

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8930 of 2018

ORDER :

This criminal petition filed under Sections 437 and 439 Cr.P.C. by the petitioner/sole accused in Crime No.275 of 2017 of Ragonda Police Station, Jayashankar (Bhupalapally) District, registered for the offences punishable under Sections 364, 376(2)(i), 302 and 201 IPC And Section 5(i)(m) of the Protection of Children from Sexual Offences Act, 2012, registered on 04.12.2017. It is from the missing of six years girl on the night of 03.12.2017, the crime is registered.

2. The police during the course of investigation arrested the petitioner and he is in judicial custody since 06.12.2017. The remand report of that date shows as many as 23 witnesses examined. The police however did not file charge sheet including within 90 days. The petitioner moved learned Sessions Judge, where his application for bail including default bail was ended in dismissal more than once undisputedly as per the record and latest by 21.06.2018 in Crl.M.P.No.362 of 2018, from which, the petitioner approached this Court and this Court in Crl.P.no.7137 of 2018 granted the default bail. From the failure of the police in completion of investigation and filing of final report within the statutory period, from the indefeasible right, the accused is entitled to bail, where merits cannot even be gone into. The bail granted is with six conditions. The condition No.5 speaks of furnishing of full address with property and bank particulars and to submit passport, if any, before the Court. It is also put as a condition

that in the event of failure to comply, the bail order can be cancelled. The learned Sessions Judge by impugned docket order, dated 08.08.2018, cancelled the default bail granted by this Court in Crl.P.no.7137 of 2018, dated 24.07.2018. The docket order of the learned Sessions Judge in cancelling the default bail speaks that the accused himself filed a memo before the learned Sessions Judge along with sworn affidavit stating that he is not having any bank account and the house where he resides is not standing in his name, but of his mother, and he has no movable or immovable properties in his name and he does not possess and hold any passport to furnish. The learned Sessions Judge referring to the memo and the affidavit in cancellation of bail order mentioned that in view of the order in Crl.P.No.7137 of 2018, dated 24.07.2018 supra, power is conferred to cancel the bail, thereby he is remanded to judicial custody

3. Heard both sides.

4. It is the fundamental thing that no one can be compelled to perform an impossible. What is the condition No.5 speaks of furnishing of bank account and property particulars, the question of furnishing arises if he possess, if not he has to state he does not possess. Once he stated of no passport, no bank account, no properties and filed affidavit if at all, the learned Sessions Judge should have been cause verify through police as to truth or otherwise of the affidavit given by him of does not possess any properties or passport or bank account. The cancellation is no doubt without

referring to any of those, if at all got any doubt on the affidavit averments by asking the police to counter verify.

5. So, this Court also got on onerous duty whether that affidavit given by him is intentional falsehood, he possess any bank account, passport and immovable or worth movable properties to furnish. The learned Public Prosecutor is given opportunity to cause verify and having verified submitted across the bar that from the police information, he has no passport or bank account or immovable property; suffice to rely on the affidavit.

6. Accordingly, the cancellation order is set aside, bail is restored with all solvencies by restoring *status quo* anti as on the time, by invoking under Section 482 Cr.P.C. in requiring the learned Sessions Judge to record the fact of the accused does not possess any properties from his affidavit given for release. The learned Sessions Judge if at all wants to enquire, it is not a bar to cause enquire through police about his possession of any properties and if at all the affidavit is false to take appropriate action including as to cancellation in such event only.

7. In the result, the criminal petition is allowed.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

4th September 2018.
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