

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.1609 and 1659 of 2018

COMMON ORDER:

The two petitions are filed, under Section 439(2) of the Criminal Procedure Code, seeking cancellation of anticipatory bail granted to A1 to A3/respondents 2 to 4 herein, by virtue of order in CRLMP.No.5484 of 2017 dated 23.01.2018 passed by the III Additional District Judge, Ranga Reddy District and cancellation of bail granted to A1/respondent No.2 herein, by virtue of order in CRLMP.No.270 of 2018 dated 31.01.2018 passed by the IV AJCJ cum XXV Metropolitan Magistrate, Cyberabad, Kukatpally. Cr.No.2446 of 2017 was registered, against A1 to A3, for the offences under Sections 498-A, 323, 307, 420 and 406 of the Indian Penal Code and Cr.No.78 of 2013 was subsequently registered against A1 for the offence under Sections 448, 427, 454, 380 and 201 of the Indian Penal Code.

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

3. The grounds, on which the cancellation of bails, are sought for, are follows:

The petitioner is the defacto complainant. Respondent No.2 is the husband and respondents 3 and 4 are parents-in-law of the defacto complainant. The petitioner and respondent 2 were married and dowry was given at the time of marriage. They lived together initially, with respondents 3 and 4. The petitioner was subjected to

untold harassment by the respondent and they even attempted to kill her by strangulating her. Report was given on 30.11.2017 in Rajendranagar Police Station. On 07.12.2017, the respondents were called to the police station and they were advised to settle the matter amicably. As such a meeting was held on 08.12.2017 and an understanding was arrived at. A Memorandum of Compromise was drawn but when the same was brought for the signatures, to given finality to the matter, respondent No.2 and his counsel scored off certain points and the petitioner also made certain endorsements on the MOC. Pursuant to the said agreement, the family of the respondents, on 09.12.2017, returned part of the jewellery belonging to the petitioner and they promised to return the rest of the jewellery and part of the dowry. Thereafter, respondents 2 to 4 went into hiding and did not come forward to fulfil the conditions.

A writ petition, in WP.No.43501 of 2017, was filed, alleging that respondent No.2 was illegally detained in Rajendranagar Police Station and a direction was sought for to the police, to follow the guidelines in *ARNESH KUMAR v. STATE OF BIHAR* [(2014) 8 SCC 273]. It clearly shows the intention of respondent No.2 to escape from law, by pretending to settle the matter. Not satisfied with the writ petition, respondent No.2 also applied for anticipatory bail, which was granted on 23.01.2018.

Immediately, thereafter, respondent No.2 went to the residential house at Madhapur, where petitioner and respondent No.2 resided and the petitioner continues to reside in the absence of petitioner, broke open the front grill and the main entrance door,

preventing the petitioner from entering the premises. On enquiry, she came to know that respondent No.2 and his sister, A2, broke open the lock, trespassed into the house and committed theft of valuables. They also removed the CC cameras and DVR installed by the petitioner and changed the lock of the house. Immediately, the petitioner lodged a complaint with Madhapur Police Station, based on which, Cr.No.78 of 2018 was registered for the offences under Sections 379, 427 and 448 IPC against the respondent No.2 and his sisters.

4. The allegation is that since CCTV cameras were committed theft of by respondent No.2, which amounts to tampering with the evidence, which is important for proving the offence under Section 307 IPC, for which Cr.No.2446 of 2017 was registered.

5. It would be beneficial to refer to the dates, which are material; 30.11.2017 is the date of registration of Cr.No.2446 of 2017; Cr.No.78 of 2018 was registered on 25.01.2018 i.e. about two months after the registration of the first crime; the statement of the petitioner, in the first crime, was recorded on 30.11.2017 itself, but a perusal of the said statement and the report given by her, does not show that she stated, anywhere in the statement or report, that the offence committed against her attracting Section 307 IPC was captured by CCTV and for that matter, whether CCTV at all was present in the said house. Moreover, though her statement was recorded on 30.11.2017, no effort was made by the Investigating Officer to seize the CCTV footage, which would have been very material for proving the offence under Section 307 IPC. That, in fact, would be the clinching evidence for proving the said offence. The lethargy of the Investigating Officer

in seizing the CC TV cameras and the lapse on the part of the petitioner to mention about the presence of CCTV, would go in support of the contention of the counsel for the respondents/accused, that no such offence, in fact, occurred and that, hence, there cannot be any reason for the respondents to assume that the CCTV would have captured the offence committed by them, so as to commit theft of the same.

6. The counsel for the respondents/accused submits that, admittedly, the house belongs to the sister of the second respondent and as the petitioner left the house by locking it, without handing over the keys, they had to break open the lock. He, on the other hand, relies on the counter affidavit filed by the seventh respondent, petitioner herein, in WP.No.43501 of 2017 wherein she denied the contention that the flat of the petitioner therein was locked by her and that the petitioner was not allowed access to the said flat. She also mentioned in the said affidavit that there was no impediment for the petitioner to collect his personal belongings, if he wishes to do so. Hence, by virtue of taking the said plea in the counter affidavit, the petitioner herein makes her plea in this petition, that she was residing in the said flat and that respondent No.2 broke open the lock of the flat in her absence and committed theft of the articles and CCTV, inconsistent.

7. The counsel for the respondents submits that it is his own clothing and his other articles, that he took away from the flat and that no belongings of the petitioner were committed theft of by him. The articles recovered, in the subsequent crime, are all the personal

belongings and clothing of respondent No.2, apart from CCTV and DVR.

8. As already observed, when there is no material to show that CCTV contained the evidence pertaining to the earlier crime, allegedly, committed by the respondents, the taking away of the CCTV from the house, which belongs to the sister of respondent No.2, where the petitioner obviously is not residing, cannot be termed as a theft committed by respondent No.2.

9. The counsel for the respondents/accused further submits that as the petitioner has abandoned the said house, the respondents were planning to let it out and in pursuance of such plan, they have vacated the house by removing the belongings of respondent No.2. The said statement cannot be brushed aside as untrue.

In BHAGIRATHSINH v. STATE OF GUJARAT¹ 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 *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

¹ (1984) 1 SCC 284

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.

From what is observed by the Supreme Court in BHADRESH BIPINBHAI SETH v. STATE OF GUJARAT² 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 23, 2018
DSK

² (2016) 1 SCC 152