

THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9967 OF 2017

ORDER:

Heard learned counsel for the petitioner/A1 in S.C.No.77 of 2011, pending on the file of Assistant Sessions Judge, Vizianagaram and also heard the learned public prosecutor, representing the respondents.

2. The petitioner is undisputedly in sub-jail, Vizianagaram. He moved an application in CrI.M.P.No.243 of 2017 under Section 437 of Cr.P.C. instead under Section 439 Cr.P.C. before the learned Assistant Sessions Judge saying the II Town police sought for giving of PT warrant to secure his presence as he is in sub-jail, Vizianagaram. It is referred that it was posted to 22.08.2017 for his appearance and on that day, he could not attend as he was in Central Prison in another case and the petition filed to that effect was dismissed and N.B.W. was issued. When the question of giving NBW does not arise, that too when it is intimated by filing petition or memo that the A1 (petitioner herein) is in sub-jail in another case and only PT warrant if at all the learned Assistant Sessions Judge could have issued. He further mentions in the bail application that he is ready to undertake his presence in future and ready to offer sufficient sureties being permanent resident of Vizianagaram Town having properties and there is no question of abscondence, hence, he may be enlarged on bail.

3. The order of the learned Assistant Sessions Judge dated 04.10.2017 in that CrI.M.P.No.243 of 2017 in dismissing his application for bail particularly from Paras 5 to 7, read as follows:

*“5. **POINT:-** On perusal of the entire record, the petitioner herein along with his wife and son involved in Crime No.82/2010 of II town Police Station, Vizianagaram and there is a grave charge under Sec.307. 353 r/w 34 IPC against all accused 1 to 3. The defacto complainant in this is no other than the then S.I. of Police, Anakapalli town Police Station, Visakhapatnam district. There is a counter case filed by the similar accused against the defacto complainant.*

6. The accused No.1, who is basically served in Survey and Land Records Department, is involved in a moral turpitude offence under the provisions of Prevention of Corruption Act and still he is not enlarged on bail in a serious offence against society involved by him. In this particular case, the alleged offence also, when the ACB officials raided the house of the petitioner/accused No.1, he along with his family members not only assaulted the ACB officials but also threatened them by using dogs. Therefore, the subsequent conduct of the petitioner/ Accused No.1 also can be taken into consideration.

7. It is settled law that the basic rule is granting bail and refusal is an exception. The petitioner/Accused No.1 involved in so many mortal turpitude offences and the Sessions Case No.77/2011 is pre-2012 matter and this court already submitted a letter of request for appointment of Spl.P.P. to conduct case and counter cases, the prosecution fails to complete trial on or before 30.11.2017, the petitioner/accused No.1 is at liberty to renew his application for grant of bail. The prosecution may not witness like silent spectator without observing the progress in Sessions case No.77/2011 and the prosecution has to take initiative to see the completion of trial in S.C.77/2011 on or before 30.11.2017 failing which, the petitioner/accused No.1 herein is at liberty to renew this application for his due release on bail, if he is not required in any other case. Hence, in the circumstances stated above, the petitioner/accused No.1 is not entitled for bail at this stage. The point is answered accordingly.”

4. It is pursuant to which as per Para 8 dismissed the application saying if the trial is not completed by 30.11.2017, he can renew his request seeking bail by filing fresh bail application. It is said order now impugned herein.

5. What he mentioned in the quash petition is that he is already on concession of anticipatory bail at the crime stage in Crime No.82 of 2010 of the II Town P.S., Vizianagaram and it is in the self-same crime, the order of the learned Assistant Sessions Judge in dismissing the application is unsustainable. Before filing the bail application, the fact required to mention is that on 05.09.2017 it is pursuant to the PT warrant issued in this case against him as A1, he was produced, the other accused 2 and 3, who are on the concession of the self-same anticipatory bail granted at the crime stage for all the accused referred supra 'in CrI.M.P.No.294 of 2010, dated 18.05.2010' were present. It is therefrom stated that there is a counter case S.C.No.11 of 2013, thereby ordered to address a letter to the Additional Director of Prosecution, Vijayawada, for appointment of Special Public Prosecutor, to conduct prosecution in S.C.No.11 of 2013 and by remanding the A1 to sub-jail and the remand is extended till 11.09.2017 and it is in the meantime the above bail application was filed.

6. In fact, the anticipatory bail order earlier granted in crime stage in favour of the three accused including the petitioner/A1, besides his wife and son the other accused, is in force for the bail is not cancelled by any specific order and bonds with sureties and solvency furnished. The docket order dated 05.09.2017 of the learned Assistant Sessions Judge is also clear in this regard.

7. Thus once the bail order is in force and from any non-appearance any NBW issued and the same is executed and even he is taken to judicial custody and sent to jail, the remedy of the accused/petitioner is to offer fresh solvency by payment of penalty to the earlier bonds executed that were breached by his non-appearance and the sureties also for not even produced him pursuant to their undertaking for his enlargement as per the anticipatory bail order supra.

8. Instead of so availing that remedy he unnecessarily filed bail application again with a wrong provision under Section 437 Cr.P.C. and without even mentioning about the earlier bail order is in force and the learned Assistant Sessions Judge also did not advert to it, either mistakenly or otherwise, in dismissing the application and even otherwise rightly dismissed for the original bail order in force could have been sought for fresh bail but for offered fresh solvency by payment of penalty on earlier bonds.

9. Hence, to clear the cloud, the petitioner is given liberty to file application before the lower court by virtue of this order by undertaking to pay penalty on the earlier bonds executed, (for once he paid the penalty being the accused the question of again giving surety notices and imposing penalty against sureties of him does not arise) and offer fresh solvency for his release since the earlier bail order granted in CrI.P.No.294 of 2010, dated 18.05.2010, in this case at crime stage of 82 of 2010 is still undisputedly in force from the record.

10. Accordingly and with the above direction, this criminal petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

27.10.2017
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