influencing the witnesses and tampering with the record. The respondent-accused officer was in police custody from 23.06.2017 to 27.06.2017, he was thoroughly interrogated, search warrants were obtained and houses of the respondent's kith and kin were raided, inventories were prepared and all the crucial witnesses were examined. The Court below considered all the aspects relating to bail. The respondent-accused officer did not violate any conditions of the bail. This petition is filed on all false and baseless allegations. Ultimately, prayed to dismiss the petition.

5. In view of the circumstances narrated by both sides, the point for determination is, whether the regular bail granted to the respondent-accused officer *vide* order dated 19.07.2017 in Crl.M.P.No.510 of 2017 on the file of the Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Courts, Hyderabad, is liable to be cancelled?

6. Learned Special Public Prosecutor has relied on the following decisions:

- (1) Central Bureau of Investigation v. V.Vijay Sai Reddy¹,**
- (2) Prasanta Kumar Sarkar v. Ashis Chatterjee and another²,**
- (3) State of Bihar v. Rajballav Prasad alias Rajballav Prasad Yadav alias Rajballabh Yadav³,**

¹ (2013) 7 SCC 452

² (2010) 14 SCC 496

³ (2017) 2 SCC 178

(4) **Kanwar Singh Meena v. State of Rajasthan and another**⁴,

(5) **Abdul Basit alias Raju and others v. Mohd. Abdul Kadir Chaudhary and another**⁵,

(6) **Thakur V. Hariprasad v. State of A.P.**⁶

(7) **Narendra K. Amin (Dr.) v. State of Gujarat and another**⁷

7. In **V.Vijay Sai Reddy's** case (1 supra) it is held by the Hon'ble Supreme Court as follows:

"While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "*reasonable grounds for believing*" instead of "*the evidence*" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce *prima facie* evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

We have highlighted the above aspects to show that the High Court has mistakenly taken into account the irrelevant materials and kept out the relevant materials, which had to be considered for the grant of bail."

8. In **Prasanta Kumar Sarkar's** case (2 supra) it is held as follows:

⁴ (2012) 12 SCC 180

⁵ (2014) 10 SCC 754

⁶ 1977 CRI.L.J. 471

⁷ (2008) 13 SCC 584

We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

(See: State of U.P. through CBI v. Amarmani Tripathi MANU/SC/0677/2005 : (2005) 8 SCC 21; Prahlad Singh Bhati v. NCT, Delhi and Anr. MANU/SC/0193/2001 : (2001) 4 SCC 280; Ram Govind Upadhyay v. Sudarshan Singh and Ors. MANU/SC/0203/2002 : (2002) 3 SCC 598).

9. In **Rajballav Prasad's** case (3 supra), the Hon'ble Supreme Court held as follows:

"We may observe at the outset that we are conscious of the limitations which bind us while entertaining a plea against grant of bail by the lower court, that too, which is a superior court like High Court. It is expected that once the discretion is exercised by the High Court on relevant considerations and bail is granted, this Court would normally not interfere with such a

discretion, unless it is found that the discretion itself is exercised on extraneous considerations and/or the relevant factors which need to be taken into account while exercising such a discretion are ignored or bypassed. In the judgments relied upon by the learned Counsel for the Respondent, which have already been noticed above, this Court mentioned the considerations which are to be kept in mind while examining as to whether order of bail granted by the court below was justified. There have to be very cogent and overwhelming circumstances that are necessary to interfere with the discretion in granting the bail. These material considerations are also spelled out in the aforesaid judgments, viz. whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. We have kept these very considerations in mind while examining the correctness of the impugned order. Ultimately, the Hon'ble Supreme Court cancelled the bail granted to the accused by the High Court.

10. In **Kanwar Sing Meena's** case (4 supra), the Hon'ble Supreme Court held that the High Court and the Sessions Court are guided by some considerations as other Courts; the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration while granting bail; each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court and ultimately, cancelled the bail granted to the accused.

11. In **Abdul Basit's** case (5 supra), the Hon'ble Supreme Court held that under Section 439(2) of the new Code, the High Court may

commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior court under Section 439(2) Cr.P.C. to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail.

12. In **Thakur V. Hariprasad's** case (6 supra), a Division Bench of this Court held that the High Court or a Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

13. In **Narendra K. Amin's** case (7 supra), the Hon'ble Supreme Court held that in an application to cancel bail, the Court is required to find out whether irrelevant material of substantial nature is taken into account or relevant material omitted from consideration while granting bail. If so, order granting bail would be perverse and the bail granted is liable for cancellation. However, the Court should avoid re-appreciation of evidence.

14. Learned counsel for the respondent-accused officer has relied on the following decisions:

(1) **Dolat Ram and others v. State of Haryana**⁸

(2) **Gurcharan Singh and others v. State (Delhi Administration)**⁹

15. In **Dolat Ram's** case (8 supra), the Hon'ble Supreme Court held that an application to cancel the bail has to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail.

16. In **Gurcharan Singh's** case (9 supra), the Hon'ble Supreme Court observed that two paramount considerations, viz., likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a Court of Justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or canceling bail.

17. The learned Special Judge for SPE and ACB Court while dealing with the bail application, held that statements of the witnesses under Section 161 Cr.P.C. were recorded, major part of the investigation is completed, and ultimately, considering the period of detention and the health condition of the respondent-accused officer, granted bail to him. As per the records placed before this Court and the Court below, the respondent-accused officer indulged in registering Government lands violating the provisions of Section 22A of the Registration Act, 1908, caused huge loss to the State exchequer to the tune of approximately

⁸ (1995) 1 SCC 349

⁹ (1978) 1 SCC 118

Rs.686 Crores, in the shape of stamp duty and registration fee. There is also record to exhibit that the respondent-accused officer acquired assets disproportionate to his known source of income. As per the preliminary investigation conducted by the ACB, the respondent-accused officer possesses disproportionate assets to the known source of his income to the tune of Rs.4,43,85,798/-. There are also allegations of accumulating wealth in the name of binamidars. As pointed out by the Special Public Prosecutor, in process of collecting material documents and evidence, the investigating agency has to issue number of notices, examine several persons including the bankers and alleged transactions relating to Hawala and the veracity of the documents and statements are required to be counterchecked. In the course of investigation, requisitions are required to be given to the Magistrates to record statements of the witnesses under Section 164 Cr.P.C. When there are allegations of causing loss to the State exchequer to the tune of Rs.686 Crores and accumulating huge property running in several crores, the prosecutor has to unearth so much of information and it will take considerable time. As per the record placed before the Court, the investigation is in progress. The gravity of the accusations against the respondent-accused officer is high. When the investigation is going on for grave allegations of accumulating the property running in several crores and when huge loss is caused to the State exchequer, if the offender is allowed to move freely, he will meddle with the investigation. As per the records, on the instructions of the respondent-accused officer, several persons acted in tune of the respondent-accused officer in the illegal transactions relating to the registration of the documents and accumulation of the assets disproportionate to the known sources of income. A thorough and detailed investigation is warranted. There is also possibility of the respondent-accused officer winning over the witnesses. In the circumstances, the

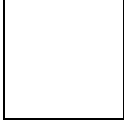
respondent-accused officer would also indulge in removing and destroying the material documents or cause their disappearance. The contentions raised by the Special Public Prosecutor cannot be discarded. The Special Court has not appreciated all the facts and circumstances of the case. The holding of the Special Judge that most part of the investigation is completed is not in consonance with the record and the submission made by the Special Public Prosecutor. The procedure and process of investigation of the offences involved in disproportionate assets case takes lot of time, as pointed out. There are overwhelming circumstances that are necessary to interfere with the discretion in granting bail. There is no force in the submissions made on behalf of the respondent-accused officer. All the contentions do fail. The Special Judge did not justify in granting the bail even on health ground of respondent-accused officer.

18. Under these circumstances, the bail granted to the respondent-accused officer *vide* order dated 19.07.2017 by the Court below in Crl.M.P. No.510 of 2017 is cancelled. The respondent-accused officer is directed to surrender before the Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, in this crime within three (3) days from the date of this order. Failing which, the petitioner-State is at liberty to arrest and remand the respondent-accused officer to judicial custody, this Criminal Petition is allowed accordingly. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 13-11-2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER



Crl.P. No. 7749 OF 2017

Date. -11-2017

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