

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1174 of 2018

ORDER:

Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent-State.

The present revision case is filed questioning the orders passed in CrI.M.P.No.600 of 2018 dated 2.04.2018 in S.C.No. 51 of 2017 on the file of the Metropolitan Sessions Judge-cum-Special Judge for Trial of NDPS Act Cases at Vijayawada, dismissing the application filed under Section 439 Cr.P.C. to enlarge the petitioners on bail.

The facts of the case are that the petitioners herein are A-1 and A-2 in S.C.No. 51 of 2017 charged for the offence under Section 8 (c) r/w Section 20(b) of N.D.P.S. Act.

The case of the prosecution is that after filing of the charge sheet, the sessions case was numbered in the year 2017. However, the police were not able to serve the summons on the address that was furnished by the petitioners as per the record. The Sessions Court issued N.B.Ws. against the petitioners and notice to sureties on 15.02.2018. Pursuant to the issuance of the said N.B.Ws., the petitioners were arrested by executing the non-bailable warrants. Therefore, the petitioners have filed bail application vide CrI.M.P.No.505 of 2018 on 22.03.2018 on the file of the Metropolitan Sessions Judge-cum-Special Judge for Trial of NDPS Act Cases at Vijayawada and the same was dismissed. Again, the petitioners filed CrI.M.P.No. 600 of 2018 before the learned Metropolitan

Sessions Judge-cum-Special Judge for Trial of NDPS Act Cases at Vijayawada. However, after hearing, the said petition was dismissed by orders dated 2.04.2018. Aggrieved by the same, the present criminal revision case is filed.

The learned counsel appearing for the petitioners, would contend that the Court below committed an error in dismissing the petition and the same is liable to be set aside. The learned Metropolitan Sessions Judge-cum-Special Judge for Trial of NDPS Act Cases at Vijayawada, failed to observe that the bail granted earlier is not cancelled by any specific order. Therefore, entertaining of fresh bail application vide CrI.M.P.No.600 of 2018 itself is illegal. In fact, the grant of bail under Section 439 or 437 Cr.P.C. is co-terminus with the final result of the case and not before. Mere issuance of N.B.Ws, and pending its execution or even after execution, it does not tantamount to cancellation of bail. The learned counsel in support of his contention, brought to the notice of this Court a judgment reported in **DASARI SATYANRAAYANA v. THE STATE OF A.P. REP. BY PUBLIC PROSECUTOR**¹ wherein this Court had an occasion to consider the effect of grant of bail and issuance of N.B.Ws. for either violation of the bail conditions or non-appearance of the petitioners before the Court.

Per contra, the learned Public Prosecutor appearing for the respondent-State, opposed the criminal revision case on the ground that since numbering of the sessions case, the petitioners herein were absconding and even the sureties were also not able to procure the presence of the petitioners. The offence charged

¹ 2014(2) ALD (CrI.) 228

against the petitioners is very grave in nature and therefore, if the petitioners are granted bail, there is every possibility of jumping from the bail once again. That apart, he also argued that the petitioners having filed a fresh bail application, it is not open for them to turn round and say that the Court below has committed an error in dismissing the bail application.

Having heard the arguments of both the counsel and perusal of the material on record, the undisputed facts are that the petitioners herein are charged for the offence under Section 8 (c) r/w 20(b) of the N.D.P.S. Act vide S.C. No. 51 of 2017 on the file of the Metropolitan Sessions Judge-cum-Special Judge for Trial of NDPS Act Cases at Vijayawada. During the pendency of the said sessions case, the petitioners have not appeared leading to recovery of sureties money from the sureties. The non-bailable warrants issued against the petitioners were executed and they were remanded to judicial custody. In those circumstances, they filed CrI.M.P.No.600 of 2018 under Section 439 Cr.P.C. praying the Court to enlarge them on bail. The question that crops up for consideration before this Court is:

Whether the petition filed before the Court for grant of bail, is maintainable?

In the circumstances of the case, the only course left open to the petitioners is to move fresh application for execution of fresh bonds before the appropriate Court. Therefore, a fresh application is not maintainable, *per se*, since the earlier order of grant of bail, has not ceased its force. Therefore, the petitioners cannot approach this Court being unsuccessful in moving the second

application before the Court below. This Court in DASARI SATYANRAAYANA v. THE STATE OF A.P. REP. BY PUBLIC PROSECUTOR (cited supra), as submitted by the learned counsel for the petitioners, considered this aspect and held as under:

“[Section 437](#) Cr.P.C. deals with application for bail and consideration regarding non-bailable offences and [Section 439](#) Cr.P.C. deals with the special powers of the High Court or Court of Session in filing of application for consideration of a non-bailable offence. The wording of [Section 439\(2\)](#) Cr.P.C., is very clear, equally from the wording of [Section 437\(5\)](#) Cr.P.C. that the bail can be cancelled by the Court even once granted by ordering arrest and commit him to custody. There must be a specific order once bail is granted either under [Sections 439](#) or [437 Cr.P.C.](#), in cancelling the bail till then the bail for all purposes in force as the regular bail is co-terminus with final result of the case and not before but for the power conferred to cancellation of bail, meanwhile any violations of the conditions of the bail or the like. Having regard to the same, mere issuance of a NBW contemplated by [Section 70\(1\)](#) Cr.P.C. pending its execution or even after execution it does not tantamount to cancellation of a bail in a non-bailable offence once already granted in the absence of any such condition specific in the order granting bail. Here the remedy once the accused jumped for bail or failed to attend as per the terms and conditions of the bail by non-compliance from NBW issued if not recalled before execution, since its execution or recall it is in force, on execution only to deposit the amount of the bond executed by accused equally by sureties and on such deposit of the amount or after submission of the bonds and payment of any amount out of it as penalty by payment by accused, in such event again enforcing against the sureties does not arise, he has to submit fresh bonds. Here, instead of so doing the accused No.3, who is the petitioner herein moved a fresh bail before the trial Court (Assistant Sessions Judge). Fresh bail application is not maintainable per se for nothing to show earlier bail order ceased its force or cancelled otherwise as mere issuance of NBW or its execution per se does not tantamount if no such condition for cancellation of bail in the order of bail from the above provision supra. When such is the case, having went

unsuccessful in moving the second bail application instead of paying the penalty for the bond earlier executed and submit fresh solvency by the accused before the concerned Court, from dismissal of that application by the learned trial Judge the petitioner/A.3 cannot knock the doors of this Court by moving the bail application saying that the bail application thereby is not maintainable because of the bail order no way shows cancelled or ceased its force, but for the remedy to seek to recall of NBW if at all pending and in this case since executed, by payment of the penalty for the bonds forfeited and to submit fresh solvency as per Chapter 33 [Cr.P.C.](#)."

In the circumstances, the criminal revision case is dismissed. However, liberty is given to the petitioners to move a petition for submitting fresh solvency, as per law.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA VA RAO, J

Date: 04.07.2018.
CCM



HON'BLE SRI JUSTICE P. KESHA RAO



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