

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.4734 of 2018

ORDER:

The defacto-complainant is no other than father of the deceased and father-in-law of A.1, A.2 to A.5 are A.1's parents, brother and relative. The crime No.72 of 2018 is registered by Dharmavaram Urban Police originally under Section 174 CrPC, later altered with a memo to Section 304-B r/w 34 IPC against 5 accused. The learned Addl.Sessions Judge-cum-Judge, Family Court by common order, dt.22.03.2018 in CrI.M.P.No.255 of 2018 and in CrI.M.P.No.262 of 2018 and in CrI.M.P.No.262 of 2018, from A.1 and A.2 are in judicial custody since 15.03.2018 and A.3 since 13.03.2018, while dismissing the bail to A.1, granted regular bail to A.2 and A.3 and in CrI.M.P.No.255 of 2018 granting anticipatory bail to A.4 and A.5 with the observations that as per the material from the very report, there is nothing spoken against the A.4 and A.5. So far as the suicide committed by the deceased is while staying at her parents house after vexed with the legal notice that cause issued by the A.1 for divorce and not because of harassment. In fact, the learned Judge had pointed out the difference between Section 304-B and 306 IPC including with similar observation for granting subsequently regular bail to A.1.

One of the averments in the bail cancellation petition is that A.1 is in judicial custody and by considering the concession of bail given to these A.2 to A.5, the A.1 is likely to be released. In fact, the A.1 was later granted bail by the judge by order, dt.16.04.2018 in CrI.P.No.380 of 2018.

On perusal of the averments no doubt discloses the deceased was subjected to harassment with cruel treatment while staying with A.1 and A.2 and A.3 were also staying there either at Bangalore and later at

Dharmavaram to where they shifted the family and unable to bear the onslaughts of the A.1 to A.3, she earlier attempted to commit suicide but was saved and survived and she was dropped forcibly at her parents' house at Dasharah festival by the accused persons with an additional demand for dowry and with no lapses of time thereafter the A.1 cause issued legal notice to her demanding for divorce. The only thing to be considered is soon before death she was subjected to cruel treatment with a demand for additional dowry. Once the fact attract the conclusion of the learned Sessions Judge to it at best attracts u/ sec.306IPC against A.1 and not Section 304-B IPC from the so called contention of the learned counsel for the petitioner is untenable. However, it is not an application for cancellation of bail of A.1 to go into that, now so far as the cancellation of bail of the other accused A.2 to A.5 concerned, what is the ground urged is A.1 is likely to be granted bail basing on the concession granted to A.2 to A.5 and nothing more but that is not a ground to cancel the bail already granted to A.2 to A.5 for not even a case that they are interfering with and threatening any of the prosecution witnesses.

So far as the general allegation are concerned, they are innocent and the very Investigating Officer is not properly conducting investigation for that they could not mention any specific incident. However, by virtue of this order if they have any apprehension, they can make a fresh application and the Superintendent of Police, Anantapur is directed verify the investigation and if at all it is not going on fair lines, change the Investigating Officer. As pointed out by the learned counsel for the petitioner so far as the bail granted to A.2 to A.5 there is imposed the condition of solvencies only of Rs.10,000/- with two sureties without imposing any of the conditions which are stipulated from the very wording of Section 437 r/ w 439 CrPC.

Having regard to the above, the conditions imposed by the trial Court, granting anticipatory bail to A.4 and A.5 and regular bail to A.2 and A.3, besides imposing other conditions, are modified as follows:-

1. The respondents 4 and 5/A.4 and A.5 that were granted anticipatory bail by the Sessions Court, shall within fifteen (15) days from today submit before the S.H.O. concerned and execute a self-bond for Rs.50,000/- [Rupees fifty thousand only] with two sureties for like sum each to the satisfaction of the arresting authority, otherwise giving liberty to the A.4 and A.5 to submit within said 15 days from now before the Judicial Magistrate of First Class having the jurisdiction, for taking to custody and to enlarge as above whereas the respondents 2 and 3/-A.2 and A.3, that were granted regular bail by the Sessions Court, shall execute a self-bond for Rs.50,000/-[Rupees fifty thousand only] each with two sureties for the like sum each to the satisfaction of the learned Judge (concerned Court). The bond to be obtained is not only to appear before the Court for enquiry or trial and even after trial to appear before revisional or appellate Court or other superior Court - vide decision-Pre-Legal Aid Committee, Jamshedpur v. State of Delhi 1982[2]APLJ 43(SC); so that at stage of committal or other proceedings obtaining of fresh bond from accused and even affidavits of sureties of bonds and solvency earlier produced are ratifying and in existence and enforceable, without even insisting his further presence, such recourse quickens the proceedings at other stages before that Court or other Court without loss of time and it also to some extent complies with the requirement of Section 437A Cr.P.C.

2. The respondents 2 to 5/ A.2 to A.5 shall report before the Investigating Officer alternate day between 9.00A.M. to 10.00A.M. till filing of report/charge sheet as the case may be, thereafter once in a month on 1st Sunday between 6.00 p.m to 7.00 p.m till completion of trial/ enquiry for assurance of their availability to safeguard the interest of the prosecution of jumping bail and interference with witnesses

until further orders being passed by the learned trial Judge relaxing the same, empowering him by virtue of this order.

3. The respondents 2 to 5/ A.2 to A.5 shall attend before the Court of law regularly in enquiry and trial without fail, if not their bail shall be cancelled forthwith, without any further order so that, the learned Judge concerned can also issue NBW by canceling the bail from the power under section 439 [2] Cr.P.C. delegated by this order during pendency of proceedings before the Court.

4. The respondents 2 to 5/ A.2 to A.5 shall not enter the area where the victim and witnesses reside, until further orders being passed by the learned Magistrate relaxing the same empowering him by virtue of this order.

5. The respondents 2 to 5/ A.2 to A.5 shall not leave the State pending enquiry/trial without prior permission of the learned trial Judge.

6. The respondents 2 to 5/ A.2 to A.5 shall furnish their full address with property and bank account particulars and submit their passport/s if any, after enlargement of bail on the next hearing date before the Court concerned (for collecting by police as part of their duty to investigate-also the means of accused and to furnish the same in the final report of investigation to enable the trial Court in the event of considering the need of awarding compensation under section 357 Cr.P.C. so to award from such material and evidence, apart from securing presence and obtaining of bond with sureties under section 437A CrPC etc.), failing which it is open to the learned Judge concerned by virtue of the power conferred by this order to cancel the bail.

7. In the event of the police making out a case for police custody for the purpose of interrogation of the respondents 4 and 5/A.4 and A.5 who were granted anticipatory bail shall be liable to be taken in police custody for facilitating the further investigation remained if any, with the permission of the Magistrate concerned who can grant such

police custody within 10 days from today, not exceeding 12 hours in the presence of a male member, subject to necessary precautions and instructions as per the constitutional bench expression of Apex Court in guideline No.iv in Gurbaksh Singh Sibbia Vs. State of Punjab¹.

8. The bail granted is since a regular one till end of trial (without prejudice to the right to cancel meanwhile in case of need and/ or for non-compliance of conditions supra) any absence of petitioner/ s as accused for hearing/ enquiry or trial, issuance of non bailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the wording of Sec.439(2) Cr.P.C. and as such in such event no fresh bail application can be entertained. As it tantamounts to only cancellation of bail bonds earlier executed, (leave about the power of the Court to issue surety notices by forfeiting bonds and for imposing penalty on the bonds forfeited); the proper course is to direct the accused to work out the remedy to pay penalty on the previous forfeited bonds as per Section 441 to 446 CrPC and to submit fresh solvency with self bond for enlarging them by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

In the result, The Criminal Petition is disposed of. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04.07.2018
Vvr

¹ (1980)2 SCC 565