

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
THURSDAY, THE EIGHTH DAY OF MARCH, TWO THOUSAND AND EIGHTEEN
: PRESENT :
THE HONOURABLE SMT JUSTICE T. RAJANI**

CRLP .No. 1932 of 2018

Between:-

Kaladindi Sanyasi Raju, S/o. late Venkata Ramana Raju.
Linga Rajupalem Village, D.No. 4-57-13/2, Sanjeevayya Colony,
Thatichetlapalem, Viskahapatnam.

..... Petitioner/Accused No. 15.

AND

State of Andhra Pradesh, Rep. by Public Prosecutor,
High Court of Andhra Pradesh, Hyderabad.

.....Respondent/Complainant.

Petition filed under Sections 437 & 439 Cr.P.C. praying that in the circumstances stated in the Grounds of Criminal Petition, the High Court may be pleased to enlarge the Petitioner/Accused No. 15, on bail, in Crime No. 151 of 2017, on the file of the Bheemunipatnam Police Station.

The petition coming on for hearing, upon perusing the memorandum of grounds filed in support thereof and upon hearing the arguments of Sri Mavidi Rama Rao, Advocate for the Petitioner and of Public Prosecutor(AP) on behalf of Respondent-State, the Court made the following **ORDER :-**

“This petition is filed under Sections 437 and 439 of Cr.P.C., seeking to enlarge the petitioner, accused No.15, on bail in Crime No.151 of 2017 on the file of the Bheemunipatnam Bhimili Police Station, registered for the offences punishable under Sections 420, 465, 466, 468, 471, 120(B) read with 34 IPC, Section 74 of the Income Tax Act, 2000-2008 and Section 13(1)(c) and (d) read with 13(2) of Prevention of Corruption Act, 1988.

Heard the learned counsel for the petitioner and the learned Public Prosecutor and perused material placed on record.

The case of the prosecution is that the petitioner is the son of A-3, Klidindi Rama Devi, and brother-in-law of A-8, Namburi Narayana Raju, and he was an active member in the conspiracy, on the direction of A-8. In pursuance of the conspiracy between the revenue officials and A-8, his family and henchmen A-15 made an application under 6(a) for obtaining Pattadar pass books and title deed, in respect of lands, to an extent of Acs.18.00 cents in Chippada village. All these lands come under the category of surplus lands and belong to Government of A.P. A-8 and A-15 influenced the legal heirs of erstwhile Vijayanagaram estate and obtained no objection affidavits, based on which A-1 and A-2 issued Pattadar pass books and title deeds, to an extent of Acs.07.92 cents in Survey No.159/3 and an extent of Ac.0.94 cents in Survey No.163/1C of Chippada village, in favour of the petitioner. It is further case of the prosecution that the petitioner, in connivance with A-8, A-1, A-2 and other henchmen, committed land grabbing offences and obtained pattadar pass books.

The learned counsel for the petitioners submits that initially the name of the petitioner was not shown as accused and it is only based on the confession of the co-accused that his name came to light. He further submits that the survey numbers in respect of which alleged offence is said to have been committed, do not pertain to this petitioner at all.

Contd....2..

The learned Public Prosecutor raises a preliminary objection, with regard to the entertainment of this bail application, on the ground that this petition is filed directly before this Court, without approaching the lower Court.

The learned counsel for the petitioner, in answer to the said contention placed reliance on the judgment of the Apex Court in Criminal Appeal No.689 of 2014, dated 27.03.2014, between SUNDEEP KUMAR BAFNA Vs. STATE OF MAHARASHTRA AND ANOTHER wherein the Apex Court held that Section 439 does not specify that the accused has to first approach the Magistrate Court and seek bail and that the accused can directly approach High Court and Sessions Court for regular bail. The only precondition being, that the person seeking bail should be in custody.

The learned Public Prosecutor, on the other hand, placed reliance on the ruling of the Apex Court in GURCHARAN SINGH AND OTHERS Vs. STATE (DELHI ADMINISTRATION)¹ in support of his contention that the accused has to first approach the Magistrate Court for seeking bail under Section 439 Cr.P.C. But a reading of the said judgment shows that it was observed therein, at paragraph 27, that ordinarily the High Court will not exercise its discretion to interfere with an order of bail granted by the Sessions Judge in favour of an accused. Hence, it can be understood that approaching the Magistrate Court is not a hard and fast rule and that it is only a practice, generally, being followed. Another ruling relied upon by the learned Public Prosecutor reported in KWMTAGWRA BRAHMA Vs. STATE OF ASSAM² wherein also it was observed that normally an accused, should file an anticipatory bail application before the Sessions Court and thereafter approach the High Court.

The ruling relied upon by the learned Public Prosecutor, which is reported in K.GAJENDRA NAIDU Vs. STATE OF AP.,³ is with regard to maintainability of second application under Section 438 Cr.P.C. Hence, the same need not be discussed as the issue, now, in this case, is not that. The ruling of this Court reported in Y.CHENDRASEKHARA RAO AND OTHERS Vs. Y.V. KAMALA KUMARI AND OTHERS⁴ wherein it was observed that sense of urgency under Section 439 is less when compared to Section 438. Hence, the view that the accused has to approach the Magistrate Court first under Section 439, was supported. But, however, the said view is contrary to what the Apex Court held in the case of SUNDEEP KUMAR BAFNA Vs. STATE OF MAHARASHTRA AND ANOTHER, first cited case by the petitioner's counsel. The ruling reported in IMRAN Vs. STATE GOVT. OF NCT OF DELHI⁵ does not make any point in favour of the learned Public Prosecutor, as it was held at para 11, that indisputably, the jurisdiction under Section 439 of Cr.P.C. for grant of bail is the concurrent jurisdiction of High Court as well as the Court of Session; but it would always be advisable to approach the Court of Session first to avail this remedy and further in the High Court, under Section 439 of Cr.P.C. From the above, it can be understood that it is only a rule of convenience and caution, given by the High Court of Delhi.

The reliance placed by the learned Public Prosecutor on the notifications of this Court, specifying that the vacation Courts would entertain the bail applications if bail is refused by the Magistrate Court, Sessions Court, cannot be given any credence, as they are only notifications and do not lay down any rule of law. It only prescribes the work that has to be taken during the vacation Courts. Hence, from the above rulings, it can be understood that approaching the Magistrate Court or the Sessions Court, as the case may be, before approaching the Court under Section 439 Cr.P.C., is only an advice given as a rule of caution and it is not mandatory that the accused should approach the lower Court, before approaching this Court. However, the High Court of Gauhati in the judgment second supra, laid down certain circumstances under which the accused can directly approach the High

¹ (1978) 1 Supreme Court Cases 118

² (2015) 3 GAUHATI LAW REPORTS 453

³ 1991(2) Andhra Pradesh Law Journal

⁴ 1993 SCC Online AP 243 : 1993 Cri LJ 3508

⁵ 2016 SCC Online Del 6158

Court, one of them being that when the Sessions Court has already rejected the application for grant of bail under Section 438/439 of Cr.P.C. where one of the persons/accused is similarly placed, it is not necessary that the similarly placed persons/accused should approach the Sessions Court for grant of bail. But, he can file an application before the High Court under Section 438/439 of Cr.P.C. In this case, it is a circumstance, reverse to the above circumstance, which brings the petitioner before this Court. The circumstance which is pleaded in his favour is that the Court below, when this petitioner filed a petition seeking anticipatory bail, did not dispose it of within the reasonable time and hence, he feels it convenient to move this Court. Though it is not similar to the circumstance stated by the Gauhati High Court, it operates similarly, in terms of futility of the petitioner in approaching the Magistrate Court. The other circumstance is that the other accused in this crime were already enlarged on bail. The said submission is not refuted by the learned Public Prosecutor.

Having regard to the facts and circumstances of the case and the submissions made by the learned counsel on either side and also taking into consideration that the petitioner has been in jail since more than 20 days, this Court is of the view that this petition is liable to be allowed. Accordingly, the petitioner is directed to be enlarged on bail on his executing a personal bond for a sum of Rs.40,000/- (Rupees forty thousand only) with two sureties for a like sum each to the satisfaction of the III Additional District Judge, Visakhapatnam. Further, the petitioner, accused No.15, is directed to appear before the Station House Officer, Bheemunipatnam Bhimili Police Station, Visakhapatnam, twice in a week i.e. on every Monday and Wednesday between 10:00 a.m. and 12:00 noon.

As a sequel, miscellaneous petitions, if any, pending on this file shall stand closed.

Sd/- I. NAGA LAKSHMI,
ASSISTANT REGISTRAR

//TRUE COPY//

for ASSISTANT REGISTRAR

To

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- TKK

HIGH COURT

TR.J

DT.08-03-2018.

BAIL ORDER



CRL.P.No. 1932 of 2018

**RELEASE THE PETITIONER
ON BAIL.**

**DRAFTED BY TKK
DT.09-03-2018.**

HIGH COURT

TR.J

DT.08-03-2018.



BAIL ORDER

CRL.P.No. 1932 of 2018

**RELEASE THE PETITIONER
ON BAIL.**