

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.3734 OF 2018**

**ORDER:**

This Criminal Petition, under Sections 437 and 439 of Cr.P.C., is filed by the petitioner/Accused No.2, who has been in judicial custody since 08.02.2018, to enlarge him on bail in Crime No.2/RCA-CR.2/2018, pending on the file of the Station House Officer, Anti-Corruption Bureau Police Station, City Range-II, Hyderabad, registered for the offences punishable under Section 13(1)(e) R/w.13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act').

2. Heard the learned counsel for the petitioner/A-2, learned Public Prosecutor (T.S.) appearing for the respondent-State, and perused the record.

3. The petitioner, earlier, filed an application in Criminal Petition No.3149 of 2018, under Sections 437 and 439 of Cr.P.C., to enlarge him on bail but the said Petition was dismissed *vide* orders of this Court on 23.03.2018 holding that the investigation is not completed and the Auditor of M/s. Sri Sai Hari Hara Estates Private Limited and Sri E.Veerender Reddy were not examined under Section 164 Cr.P.C. But the present Petition was admittedly filed by the petitioner on 27.03.2018 *i.e.*, within 4 days from the date of dismissal of his earlier bail application on 23.03.2018 renewing his earlier request to enlarge him on bail.

4. Though 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 applications. Ordinarily, the issues which had been canvassed earlier would not be permitted to be 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 as held by the Apex Court in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav**<sup>1</sup>.

5. When a bail application is rejected, there is no bar to entertain another application, afresh, since principles of *res judicata* have no application, however, there must be some new ground to be made out to apply for bail, again, after rejection of earlier bail application, as held by the Allahabad High Court in **Gama Vs. State of U.P.**<sup>2</sup>. In **Rajender Singh Vs. State**<sup>3</sup>, after rejecting bail application 12<sup>th</sup> time, the Delhi High Court allowed the bail application when filed for 13<sup>th</sup> time on the ground that there are new developments in the investigation. In **State of Tamil Nadu Vs. S.A. Raja**<sup>4</sup>, the Apex Court in Paragraphs 8 and 9 held that when a learned Single Judge of the same Court had denied bail to the petitioner/accused 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

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<sup>1</sup> AIR 2005 SC 921

<sup>2</sup> 1987 Crl.L.J. 242 (Allahabad)

<sup>3</sup> 1988 Crl.L.J. 749 (Delhi)

<sup>4</sup> AIR (2005) SC 4462

would lead to bad precedents. Similarly, in ***Parvinder Singh Vs. State of Punjab***<sup>5</sup>, the Apex Court held that dismissal of earlier bail application would not render fresh bail application legally not maintainable and Court can always consider fresh circumstances and subsequent events.

6. Thus, the law consistently laid down by the Apex Court and other High Courts is that, if there are major changed circumstances subsequent to dismissal of earlier bail application, the Court can entertain such bail application, 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 brought to the notice of the court, the Court can grant bail.

7. Adverting to the present facts of the case, the reason for renewing the present Petition, within one month from the date of dismissal of the earlier bail Petition is that, this Court, on an erroneous appreciation of facts, concluded that, till date, record of the statements of Sri E. Veerender Reddy, who is unconcerned with M/s. Sri Sai Hari Hara Estates Private Limited, was not completed under Section 164 of Cr.P.C. This Court, in fact, dismissed the earlier Petition on the ground that investigation is not completed and statements of the witnesses *i.e.*, the Auditor of M/s. Sri Sai Hari Hara Estates Private Limited and Sri E. Veerender Reddy, are required to be recorded under Section 164 of Cr.P.C. But the contention of the petitioner is that the said Veerender Reddy is no way concerned with activities of M/s. Sri Sai Hari Hara Estates Private Limited. But, on that ground the request of the petitioner cannot be entertained at this stage as this Court does not sit over an appeal while deciding an application for grant of bail, filed under Sections 437 and 439 of Cr.P.C.

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<sup>5</sup> 2004 (14) SCC 615

8. The other contention raised by the learned counsel for the petitioner, during the course of arguments, is that the amount allegedly invested by A-1 and his in-laws in M/s.Sri Sai Hari Hara Estates Private Limited was already repaid and, in fact, that was considered by this Court in Criminal Petition No.3149 of 2018. Moreover, till date, the statements of the Auditor of M/s. Sri Sai Hari Hara Estates Private Limited and Veerender Reddy were not recorded under Section 164 of Cr.P.C. Therefore, absolutely, no changed circumstances, or any additional material, for enlarging the petitioner on bail, are brought to the notice of this Court by the learned counsel for the petitioner.

9. In view of the law declared by the Apex Court in the decisions referred *supra*, it is difficult to accept the contention of learned counsel for the petitioner that there are major changed circumstances, which entitle him to claim bail under Sections 437 and 439 of Cr.P.C. Therefore, filing of successive bail applications, without there being any major change in the circumstances of the case, would not serve any purpose and even incarceration in jail for long period as pre-trial detention is also not a ground to enlarge the petitioner on bail, in view of the law declared by the Apex Court in ***Pappu Yadav*<sup>1</sup>**.

10. Therefore, I find no substantial or major changed circumstances to enlarge the petitioner on bail, within 4 days from the date of dismissal of his earlier bail application. On this ground alone, the petitioner is not entitled to claim bail in the instant crime, which involves a serious economic offence.

11. Sri S. Ashok Anand Kumar, learned counsel for the petitioner, would submit that this petitioner is no way concerned with the offence and the role played by this petitioner would not attract the definition of

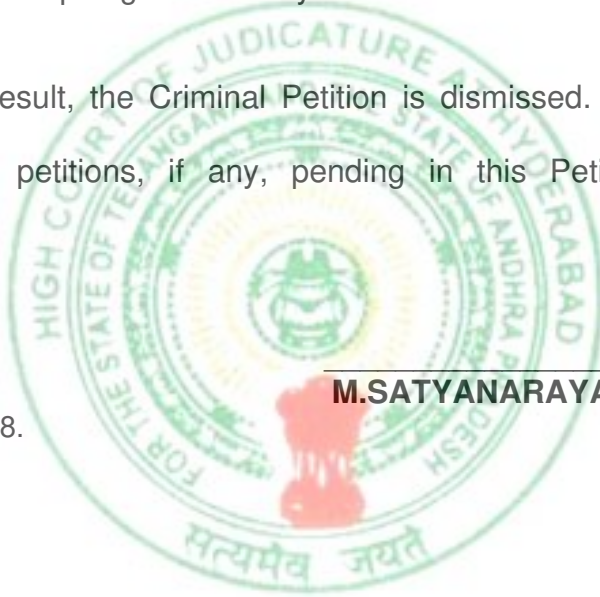
'*abetment*' to try with the other accused under Section 109 of I.P.C. This aspect was also earlier dealt with by this Court in Criminal Petition No.3149 of 2018 and, therefore, as on today, no changed circumstances are brought to the notice of this Court, after dismissal of the earlier bail application.

12. In those circumstances, based on the same material and same stage of investigation, this Court is not inclined to grant bail to the petitioner. However, the petitioner, if he is entitled, can file an application before the appropriate Court, as per Section 167(2) of Cr.P.C., as 58 days of his remand is expiring as on today.

13. In the result, the Criminal Petition is dismissed. In consequence, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

Date: 06.04.2018.  
Dsh

**M.SATYANARAYANA MURTHY, J**



**HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

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**DSH**