

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.6659 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.'), is filed by the petitioner/A-2 to quash the order, dated 18.06.2018, in CrI.R.P. No.30 of 2018, passed by the II Additional Sessions Judge, Kadapa at Proddatur (for short, 'the Revisional Court') and consequently quash the order, dated 27.03.2018, in CrI.M.P. No.231 of 2018 in Crime No.138 of 2016 of Yerraguntla Police Station by the Judicial First Class Magistrate, Kamalapuram, Kadapa District (for short, 'the trial Court').

2. Notice served and proof of service is filed but none appeared for the 2nd respondent/de-facto complainant.

3. Heard, the learned counsel for the petitioner/A-2, learned Public Prosecutor appearing for the 1st respondent-State, and perused the record.

4. The facts of the Petition, in brief, are that the petitioner/A-2 obtained bail *vide* order in CrI.M.P. No.3762 of 2017 in Crime No.138 of 2016 of Yerraguntla P.S. from the Judicial First Class Magistrate, Kamalapuram; while enlarging him on bail, the trial Court imposed certain conditions *i.e.*, he shall appear before the Station House Officer concerned on every Sunday and Thursday between 10:00 A.M. to 01:00 P.M. for a period of one month with a further direction not to interfere in the investigation process and co-operate with the investigating agency. Subsequently, as he failed to comply with the order *i.e.*, alleging he had not appeared before the concerned S.H.O. on 24.12.2017, 31.12.2017 and 04.01.2018, the 2nd respondent/de-facto complainant filed CrI.M.P.

No.3762 of 2017 to cancel his bail on the ground that he failed to appear before the concerned S.H.O. on the above three dates and thereby violated the conditions including threatening of witnesses.

5. The petitioner/A-2 filed counter denying the material allegations of the petition *inter-alia* contending that he has attended before the concerned S.H.O. periodically from time to time and did not violate any of the bail conditions and finally contended that the 2nd respondent/de-facto complainant has no *locus-standi* to file this Petition and the competent authority is the concerned S.H.O. and finally prayed to dismiss the Petition.

6. The trial Court, after hearing the argument of both sides, and perusing the material on record, including the report of S.H.O. Yerraguntla P.S. allowed the Petition, canceling the bail granted to the petitioner/A-2 with a direction to surrender him on or before 30.04.2018, mainly on the ground that he failed to attend before the S.H.O. concerned on 31.12.2017 and 04.01.2018.

7. Aggrieved by the said order, the petitioner/A-2 preferred Crl.R.P. No.30 of 2018 before the Revisional Court submitting that he has duly complied with the bail conditions and also attended before the concerned S.H.O. periodically and finally contended that 2nd respondent/de-facto complainant has no *locus-standi* to file Petition for cancellation of bail and the S.H.O. concerned is only the competent person to file this Petition and finally prayed to allow the Revision by setting-aside the impugned order of the trial Court.

8. The Revisional Court, after hearing the argument of both sides, and perusing the material on record, dismissed the Criminal Revision Petition confirming the impugned order therein.

9. Further aggrieved, the petitioner/A-2 filed this Petition, under Section 482 Cr.P.C., to quash the order dated 18.06.2018 passed in Crl.R.P. No.30 of 2018 by the Revisional Court, setting-aside the order dated 27.03.2018 passed in Crl.M.P. No.231 of 2018 by the trial Court.

10. During course of hearing, Sri Vedula Venkata Ramana, learned Senior Counsel, appearing on behalf of Smt.P.Rajani Reddy, learned counsel for the petitioner/A-2, submitted that violating of the conditions of the bail order by the petitioner is a disputed question of fact and when such question is required to be gone into by the trial Court, without recording any finding, the trial Court cannot cancel the bail granted to the petitioner, exercising power under Section 439(2) Cr.P.C., but bail can be cancelled only in exceptional circumstances, only after recording satisfaction of the Court that there is no *prima-facie* material to conclude that the petitioner/A-2 has violated the condition, which is a *sine qua non* to exercise discretionary jurisdiction that conferred either on the Sessions Court or on High Court. But in the absence of any evidence in support thereof, the trial Court cannot cancel the bail granted to the petitioner/A-2 exercising power under Section 439(2) Cr.P.C. and prayed to allow this Petition by quashing both the orders.

11. Learned Public Prosecutor opposed the Petition on the ground that the petitioner/A-2 failed to adhere to the bail conditions imposed by the trial Court.

12. Considering the rival contentions and perusing the material on record, the point for consideration is:

Whether the trial Court exercised power under Section 439(2) Cr.P.C. based on any material? If not, whether the

order passed by the trial Court and affirmed by the Revisional Court are liable to be quashed?

13. **POINT:** Undisputedly, Crl.M.P. No.231 of 2018 filed by the 2nd respondent/de-facto complainant under Section 439(2) Cr.P.C. was allowed on the ground that the petitioner/A-2 failed to appear before the S.H.O. concerned on 31.12.2017 and 04.01.2018 respectively and cancelled the bail granted to the petitioner/A-2 with a direction to surrender him on or before 30.04.2018. Aggrieved thereby, the petitioner/A-2 filed Crl.R.P. No.30 of 2018, under Section 397(2) Cr.P.C. It is an undisputed fact that the order in Crl.M.P. No.231 of 2018 is only an *interlocutory* order, against which no Revision is maintainable, in view of the bar under Section 397(2) Cr.P.C. However, obviously for different reasons, the petitioner/A-2 preferred Revision and the same was also decided on merits, though Revision is not maintainable against such an order. On this short ground, the order in Crl.R.P. No.30 of 2018 is liable to be quashed, in view of the bar under Section 397(2) Cr.P.C. Accordingly, the order dated 18.06.2018 passed in Crl.R.P. No.30 of 2018 by the learned Revisional Court is quashed.

14. The main reason for filing the instant Petition, under Section 482 Cr.P.C., is violation of the conditions in the bail order imposed by the trial Court *i.e.*, alleged non appearance of the petitioner/A-2 before the S.H.O. concerned on 24.12.2017, 31.12.2017 and 04.01.2018 but the trial Court considering the report of S.H.O. Yerraguntla, accepted that the petitioner/A-2 did not appear on 31.12.2017 and 04.01.2018 and cancelled the bail.

15. As per Section 439(2) Cr.P.C. a High Court or Court of Session may direct that any person who has been released on bail under this

Chapter be arrested and commit him to custody but the Section is not clear, under what circumstances the Court can exercise such power under Section 439(2) Cr.P.C. But this Court had an occasion to decide similar issue in ***Smt.P.Kalpana, Rep. by G.P.A. holder M.Krishna Reddy Vs. State of Telangana, Rep. by its Public Prosecutor***¹, wherein Sri Vedula Venkatramana, learned Senior Counsel, appeared for the respondent/ A-11 therein and relied on various decisions, and after elaborate discussions and reviewing the entire case law, this Court held that when the petitioner/accused violated the conditions of bail, the Court can exercise the power under Section 439(2) Cr.P.C. to cancel the bail and the relevant portion is extracted hereunder for better appreciation:

“Learned Senior Counsel for the petitioner strenuously demonstrated that the petitioner did not violate any conditions imposed by the Sessions Court while granting bail and in such case, the Court cannot exercise power under Section 439(2) Cr.P.C and placed reliance on the judgment of the Supreme Court in *Dolatram and others v. State of Haryana* {1995 (1) SCC 349}, wherein, it is held that, rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or

¹ 2018 (2) ALT (Crl.) 340 (AP)

attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

The same principle is reiterated by the Supreme Court in *Padmakar Tukaram Bhavnagare and another v. State of Maharashtra and another* {2012 (13) SCC 720}.

In view of the principles laid down in the above judgments, the possibility for cancellation of a bail may be due to supervening circumstances, *i.e.* circumstances intervening between the date of granting bail and before termination of criminal proceedings. But, in this case, the order passed by the in-charge Sessions Judge in Crl.M.P. No.3726 of 2017 under Section 438 Cr.P.C granting anticipatory bail to the second respondent/A-11 is under challenge in a higher forum. Request of the petitioner is in

consonance with the principle laid down by the Apex Court in *Abdul Basit alias Raju and others v. Mohd. Abdul Kadir Chaudhary and another* {2015 (2) ALT (Crl.) 151 (SC)}. Therefore, this Court can exercise power under Section 482 Cr.P.C or under Section 439(2) Cr.P.C to quash or set-aside or annul the order passed by the in-charge Sessions Judge in Crl.M.P.No.3726 of 2017, subject to availability of grounds to exercise such power.

The Full Bench of the Apex Court in *Aslam Babalal Desai v. State of Maharashtra* {AIR 1993 SC (1)} and *Narendra K. Amin (Dr.) v. State of Gujarat and another* {2008 13 SCC 584} laid down certain parameters for cancellation of bail, by relying on the judgment in *State Through Delhi v. Sanjay Gandhi* {1978 AIR 961}, wherein, it was succinctly held that, rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The Apex Court further stated that, Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court or Court of

Sessions to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody, an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extra-ordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process.

Similarly, in *Bhagirathsinh Judeja Vs. State of Gujarat* {1984 1 SCC 284} the Apex Court held that, very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence.

Finally, the Full Bench of the Apex Court in ***Aslam Babalal Desai*** (referred *supra*), summed up the principle stating that, once the accused has been released on bail his liberty cannot be interfered with lightly *i.e.* on the ground that the prosecution has subsequently submitted a charge-sheet. Such a view would introduce a sense of complacency in the investigating agency and would destroy the very purpose of instilling a sense of urgency expected by Sections 57 and 167(2) of the Code. We are, therefore, of the view that once an accused is released on bail under Section 167(2) he cannot be taken back in custody merely on the filing of a charge-sheet but there must exist special reasons for so doing besides the fact that the charge-sheet reveals the commission of a non-bailable crime, and over-ruled the ratio of ***Rajnikant Jivanlal and Anr. v. Intelligence Officer, Narcotic Control Bureau, New Delhi*** {AIR 1990 SC 71} to the extent it is inconsistent herewith does not, with respect, state the law correctly.

Moreover, in ***Narendra K. Amin*** (referred *supra*), while reiterating the judgments of various High Courts including ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav*** {2005 (1) ALT (Crl.) 272 (SC)}, the Apex Court concluded that, once it is found that bail was granted on untenable grounds, same can be cancelled. The stand that there was

no supervening circumstance has no relevance in such case.

This view is fortified by the judgment in *Puran v. Rambilas & Another* {2001 (2) ALT (Crl.) 108 (SC)}, wherein, the Division Bench of the Apex Court after reviewing the entire law laid down by the Supreme Court in *Niranjan Singh & another v. Prabhakar Rajaram Kharote* {1980 Crl.L.J 426}, *Dolatram* (referred supra) and *Gurcharan Singh v. State (Delhi Administration)* {1978 Crl.L.J. 179} was of the view that, if, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S.439 (2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session *vis-a-vis* the High Court in *R. Rathinam v. State of DSP, District Crime Branch, Madurai*

District and Another {2000 (1) SCR 718}, the Supreme Court reiterated the same principles.

In another judgment of the Apex Court in *Manjit Prakash & others. V. Shobha Devi & another* {AIR 2008 SC 3032}, the Apex Court discussed about the parameters for grant of bail and cancellation of bail that stand on different footings by relying on the majority judgment in *Aslam Babalal* (referred *supra*), *Kalyan Chandra Sarkar* (referred *supra*). But, in *Puran* (referred *supra*), the Apex Court succinctly observed as follows.

"11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of canceling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in *Gurcharan Singh v. State (Delhi Admn.)*. In that case the Court observed as under: (SCC p. 124, para 16) "If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the

High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session *vis-a-vis* the High Court."

Thus, if the order suffers from any perversity or on consideration of any extraneous material, the Higher Court can set-aside or annul or quash the order of regular bail or pre-arrest bail by exercising power under Section 439(2) Cr.P.C, only in extraordinary and overwhelming circumstances.

Similarly, in *Bhagirathsinh Judeja* (referred supra) the Apex Court has held that, very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available

for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. Similar view was expressed by the Apex Court in *Mehboob Dawood Shaikh v. State of Maharashtra* {2004 (3) ALT 11 (SC)}.

In *Neeru Yadav v. State of U.P* {2016 (1) ALT (Crl.) 2010 (SC)}, the Full Bench of the Apex Court again reviewed the law declared by the Apex Court for cancellation of bail by referring the earlier judgments in *State of U.P v. Amarmani Tripathi* {2005 (8) SCC 21}, *Puran* (referred *supra*), *Narendra K. Amin* (referred *supra*), and *Prakash Kadam v. Ramprasad Vishwanah Gupta* {2011 (6) SCC 189} and held as follows:

“At the outset we are obliged to clarify that it is not an appeal seeking cancellation of bail in the strictest sense. It actually calls in question the legal pregnability of the order passed by the High Court. The prayer for cancellation of bail is not sought on the foundation of any kind of supervening circumstances or breach of any condition imposed by the High Court. The basic assail is to the manner in which the High Court has exercised its jurisdiction under Section 439 CrPC while admitting the accused to bail. To clarify, if it has failed to take into consideration the relevant material factors, it would make the order absolutely perverse and totally indefensible. That is why there is a difference

between cancellation of an order of bail and legal sustainability of an order granting bail.”

In *Neeru Yadav* (referred *supra*), a reference was made to the earlier judgment of the Supreme Court in *Ram Govind Upadhyay v. Sudarshan Singh* {2002 (1) ALT (Crl.) 330 (SC)}, wherein, it has been clearly laid down that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of crimes warrants more caution as there is a greater chance of rejection of bail though, however, dependent on the factual matrix of the matter. In the said case, reference was made to *Prahlad Singh Bhati v. NCT of Delhi* {2001 (1) ALT (Crl.) 362 (SC)}, and thereafter the court proceeded to state the following principles:-

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

The Division Bench of the Apex Court in *Abdul Basit* (referred *supra*) again referred the judgments of *Gurcharan Singh* (referred *supra*), *Puran* (referred *supra*), *Narendra K. Amin* (referred *supra*), *Ranjit Singh v. State of Madhya Pradesh* {2013 16 SCC 797} and *Hari Singh Mann v. Harbhajan Singh Bajwa* {2001 (1) ALT (Crl.) 257 (SC) held that, although the court granting bail can cancel the bail on ground of misconduct of accused misconduct or new adverse facts having surfaced after the grant of bail, however, in view of express bar contained in Section 362 Cr.P.C, it cannot review its order as to grant of bail on ground of it being unjustified, illegal or perverse. Such challenge to bail order on ground of it being illegal or

contrary to law can be determined only by the court superior to the court which granted bail.

Similar view was taken by the Apex Court in *Anil Kumar Yadav Vs. State (NCT) of Delhi and another* (AIR 2017 SC 5398}, wherein, the Apex Court again reviewed the law and based on the judgment in *State of Bihar v. Rajballav Prasad* {2017 (2) ALT (Crl.) 133 (SC)}, concluded that the Court while granting bail should exercise its discretion in a judicious manner. Of course, once discretion is exercised by the Sessions Court to grant bail on consideration of relevant materials, the High Court would not normally interfere with such discretion, unless the same suffers from serious infirmities or perversity. While considering the correctness of the order granting bail, the approach should be whether the order granting bail to the Accused was vitiated by any serious infirmity, in which case, the High Court could certainly interfere with the exercise of discretion. The materials available on record prima facie indicating the involvement of the Accused, possibility of Accused tampering with witnesses and the gravity of the crime were not kept in view by the Sessions Court. Since the Sessions Court granted bail to the Appellants on irrelevant considerations and the same suffered from serious infirmity, the High Court rightly set aside the order of grant of bail to the Accused. Even, the judgment of the Apex Court in *Anil*

Kumar Yadav (referred *supra*), supports the view taken in *Abdul Basit* (referred *supra*). Thus, it is clear from the long line of perspective pronouncements that a bail can be cancelled, set-aside or annulled or quashed by the Superior Court when the Court found that it is impregnable or perverse, unjustified and contrary to the principles of law and the bar under Section 362 Cr.P.C has no application to such petition filed before Superior Courts filed challenging order passed by Subordinate Court, i.e. Sessions Court in the present case.

The grounds for cancellation of bail or setting-aside the bail are laid down by the Apex Court in *Usha Devi v. The State of Bihar* {2006 (Crl.L.J.) 4435} which reads as follows:

“17. It is well settled that the grounds for cancellation of bail under Section 437(5) and 439(2) of the Code are identical, namely, bail granted under Section 437(1) or 439(1) of the Code can be cancelled broadly when one or more of the following conditions are fulfilled:

- (i) The accused misuses his liberty by indulging in similar activity,
- (ii) Interferes with the Course of investigation,
- (iii) Attempts to tamper with the evidence,

(iv) Threaten witnesses or indulges in similar activities which would hamper smooth investigation,

(v) There is likelihood of the accused fleeing away to another country.

(vi) Attempts to make himself scare by going underground or becoming unavailable to the Investigating Agency,

(vii) Attempts to place himself beyond the reach of the surety,

(viii) Bail has been granted by an inferior Court in a case involving serious offence shocking to the conscience of the superior Courts

(ix) After investigation the facts disclose commission of graver offence.”

The above guidelines mostly relates to intervening circumstances But, in *Kanwar Singh Meena Vs. State of Rajasthan* {2012 (12) SCC 180} (referred *supra*), the Apex Court observed that, Cancellation of bail is a serious matter. Bail once granted can be cancelled only in the circumstances and for the reasons which have been clearly stated by this Court in a catena of judgments.

In *Dinesh M.N. (S.P) v. State of Gujarat* {2008 (5) SCC 66}, the three Judge bench of the Apex Court held that

where the Court admits the Accused to bail by taking into consideration irrelevant materials and keeping out of consideration the relevant materials the order becomes vulnerable and such vulnerability warrants annulment of the order.”

16. In view of the law laid down by the Apex Court and reiterated by this Court in **Smt.P.Kalpana**¹, the Criminal Petition is liable to be dismissed.

17. Accordingly, with the above observations, the Criminal Petition is dismissed. However, the order dated 27.03.2018 passed in Crl.M.P. No.231 of 2018 by the trial Court needs no interference by this court and the same holds field.

18. Miscellaneous petitions, if any, pending in this petition shall stand closed.

Date: 26.07.2018.
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M.SATYANARAYANA MURTHY, J

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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