

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NOs.1386 & 2929 OF 2017

COMMON ORDER:

As both the criminal petitions are filed for common relief of cancellation of bail, I find it expedient to decide both the cases by common order.

These two criminal petitions are filed under Section 439(2) Cr.P.C by the defacto complainant and the State of Telangana, seeking a direction to cancel the bail granted to the respondent/accused-Dr. Darapuneni Venkata Siddhartha.

The defacto complainant is the daughter of late Capt. T. Kameswara Rao (hereinafter will be referred as deceased father) and resident of United States of America, represented by GPA Holder one T. Bhaskar. The facts of the case are that while the defacto complainant along with her two children and deceased father were proceeding in Scorpio vehicle towards Neredmet from RGI Airport, on the way at exit of airport flyover bridge, the respondent/accused, driver of Honda City car drove his car in rash and negligent manner, crashed road divider and flew across the road and made head on collision to defacto complainant's Scorpio vehicle, due to which defacto complainant's father received severe injuries to his head and other parts of his body. Immediately, the defacto complainant's father was shifted to Trident Hospital, Shamshabad and after first aid, shifted to KIMS Hospital, Begumpet for better treatment. Hence, the defacto complainant requested the police to take necessary action against the

respondent/accused i.e. driver of Honda City Car who drove the car in inebriated condition. On the strength of the complaint police registered Crime No.296 of 2016 on the file of RGI Airport Police Station and took up investigation. During the course of investigation, witnesses were examined and detailed statements were also recorded. Thus, the respondent/accused committed an offence punishable under Section 337 IPC and Sections 184, 185 of Motor Vehicles Act, 1989. On 05.08.2016 the respondent/accused was arrested, produced before the Metropolitan Magistrate and he was granted conditional bail on the same day.

Father of the defacto complainant succumbed to injuries on 24.09.2016 at KIMS. It is alleged that the respondent/accused being a Doctor by himself, knowingly drove his vehicle in highly inebriated condition. Respondent/accused was subjected to breath analyzer test and the report shown BAC 131MG/100ML. It is also contended that driving vehicle at high speed, rash and negligent manner is danger to the public/road users. Thereupon, the section of law was altered from Section 337 IPC and Sections 184 & 185 of MV Act to Section 304(Part-II) IPC and Sections 184 & 185 of MV Act. The State filed CrI.M.P.No.3420 of 2016 in Crime No.296 of 2016 before the Metropolitan Sessions Judge, Cyberabad at L.B. Nagar to cancel the bail granted to the respondent/accused, but the Sessions Court dismissed the petition vide order dated 03.01.2017.

It is the contended by the learned counsel for the petitioner that the respondent/accused was released on bail for the offence

punishable under Section 337 IPC and Sections 184 & 185 of MV Act. But, consequently, the section of law was altered to Section 304(Part-II) IPC and Sections 184 & 185 of MV Act, as the gravity of offence was increased. The respondent/accused did not obtain any bail for the offence punishable under Section 304(Part-II) IPC. But the Sessions Court, on erroneous appreciation of facts, declined to cancel the bail without assigning proper reasons. Whereas, the defacto complainant in her affidavit specifically stated that she was pursuing the police regarding progress in investigation and also about alteration of section of law.

The defacto complainant's father was discharged from KIMS Hospital on 09.09.2016 in a totally paralyzed condition and he was shifted to Central Rehabilitation Centre, where again, he was shifted to KIMS Hospital and died on 24.09.2016. Further, the police did not record the statement of the lady companion, who is an airhostess in Indigo Airlines, who accompanied the respondent/accused at the time of accident. The specific contention of the petitioner is that the police did not inform the progress in the investigation and she was informed by the Investigation Agency, that an application for cancellation of bail is filed against the respondent/accused.

The petitioner stated that the respondent/accused is tampering the record and may likely to influence the witnesses in the case, he being highly influential doctor. Crime No.228 of 2011 was registered against the respondent/accused for the offence punishable under Section 20(b) of N.D.P.S. Act for consuming

Narcotic substances, since there is every possibility of tampering evidence, the petitioners in both the criminal petitions i.e. defacto complainant and the State sought for cancellation of bail.

During hearing, learned counsel for the petitioner S. Vani contended that when the defacto complainant lodged a complaint describing the nature of injuries sustained by the father of the defacto complainant and his paralyzed condition, the authorities of KIMS Hospital, under the influence of the respondent/accused, totally distorted the facts and thus, the respondent/accused was released on bail. Further, it is stated that as the respondent/accused has earlier worked for quite sometime as a doctors in KIMS hospital, he is leaving no stone unturned to influence the doctors with his past relationship. Further, as the offence committed by the respondent/accused bailalbe, the respondent/accused was granted bail by the Metropolitan Magistrate. But, later, the Metropolitan Sessions Judge refused to cancel the bail, assigning his own reasons.

Subsection (5) of Section 437 provides that any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody. Similarly Section 439 Cr.P.C deals with Special powers of High Court or Court of Session regarding bail. Section 439(2) stipulates that 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.

As noted above, Section 437(5) Cr.P.C provides that any Court releasing any person on bail may direct that such person be arrested and commit him to custody. Hence, the High Court or Court of Session can cancel the bail. But a Magistrate has no power to cancel the bail when such bail has been granted by the High Court on the same case. If the Courts have the discretion or power to grant bail, they have also the power to cancel bail already granted to a person accused of an offence under the Indian Penal Code or under any other provision of law.

In **Puran v. Rambilas**¹, the Supreme Court *inter alia* held that one of the grounds for cancellation of bail would be where material evidence brought on record have been ignored and that to without any reason. Keeping this observations in view, the Supreme Court from the peculiarity and circumstances of facts of the case of **Guria Swayam Sevi Sansthan v. State of Uttar Pradesh**² held that if the private respondents had been granted bail long time back and in some case trials have also been concluded, it would not be proper to cancel bail.

In cancellation of bail, the conduct of accused subsequent to release on bail and supervening circumstances will be relevant. However, power of a superior court to cancel bail in appropriate cases on other grounds is not restricted.(vide **Subodh Kumar Yadav v. State of Bihar**³).

¹ (2001) 6 SCC 338

² 2010 AIR SCW 1182

³ AIR 2010 SC 802

In the present facts of the case, the allegation is that, the defacto complainant highlighted the serious condition of her father and more particularly, stating that he is in paralytic condition. But the KIMS doctors issued certificate without disclosing the paralytic condition of defacto complainant's father. Further, at present, the respondent/accused is not working in KIMS hospital is not a ground to conclude that he influenced the witnesses i.e. doctors in KIMS Hospital. In such a case, if conclusion is arrived that the respondent/accused has influenced the doctors to issue such certificate, at this stage, it will have its drastic impact on the final decision after trial. In the absence of any tangible material to conclude that the respondent/accused tampered evidence or influenced the witnesses, it is difficult for me at this stage to conclude that the respondent/accused influenced the witnesses and tampered evidence.

It is also contended that the petitioner is addicted to vices and crime was also registered under the provisions of NDPS Act. But, registration of crime under NDPS Act by itself is not a ground for cancellation of bail, since the offence allegedly committed by the respondent/accused is unconnected with the offences punishable under Section 20(b) of NDPS Act. Even otherwise, unless such material is brought on record in support of the said contention, it cannot be concluded that the respondent/accused has committed offences punishable under Section 20(b) of NDPS Act.

Based on the material available on record, though the respondent/accused was in inebriated state, at the time of

commission of offence, the Metropolitan Magistrate granted bail and if, for any reason, the Magistrate ignored the material without assigning any reason, this Court can cancel the bail. At the same time, if the conduct of the respondent/accused is otherwise disclosed that he is interfering with investigation and tampering of evidence, the Court can cancel the bail. But, here, though allegations are made that respondent/accused is an influential person and influenced the doctors in KIMS Hospital, such allegation is not based on any material, except the self serving complaint lodged by the daughter of the deceased i.e. defacto complainant. At this moment, this Court cannot record any finding with regard to certificates which are in dispute which are crucial in deciding the controversy in the main case. Apart from that, the allegation is not supported by any piece of paper. The Trial Court granted bail only in Crime No.296 of 2016 for the offence punishable under Section 337 of I.P.C, but not for the offence punishable under Section 304-A of I.P.C. The Investigating Agency may take the accused to custody and remand him to judicial custody subject to recording reasons after following guidelines of Apex Court in **Joginder Kumar v. State of Uttar Pradesh**⁴, if the respondent/accused is not on bail. Mere change of section of law by itself is a ground to cancel the bail as discussed. Therefore, I find no ground to exercise discretion to cancel the bail.

Hence, I am of the opinion that it is not a fit case to cancel the bail granted to the respondent/accused by exercising power

⁴ AIR 1994 SC 1349

under Section 439(2) Cr.P.C for the offence punishable under Section 337 of I.P.C

In the result, both the criminal petitions are dismissed.

Consequently, miscellaneous petitions, if any, pending in these petitiona, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.04.2017

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