

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.3879 OF 2018

ORDER:

This criminal petition is filed under Section 437 and 439 Cr.P.C to grant bail to the petitioner/A1 in Crime No.2/RCA-CR.2/2018 of ACB, City Range, Hyderabad, registered for the offences punishable under Sections 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

The case of the petitioner/A1 is that he allegedly committed the offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and he is in judicial custody for the last more than 50 days and out of the said period, the petitioner is in police custody for six days. The respondent filed application for police custody of the petitioner and the same was dismissed by the Sessions Court on 22.02.2018.

The main allegation against the petitioner is that he adopted corrupt practices, collected huge amount and invested in various properties including the firm i.e. Sri Sai Hari Hara Estates Pvt. Ltd., Hyderabad, being run by A2. It is also contended that A3 was already enlarged on bail and entire investigation is completed and prayed to enlarge the petitioner on bail.

Whereas, Special Public Prosecutor for ACB, appearing for respondent opposed the bail application on the ground that mere enlargement of other accused is not a ground to enlarge the petitioner on bail and that the petitioner successfully avoided his arrest for a long time and that the petitioner invested huge amounts in the business of A2, who allegedly aided the petitioner and apart

from that A3 was enlarged on bail on the ground that he was student.

The petitioner, earlier, filed an application in CrI.M.P.No139 of 2018 before the Principal Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad, 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 07.03.2018 holding that the investigation is not yet completed and many more witnesses have to be examined and documents to be seized. But the present Petition was admittedly filed by the petitioner on 29.03.2018 *i.e.*, within 22 days from the date of dismissal of his earlier bail application on 29.03.2018 renewing his earlier request to enlarge him on bail.

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**¹.

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.**². In **Rajender Singh Vs. State**³, after rejecting bail application 12th time, the Delhi High Court allowed the bail application when filed for 13th time on the ground that there are new developments in the investigation. In **State of Tamil Nadu Vs. S.A. Raja**⁴, 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 would lead to bad precedents. Similarly, in **Parvinder Singh Vs. State of Punjab**⁵, 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.

¹ AIR 2005 SC 921

² 1987 Cr.L.J. 242 (Allahabad)

³ 1988 Cr.L.J. 749 (Delhi)

⁴ AIR (2005) SC 4462

⁵ 2004 (14) SCC 615

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.

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 on an erroneous appreciation of facts. The Court, in fact, dismissed the earlier Petition on the ground that investigation is not yet completed and statements of the witnesses are required to be recorded under Section 164 of Cr.P.C. 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.

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*¹**.

Therefore, I find no substantial or major changed circumstances to enlarge the petitioner on bail, within 22 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.

The contention of the petitioner is that when the other accused were enlarged on bail, this petitioner is also entitled to claim bail on the principle of parity. But the principle of parity cannot be applied while granting bail to the petitioner in serious offences.

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.

In the result, the criminal petition is dismissed.

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

M.SATYANARAYANA MURTHY,J

12.04.2018
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