

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.8603 of 2018

ORDER :

The 1st petitioner is the defacto-complainant in Cr.No.221 of 2017 of Taluk Rural Police Station, Kurnool. The 2nd petitioner is wife of the 1st petitioner and mother of the deceased girl aged about 15 years, a minor, registered from the report of the defacto-complainant, dt.19.08.2017, for the offences punishable under Sections 302 read with 34 IPC, Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) amended Act, 2015(for short, 'the Act') and Section 5 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 (for short, 'the POCSO Act').

2. The accused persons are K.Janardhan Reddy-A.1, Correspondent of the Residential School known as Kattamanchi Ramalinga Reddy School, Vengannabavi, Dinnedevarapadu, Kurnool Rural Mandal (for short 'KRR School'). The A.2 K.Harshavardhan Reddy and A.3 K.Divakar Reddy are sons of the A.1. All are residents of Dinnedevarapadu village, Kurnool Rural Mandal. Pending investigation of the crime, it appears the A.1 was granted regular bail on 11.10.2017 in CrI.M.P.No.310 of 2017 and A.2 and A.3 were granted regular bail on the self same day, in CrI.M.P.No.315 of 2017 and they were in judicial custody since 18.09.2017 (A.2 and A.3) and A.1 aged about 17 years subsequently surrendered on 05.10.2017 and later he was granted bail supra.

3.The facts in granting regular bail to the 3 accused respectively are that as per the prosecution case, the deceased-minor girl was raped and murdered and it was created by the accused as if a suicide and it is an atrocity against the Schedule Tribe girl-the deceased between 8.00 P.M. to 11.30 P.M. at the hostel room of KRLR school referred supra on

19.08.2017. The deceased girl was studying 10th class in the residential school staying in hostel found died hanging to a sari knotted to the neck and the other knot to the ceiling fan in the hostel room. It is on the information by the hostel management to the defacto-complainant's wife (mother of the deceased), the father of the deceased went to the hostel and found minor girl died hanging to the ceiling fan in the hostel barrack room, it is later the school management got down the deadbody and shifted to the Govt. hospital mortuary, Kurnool. It is from the report of the defacto-complainant referred supra, the crime is registered.

4. The observation of the learned Sessions Judge in granting bail is that according to the accused, it is a death occurred due to asphyxia by hanging and D.N.A. test not matched to the petitioners and their father even to say they are responsible for any alleged rape or to say the rape and murder and their institution is being run since decades and it is a reputed one and their liberty is curtailed because of the crime foisted against them without basis and there are CC footages through 4 CC camaras in the hostel reveals that the deceased was taken to the dormitory by a caretaker and it is not projected the presence of the accused persons and the CC footage however shows after death of deceased came out public at large the petitioners and their father rushed to the scene of offence and observed what was happened in their hostel to the deceased and their accusation and the investigation is mostly completed by having examined about 23 witnesses including the co-students and friends of the deceased which reveals death by suicide and nothing to say not homicidal death much less by committing rape. What the defacto-complainant and his wife stated is there are two post mortem reports and in one report death mentioned as 18 to 24 hours and in the other 24 hours and there are certain documents to be referred to

the other departments for conducting scientific test, not mentioned in the post mortem report filed by the petitioners is with an object of sidetracking the Court. What the Addl. Public Prosecutor argued in opposing the bail is the entire case record from the original investigation placed before the Court contains the objections taken by the defacto-complainant already in the other post-mortem report and argued that it is for the doctor who prepared post mortem report to explain how second one filed by the petitioners came into existence and all the observations made in the post-mortem report relied by the accused/ petitioners also incorporated in the original post mortem report submitted by the investigating officer to the Court and the investigating officer R.Vinod Kumar present and also clarified about two reports and what the report with the C.D. File submitted to the Court is original and he cannot say how the accused got another post-mortem report with the modifications and concoctions. However he stated that there are no material discrepancies in between the two reports. Ultimately it is observed in paras-6 and 7 of the bail order granting bail to the petitioners particularly A.2 and A.3, leave about A.1's bail is not impugned much less for its cancellation by the defacto-complainant and his wife herein, as follows:-

“After going through the version advanced by the petitioner counsel, Additional Public Prosecutor and the defacto-complainant including his wife coupled with the instruction sheet submitted by the Investigating Officer to the Public Prosecutor shows that in column No.9, it is mentioned that investigation is almost completed except receipt of the final opinion from the Professor of FSL, Kurnool. In the above circumstances, I am of the view that it is a fit case to grant bail to the petitioners subject to the conditions.

In the result, the petitioner/ A.2 and A.3 are ordered to be released on bail by executing a self-bond for Rs.10,000/- each with two sureties for the likesum to the satisfaction of Judicial Magistrate of First Class, Kurnool and on every Sunday between 4 and 6 p.m. and on every Saturday between 3 and 5 p.m. and mark their presence for a period of one month or filing of charge sheet whichever is earlier and further directed not to influence and threaten the witnesses.”

5. Needless to repeat the bail granted was dt.11.10.2017. The defacto-complainant and his wife filed the present application for cancellation of the bail before this Court on 08.08.2018 which is 10 months subsequent to the date of granting the bail. In the present application filed under Section 439(2) and 482 CrPC, it is the prayer to cancel the bail granted to the A.2 and A.3 referred supra and it is averred in 31 paras in detail running in 15 pages of the investigation is invalid. The investigating officer is acting at the influence of the accused persons. But in none of the contentions raised for cancellation of bail, nothing shown of any supervening circumstances of accused violated any of the conditions of the bail in question, within the scope of Section 439(2) CrPC. No doubt, that is not be all and end all for this Court got inherent power from Section 482CrPC also quoted in the application though the relief confined is for cancellation of bail, the bail order if at all not sustainable including by consideration of the subsequent events as on date including from the filing of the chargesheet by the police on 28.05.2018 and as on date of the report received from the learned Special Judge, there a case number also allotted as SC.No.160 of 2018 on or before 25.09.2018 in saying even the chargesheet filed in the end of May,2018, the delay occurred is from the First Information Report and other record filed at the crime stage before the Spl. Mobile Magistrate, Kurnool not submitted but for very recently

for the letter dated 07.06.2018 and remainder dt.04.09.2018 from which the chargesheet is taken cognizance under Section 190 CrPC by allotting Sessions Case number. For what are the offences mentioned from the police final report includes investigation for Section 306 read with 34 IPC and Section 3(1)@ & (s) and 3(2)(v) of the Amended Act, against all the 5 accused so far as the impugned order of bail for its cancellation or otherwise concerned as to the merits, the learned Sessions Judge no doubt considered the C.D. of the original post mortem report and the post mortem report placed reliance by the accused with some variations which appears to be a concocted one however the findings common in both are the observation as referred supra, in granting bail particularly so far as the petitioners A.2 and A.3 concerned, from the factum of they are in judicial custody since 18.09.2017 having been arrested and produced for judicial custody.

6. Though the learned counsel for the petitioners/accused represented by the learned Senior Counsel Sri T.Niranjan Reddy who argued at length referring to several expressions including the latest three Judge Bench expression of the Apex Court in **Ms. X Vs. State of Telangana**¹, to the say that where it is held the question of cancellation of bail arises when there are only subsequent changed and supervening circumstances of accused violated any of the conditions of bail and not otherwise and none of the contentions could show any violation of the conditions of the bail by the accused persons from what was laid down by the Apex Court therein of granting of bail is one thing and taking away the fundamental right of once bail granted by exercise of discretion is another thing; as observed by this Court in the recent common order covered by CrI.P.No.12683 of 2017 and batch,

¹ 2018 (2) ALT (CrI.) 273 SC

dt.11.09.2018, leave about the recent another single Judge expression of this Court in P.Kalpana Vs. State² particularly of the Apex Court in Kanwar Singh v. State of Rajasthan³ that is also referred in the common order of this Court referred supra from para-36 onwards including what was laid down by another three Judge Bench expression of the Apex Court in Narendra K Amin (Dr.) Vs. State of Gujarat⁴ scanning the law including earlier three Judge Bench expression of the Apex Court in Aslam Babalal Desai Vs. State of Maharashtra⁵, another three Judge Bench expression of the Apex Court way back in Talab Haji Hussain v. Madhukar Purshottam⁶ that is referred in the subsequent five Judge Bench expression of the Apex Court in Ratilal Bhanji Mithani Vs. Assistant Collector of Customs, Bombay⁷. Above earlier Constitution Bench expressions are not brought to the notice of the Apex Court in the recent three Judge Bench in Ms. X supra where it is well laid down that the High Court got the power under Section 482 Cr.P.C. even to cancel the bail where the order granted is otherwise not sustainable to subserve the ends of justice.

7. However, the fact remains herein is that all the 31 paragraphs of the present bail cancellation application mainly points out the investigation defects in saying the Investigating Officer conducted unfair investigation by colluded with the accused to save them. Once such is the case, the cancellation of bail is not a cure but for to file appropriate petition for any further or re-investigation by change of the Investigating Officer or Investigating Agency as the case may be.

² 2018(2) ALD (CrI) 404

³ 2012 (12) SCC 180

⁴ 2008 (13) SCC 584

⁵ 1992 4 SCC 272

⁶ AIR 1958 SC 376

⁷ AIR 1967 SC 1639

8. In fact, the chargesheet filed in this case by the Investigating Officer (DSP) and it was taken cognizance for the offence punishable under Section 306 IPC and the offence under Section 3 of the Act, as referred supra by the learned Special Judge under Section 190/ 193 CrPC. Once such is the case and the discretion was exercised by the Court below in granting bail and that too from the changed circumstances, the final report filed under Section 306 IPC and not for the offence under Section 302 IPC and Section 10 of the POCSO Act and that is also a factor for consideration by this Court, it is not just to cancel the bail.

9. Having regard to the above, the application for cancellation of bail is disposed of for the Court is not able to stretch its finger to cancel said bail order but for remedy is left open if at all to impugn the investigation either to seek re-investigation or further investigation against the alleged unfair investigation, if necessary for taking further cognizance, from any protest against said final report to raise before the Court of Sessions also for not taken cognizance for the offence under Section 302 IPC and Section 10 or other offences under the POCSO Act. It is on such contingency and from any future change of circumstances, remedy if at all to seek for cancellation of bail pending trial always left open either to the witnesses or to the defacto-complainant-cum-victim or to the prosecution agency.

10. The defacto-complainant and her husband present during arguments and stated that right from 16.08.2018 they are apprehending harm to them in the hands of the accused. The Superintendent of Police, Kurnool is directed by virtue of this order to provide wherever necessary any protection to the defacto complainant and any other witnesses if there are any written requisitions as per necessity.

11. With these observations, 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:28.09.2018

Note:- copy to be marked to the Superintendent of Police, Kurnool, for compliance.
b/o. vvr.

