

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.2924 OF 2018

ORDER:

This criminal petition is filed under Section 439(2) Cr.P.C. to cancel the anticipatory bail granted on 31.01.2018 in Crl.P.No.660 of 2018 on the ground that the petitioner disobeyed the conditions imposed by the Court more particularly condition No.2 in terms of Section 438(2) Cr.P.C.

The specific case of the petitioner is that subsequent to grant of bail a panchayat was held and in the said panchayat, the accused allegedly squeezed her neck with an intention to kill her and due to intervention of elders and relatives, she was rescued. Thereupon, she lodged a report with the police on the same day. On the strength of the report, the police registered a case in Crime No.33 of 2018 at Wyra Police Station, for the offences punishable under Section 294(b), 323 and 506 IPC.

In view of the subsequent events, the petitioner sought for cancellation of bail granted by this Court in Crl.P.No.660 of 2018 on 31.01.2018.

Learned counsel for the petitioner reiterated the contentions urged in the petition while drawing the attention of this Court to the report lodged with the police, which is basis for registration of the case against the accused and prayed to allow the petition.

Learned counsel for the 2nd respondent contended that the accused is a train ticket examiner in Indian Railways and when father of the *de facto* complainant, offered to settle the dispute in the police station, father of the petitioner came to the police station along with 15 supporters and in the heat of fashion there was an altercation and that the accused did not cause any injuries on the body of the petitioner and that the

accused also received injuries in the said altercation and when he made an attempt to lodge a report, the police did not receive the same. Even otherwise, this could not fall within the parameters and placed reliance in **Surendra Singh v State of Bihar and others¹**, **CBI, Hyderabad v Subramani Gopalakrishnan and another²** and **N.Jaykumar v Kandali Srinivasulu Reddy and two others³**.

It is an undisputed fact that this Court granted bail by order dated 21.01.2018 in CrI.P.No.660 of 2018 while imposing following conditions:

"i) The petitioner/A1 shall make himself available for interrogation by a police officer as and when required.

ii) The petitioner/A1 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer

iii) The petitioner/A1 shall not leave India without the previous permission of the Court."

As the 2nd respondent/accused allegedly violated condition No.2 in terms of Section 438(2) Cr.P.C., the bail is to be cancelled. Even according to the condition No.2, the petitioner/A1 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer. But here, the petitioner is the wife of the 2nd respondent/accused and she lodged report with the police, hence, violation of condition no.2 would not attract. Even according to Section 439(2) Cr.P.C. the High Court or Court of Sessions may direct that any person who has been released on bail under this chapter be arrested and commit him to custody. But no specific circumstances are enumerated under Section 439(2) Cr.P.C. to issue

¹ 1990 CrLJ 1904

² CrI.A.Nos.985-986 of 2011, dt 21.04.2011

³ CrI.P.No.7055 if 2014 and batch, dt 03.06.2014

such direction. But power is conferred on the Court to direct the person, who was granted bail to surrender before the Police etc. However, in **State (Delhi Administration) v Sanjay Gandhi**⁴ the Apex Court laid down the guidelines to exercise power under Section 439(2) Cr.P.C. to issue such direction, which is reiterated in **Surendra Singh's case** referred supra. Similarly, the Apex Court in **Subramani Gopalakrishnan and another's case** referred supra at para 21 laid down the following guidelines:

“21) It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

Unless subsequent act of accused falls within the parameters, the Court cannot exercise power under Section 439(2) Cr.P.C. to issue direction to the accused to surrender before police and commit him to prison. The act committed by the accused i.e. registration of crime, when the accused allegedly caused injury on the body of the petitioner would not fall within the parameters to exercise power under Section 439(2) Cr.P.C. Therefore, the ground urged in the petition to cancel bail

⁴ AIR 1978 SC 961

exercising power under Section 439(2) Cr.P.C. did not fall within the parameters laid down in **Subramani Gopalakrishnan and another's** case referred supra. As such I find no ground to cancel the bail petition.

In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

10.04.2018
kvrm

