

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4988 of 2018

ORDER :

This is an application filed as if under Section 389 Cr.P.C. impugning the order of the learned XIII Additional District and Sessions Judge-cum-Additional Metropolitan Sessions Judge at L.B.Nagar of Ranga Reddy District in CrI.M.P.No.171 of 2018 in Crime No.1088 of 2018, dated 12.04.2018, in not choosing to extend the time to comply with the conditional order of release of the accused pending disposal of the appeal on concession of bail. That condition is to deposit 1/4th of the cheque amount pursuant to the conviction judgment of the trial Court. Applications were filed and extensions were obtained and again finally this extension sought, that was dismissed. In fact, this application is not maintainable before the Court under Section 389 Cr.P.C., but for to convert the same within the power of this Court either under Article 227 of the Constitution of India or under Section 482 Cr.P.C., for that the Court inherent power inheres from its very constitution as observed by this Court in referring to the catena of expressions in **Tamialnadu Mercantile Bank Ltd. V. M/s.Subaiah Gas Agency and two others** in CrI.Appeal No.1686 of 2009, dated 30.01.2015, and also from the Three-Judge Bench expression of the Apex Court in **Prabhu Chawla vs. State of Rajastan**¹. Undisputedly, the suspension of sentence order is on condition of deposit of 1/4th of the amount within the fixed

¹ (2016) 16 SCC 30

time. The amount is not deposited even time extended, thereby taken into custody. Once such is the case, so long as that order granting the concession pending appeal not cancelled, the petitioner can comply with that order to release him. On such compliance pending the appeal, if not in the meantime, appeal shall be disposed of as expeditiously as possible, under Section 386 Cr.P.C. read with 390 Cr.P.C., as laid down by the Three-Judge Bench expression of **Bansigh v. State of Uttar Pradesh**², on merits, even in the absence of parties before the Court.

2. Accordingly, the criminal petition is disposed of by setting aside the dismissal order and the lower Court is directed, if amount is paid, to accept and release pending appeal.

Miscellaneous petitions pending, if any, shall stand closed.

6th June 2018.

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Dr. B. SIVA SANKARA RAO, J

² AIR 1996 SC 2439