

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1665 of 2018

ORDER:

Heard the learned counsel for the petitioner 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.787 of 2018 dated 26.04.2018 in SC.No. 42 of 2014 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 petitioner on bail.

The facts of the case are that the petitioner herein is the sole-accused in SC.No. 42 of 2014 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 on 26.04.2013 the petitioner was detained in Vijayawada Railway Police Station and was questioned with regard to the contents of the luggage and on such questioning, he confessed that the luggage contains ganja. Whereupon, he was produced before the I.R.P., Station House Officer, G.R.P.S., Vijayawada. On search, 36 kgs. of ganja was found. In connection with the said crime, the petitioner has obtained bail vide CrI.M.P.No.1360 of 2013 on 24.07.2013 on the file of the Metropolitan Sessions Judge-cum-Special Judge for Trial of NDPS Act Cases at Vijayawada. He was released on bail on his executing a bond for Rs.30,000/- with two sureties for a like sum to the satisfaction of the II Metropolitan Magistrate for Railways,

Vijayawada. After filing of the charge sheet, the sessions case was numbered in the year 2014. However, the police were not able to serve the summons on the address that was furnished by the petitioner as per the record. The Sessions Court issued notice to the sureties and the sureties also expressed their inability to produce the petitioner. In those circumstances, N.B.W. was issued against the petitioner on 9.10.2015. Pursuant to the issuance of the said N.B.W., the petitioner was arrested by executing the non-bailable warrant. Therefore, the petitioner filed CrI.M.P.No. 787 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 26.04.2018. Aggrieved by the same, the present criminal revision case is filed.

The learned counsel appearing for the petitioner, 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 on 24.07.2013 is not cancelled by any specific order. Therefore, entertaining of fresh bail application vide CrI.M.P.No.787 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.W., 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 PROSECUTOR¹ wherein this Court had an occasion to consider the effect of grant of bail and issuance of N.B.W. for either violation of the bail conditions or non-appearance of the petitioner 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 petitioner herein was absconding and even the sureties were also not able to procure the presence of the petitioner. Whereupon, the sureties furnished were also encashed by the Court below. The offence charged against the petitioner is very grave in nature and therefore, if the petitioner is granted bail, there is every possibility of jumping from the bail once again. That apart, he also argued that the petitioner having filed a fresh bail application, it is not open for him 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 petitioner herein is charged for the offence under Section 8 (c) r/w 20(b) of the N.D.P.S Act vide SC. No. 42 of 2014 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 petitioner has not appeared leading to recovery of sureties money from the sureties. The non-bailable warrant issued against the petitioner was executed and he was remanded to judicial custody. In those circumstances, he filed CrI.M.P.No.787 of

¹ 2014(2) ALD (CrI.) 228

2018 under Section 439 Cr.P.C. praying the Court to enlarge him on bail. In the Court below, the petitioner has taken a plea that his previous counsel has informed him that the case was disposed of and as such he could not appear before the Court. Apart from that, he was also suffering with asthma.

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 above said crime, the petitioner was originally granted bail on 24.07.2013 vide CrI.M.P.No.1360 of 2013 vide Crime No.157 of 2013 of GRPS, Vijayawada. The said grant of bail is not cancelled till date. Such being the position, the bail granted earlier, for all practical purposes, is in force and co-terminus with the final result of the case. In the absence of any specific order in cancelling the bail granted earlier under Section 439 or 437 Cr.P.C., for all practical purposes, even though N.B.W. was issued or executed will not tantamount to cancellation of bail. In such circumstances, the only course left open to the petitioner 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 petitioner 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 petitioner, 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 is 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 petitioner 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



CRIMINAL REVISION CASE No.1665 of 2018

Date:04.07.2018

ccm