

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2936 OF 2018

ORDER:

A.6 in Crime No.110 of 2017 of Bobbili Police Station, Vizianagaram District, apprehending his arrest, filed this criminal petition under Section 438 of the Code of Criminal procedure, 1973 (for short 'CrPC'), to release him on bail in the event of his arrest in connection with the above crime registered for the offence punishable under Section 307 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 25(1)(A) and 27(2) of the Indian Arms Act, 1959 (for short 'the Act').

The case of the prosecution, in brief, is that the *de facto* complainant lodged a complaint alleging that on 16.04.2017 himself and his friends went to morning walk at Koti tank bed and when they were returning to home at 6.45 p.m., from his behind some unknown persons suddenly attacked with country made weapon and opened fire against him, immediately the *de facto* complainant tried to caught the person who opened fire against him, but due to fire-arm injury he was unable to caught him and his friend Ganapathi Raju and Srinu caught hold the said unknown persons and he was shifted to the hospital. On the strength of the same, the police registered the crime and issued F.I.R.

The main contention of the petitioner is that some unknown persons caused injury behind the *de facto* complainant, he is not person, who allegedly caused such injury, and therefore, he was falsely implicated in the crime and prayed to grant pre-arrest bail apprehending his arrest in connection with the crime.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition while contending that earlier application in CrI.P.No.2126 of 2018 was dismissed on 01.03.2018 in his absence and the order will have no bearing on the issue involved in the present petition and apart from that there is absolutely no material till date to connect the petitioner with the offence and in the absence of any material, the Court can direct the Station House Officer to release the petitioner on bail in the event of his arrest in connection with the above crime.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition on the ground that the material witnesses were examined during investigation, the statements of witnesses disclosed that the petitioner is the person who caused injury to the *de facto* complainant with an intention to kill him and when there is material on record, the Court cannot grant pre-arrest bail, which is not a matter of routine. Unless there are exceptional circumstances, the Court cannot grant pre-arrest bail and prayed to dismiss the petition.

Sustaining fire-arm injury by the *de facto* complainant is not in dispute, but who caused injury is a question of fact. At this stage, it is not possible to decide, however, it is the duty of the Court whether there is, *prima facie*, evidence to connect the petitioner with the offence. The statement of the *de facto* complainant clearly disclosed that the petitioner, on account of illicit contact with his wife, caused such injury to put an end to his life and similarly the other witnesses, Akkena Reshmitha Naidu also stated that injury was caused by the petitioner, as stated by L.W.1/ *de facto* complainant, therefore, material on record clearly shows, *prima facie*, that the person who caused fire-arm injury is the petitioner.

The other contention of Public Prosecutor is that when earlier bail application in CrI.P.No.2126 of 2018 was dismissed on 01.03.2018, renewal of the same request would not serve any purpose, if there are no changed circumstances, hence, the petitioner cannot be enlarged on bail in the event of his arrest. But this contention was refuted by the counsel for the petitioner contending that the earlier order was passed in his absence, and therefore, dismissal of earlier bail application would not come in the way of the petitioner.

As seen from the order dated 01.03.2018 in CrI.P. No.2126 of 2018, it appears that the order was passed on merits only, not in the absence of the counsel for the petitioner. The normal rule is that when an application was dismissed and renewing the same request without changed circumstances would not permit the Court to grant bail on the same grounds. This question is no more *res integra* in view of the law laid down by the Apex Court in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & others**¹ wherein it was held that the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be

¹ 2005 SCC (Cri.) 489

re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

When a bail application is rejected there is no bar to entertain another application afresh since principle of *res judicata* has no application, however there must be some new ground to be made out to apply for bail again after rejection of earlier bail application (vide: “**Gama v. State of U.P.**”²)

Whereas Delhi Court in “**Rajender Singh v. State**”³ held that after rejecting bail application 12th time, when the application was filed for 13th time on the ground that there are new developments in the investigation is impermissible.

In “**State of Tamil Nadu V. S.A. Raja**”⁴ (referred supra) the Apex Court held in paragraphs 8 & 9 when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

Similarly in “**Parvinder Singh v. State of Punjab**”⁵ the Apex Court held that dismissal of earlier bail application would not render

² 1987 Cr.L.J. 242 (All)

³ 1988 Cr.L.J 749 (Del.)

⁴ (2005) 8 Supreme Court Cases 380

⁵ (2003) 14 SCC 615

fresh bail application legally not maintainable and Court can always consider fresh circumstances and subsequent events.

Thus, the law consistently laid down by the Apex Court and other Courts is that if there are major changed circumstances subsequent to dismissal of earlier bail application, the Court can entertain application for bail, consider the same and decide afresh. Merely, on the ground that the earlier application was dismissed, the Court cannot straightaway dismiss the fresh bail application and if major changed circumstances are shown to the satisfaction of the Court, the Court can grant bail. A similar view is expressed by the Apex Court in **Kalyan Chandra Sarkar** case (referred supra). In the present facts of the case, though the application was renewed 7 days after dismissal of earlier application CrI.P.No.2126 of 2018, no additional material is brought on record and no substantial changed circumstances including investigation are brought to the notice of this Court enabling this Court to exercise jurisdiction under Section 438 CrPC.

Therefore, renewing the request without there being any change of circumstances would lead to bad precedent and judicial indiscipline. Hence, I am not inclined to consider the bail application to grant pre-arrest bail at this stage as there are no changed circumstances in the investigation.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

21.03.2018
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