

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.657 and 673 of 2018

COMMON ORDER:

The two petitions are filed, under Section 439(2) of the Criminal Procedure Code, seeking cancellation of regular bail granted to A2, by virtue of order in CRLMP.No.2054 of 2017 dated 08.12.2017 and cancellation of anticipatory bail granted to respondents/A1 and A2, by virtue of order in CRLMP.No.1069 of 2017 dated 31.07.2017, by the Sessions Judge, Mahila Court, Vijayawada. Cr.No.237 of 2017 was registered, against A1 and A2, for the offences under Sections 498-A and 376(2)(n)(f) of the Indian Penal Code and Cr.No.353 of 2017 was subsequently registered against A2 for the offence under Section 307 of the Indian Penal Code.

2. Heard the counsel for the petitioner, Mr. S.S. Prasad, learned senior counsel for respondents/accused and the Public Prosecutor appearing for the State.

3. With respect to Cr.No.237 of 2017, which was registered on 15.07.2017 for the offence under Sections 498-A and 376(2)(n)(f) of IPC, the petitioner does not file copy of the original report given by her but she filed the letter of the Inspector of Police, Krishnalanka Police Station, Vijayawada City, addressed to the Assistant Commissioner of Police, South Zone, Vijayawada City, seeking to transfer the case to Suryaraopet Police Station, on the point of jurisdiction, which spells the facts, as under:

On 05.07.2017 at 18.00 Hrs, the victim, who is the complainant, stated that her marriage was performed on 29.05.2005 with A2, by giving dowry of Rs.5 lakhs and 15 sovereigns of gold ornaments, apart household articles. A2 harassed her mentally and physically, even after two children were born. Her father-in-law made allegation that she had illegal contacts with so many persons and that she is giving entire money to them. After the death of her mother-in-law, her father-in-law made so many sexual assaults on her and finally in the month of November, between 7.00 hrs to 8.00 hrs, her father-in-law, forcibly, participated in sexual intercourse and also further several times. Even though she informed the matter to her husband, her husband did not consider her words. She came out in view of unbearable harassment and peculiar attitude of her husband and father-in-law. Later, her husband came to her house and threatened to kill her and her children.

4. The Court below, by elaborately considering the case law and also considering that a perusal of the statements of the father and the mother of the defacto complainant shows that the offence under Section 376 IPC is not attracted and that they also stated that the defacto complainant was residing in her parents house since December 2015, observed that no grave allegations are made out in the complaint given by the defacto complainant and granted bail to the petitioners therein.

5. The second order granting bail to the husband of the defacto complainant, who is the sole accused in Cr.No.353 of 2017, spells the facts, most of which are the same, as mentioned in Cr.No.237 of 2017.

The additional allegations are that the accused therein, who is the husband of the defacto complainant, on 15.11.2017, at about 10.00 PM, came into her bedroom, on the eve of her daughter's birthday, with a view to kill her and beat her in the presence of her children and also throttled her neck and tied a towel to her neck and he fisted on her right eye and attempted to kill her. Her children raised cries and she escaped and dialled 100 on which the police came to the spot and she informed the matter to them. Her husband necked her out of the house, stating that she cannot do anything to him. The police came there and called her husband. He came out but he did not even reply to the police. Again on 17.11.2017, at about 10.00 PM, her husband drove her children and herself and throttled her neck and tied a towel to her neck. Then her children raised cries and she escaped.

6. The Court below, though in detail, did not consider the gravity of the allegations and the truth of the allegations, observed that as the investigation was almost complete and as that the petitioner therein was in jail since 20.11.2017 and granted bail. The contention of the Public Prosecutor, that the offence is heinous in nature and the investigation is still pending, was noted. It also observed that a perusal of the CD file showed that the investigation is almost completed.

7. The petitions are now filed seeking cancellation of the aforesaid bail orders on the ground that the respondents/accused have misused the bail granted to them. After obtaining bail in Cr.No.237 of 2017, the husband of the complainant, committed an offence for which

Cr.No.353 of 2017 was registered. The bail application does not make out any case for any relief and the respondents are not entitled for continuation of bail and that the petitioner apprehends danger to her life and her children in the hands of the accused. She also submits that the conditions imposed in the bail order are not complied with.

8. The order in CRLMP.No.1069 of 2017 in Cr.No.237 of 2017 is delivered in the petition filed for grant of anticipatory bail, while the order in CRLMP.No.2054 of 2017 in Cr.No.353 of 2017 is delivered in a petition seeking grant of regular bail. There are no conditions imposed while granting anticipatory bail to the respondents/accused, except that they should furnish a personal bond for Rs.20,000/- with the sureties for a like submit. In the order granting regular bail, apart from the above condition, a condition that the respondent should attend the police station on every Monday and Friday between 8.00 AM and 12.00 Noon till the charge sheet is filed, was imposed. There is no adverse report from the Public Prosecutor, who is the person, who is expected to inform about the non-compliance of the conditions, with regard to the compliance of the said condition. Hence, the petitioner stands without any basis, for the contention that the conditions imposed in the bails orders were not complied with.

9. With regard to cancellation of bail, the counsel for the petitioner relies on the following decisions:

In PRASANTA KUMAR SARKAR v. ASHIS CHATTERJEE¹
the Supreme Court reiterated the factors to be considered while

¹ (2010) 14 SCC 496

considering a bail application. It was stated that those factors should be borne in mind while considering the application for bail. They are as follows:

- 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.

It was observed that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal and considering that the High Court therein completely lost sight of the basic principles enumerated in the decision, the appeal was allowed and the order was set aside.

The decision in *SAVITRI AGARWAL v. STATE OF MAHARASHTRA*² is, in fact, not useful for the petitioner as it was observed that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail, already granted. It was observed that in the said case nothing was brought on record from which it can be inferred that the appellants had not cooperated in the investigation or had, in any manner, abused concession of bail

² (2009) 8 SCC 325

granted to them. It was also observed that rejection of bail in a non-bailable case at the initial stage and cancellation of bail are two different aspects and overwhelming circumstances are necessary for cancelling the bail. The Supreme Court laid down the parameters for grant of anticipatory bail. It was observed that though the power conferred by Section 438 of the Code is of an extraordinary character, it does not justify the conclusion that the power must be exercised in exceptional cases only because it is of extraordinary character.

The decision in *RANJIT SINGH v. STATE OF MADHYA PRADESH*³ lays down the parameters for granting bail. It was observed that no special emphasis is required to state that there is distinction between the parameters for grant of bail and cancellation of bail; there is also distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail, on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. It held that if an order granting bail was a perverse one or passed on irrelevant materials, it can be annulled by superior Court.

10. The counsel for the respondents/accused also relies on certain decisions as under:

In *BHAGIRATHSINH v. STATE OF GUJARAT*⁴ the Supreme Court has laid down the considerations for cancellation of bail and observed that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail; even where a

³ (2013) 16 SCC 797

⁴ (1984) 1 SCC 284

prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour, by tampering with evidence. It was also observed that ordinarily the Supreme Court is not inclined to interfere with the orders either granting or refusing to grant bail to an accused person either facing a criminal trial or whose case after conviction is pending in appeal; but where the order granting the bail by the Sessions Judge was set aside by the High Court, adopting an erroneous approach, the Supreme Court can interfere with the High Court's order of cancellation of bail. It was also observed that the High Court therein was misdirected, while examining the question of directing cancellation of bail, by interfering with the discretionary order of the Sessions Court.

In *BHADRESH BIPINBHAI SETH v. STATE OF GUJARAT*⁵ the Supreme Court laid down principles and guidelines regarding grant of anticipatory bail. The Supreme Court relied on *GURUBAKSH SINGH SIBBIA v. STATE OF PUNJAB* [(1980) 2 SCC 565] wherein the Constitution Bench emphasised that provision of anticipatory bail enshrined in Section 438 of the Code is conceptualized under Article 21 of the Constitution which relates to personal liberty; therefore, such a provision calls for a liberal interpretation of Section 438 of the Code, in the light of Article 21 of the Constitution; the Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the

⁵ (2016) 1 SCC 152

person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore, means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. At para 22 of the judgment, the Supreme Court observed that grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. Hence, this part of the observation of the Supreme Court shows that the cumulative effect of consideration of the circumstances, enters into judicial verdict.

It is also interesting to note that at Para 25.4 the Supreme Court observed that there is no requirement that the accused must make out a special case for the exercise of power to grant anticipatory bail. It is also held that when the Court is inclined to grant anticipatory bail, it shall grant interim bail and then issue notice to the Public Prosecutor, after hearing whom, the Court may either reject or confirm the initial order of granting bail. In the said decision, while holding that no purpose would be served in compelling the appellant to go behind bars; the Supreme Court also observed that the investigation is completed and there is no allegation that the appellant may flee the course of justice and there is no allegation that during this period he had tried to influence the witnesses. It also further observed that in the aforesaid circumstances, even when there is a serious charge levelled against the appellant, that by itself should not be the reason

to deny anticipatory bail when the matter is examined, keeping in view other factors enumerated above.

A Full Bench judgment of the Supreme Court in *STATE (DELHI ADMINISTRATION) v. SANJAY GANDHI*⁶ held that mere turning of witnesses hostile is not enough for cancellation of bail and involvement of the accused in bringing out such result must be shown.

11. As already observed, while granting anticipatory bail the Court below has considered the case law and in the order granting regular bail, the Court below observed that the investigation is completed and that the petitioner therein was in jail since long. Whether it is mandatory that all the considerations, that are held to be necessary for granting bail have to be spelled out by the order, has to be examined.

12. The nature and gravity of the accusation is, however, borne out by the record. The antecedents of the applicant have to be put forth by the prosecution i.e. with regard to the accused undergoing imprisonment on conviction by a court in respect of any cognizable offence. The possibility of the applicant to flee from justice and the possibility of the applicant likely to repeat similar or other offence are also the facts which have to be urged and proved by the prosecution. The impact of grant of anticipatory bail affecting very large number of people is, however, not there in this case. As the disputes are between two private parties, the question of the order granting bail, impacting large number of people, does not arise.

⁶ (1978) 2 SCC 411

13. The parameters for granting bail are laid down and the parameters for cancellation of bail are also laid down by virtue of the above decisions. With regard to the parameters of granting bail, the Court below, while granting anticipatory bail, considered the above parameters. The order granting bail however, only reflects the stage of investigation and the period of detention of the accused. The nature and gravity of the accusation, however, is evident from the record. So also, the severity of the punishment in the event of conviction. With regard to the danger of absconding or fleeing after release on bail; the likelihood of the offence being repeated; the reasonable apprehension of the witnesses being influenced and the danger of justice being thwarted by grant of bail, it is for the Public Prosecution to put forth such submissions and also the material in support of such submissions. The order does not show that any such submissions or material were put forth by the prosecution.

14. With regard to the contention of the counsel for the petitioner, that the respondents committed the offence under Section 307 IPC after anticipatory bail was granted in the earlier crime, this Court opines that the same shall not be the consideration for cancellation of bail, which was granted after the alleged offence was committed by the respondents. Apart from that, if the material on record shows that the allegations, *prima facie*, are not believable, the Court shall not cancel the bail. There is inherent inconsistency in the report given by the defacto complainant/petitioner. The allegation is that on 15.11.2017 there was an attempt of murder on her and that she informed the police about the same but as to what happened after the

police intervened and as to how she was again allowed into the house, so that the same offence was again committed on 17.11.2017 is not explained in the report. So also, the allegation that A1 had sexual intercourse with her on several occasions. It does not receive sufficient strength, for the reason that petitioner does not mention the dates of the offences and does not mention the reasons for her not reporting about the same immediately after the alleged offence took place, which is in one November. Though she does not specify the year, it has to be understood that it is, at any rate, in November 2016, as the report was given in the year 2017.

15. In RANJIT SINGH's case (3 supra) the Supreme Court says that if an order granting bail was a perverse one or passed on irrelevant materials, it can be annulled by superior Court. No perversity can be seen in the impugned orders.

16. From what is observed by the Supreme Court in BHADRESH BIPINBHAI SETH's case (5 supra) it can be understood that when the investigation is completed and there is no allegation that the appellant may flee the course of justice and there is no allegation that during this period he had tried to influence the witnesses, no cancellation of bail is warranted. There are no such allegations in this case. Hence, this Court opines that it is not a fit case for cancelling the bail granted to the respondents/accused.

The criminal petitions are dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

March 22, 2018
DSK