

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH**

CRIMINAL PETITION No.9898 OF 2018

Between:

Ayub Khan @ Ayub Pahelwan and another.

... Petitioners

And

The State of Telangana
Represented by its Public Prosecutor

... Respondent.

JUDGMENT PRONOUNCED ON 30.10.2018

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

- 
1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? No
 2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes
 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? No

*** THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ CRIMINAL PETITION No.9898 of 2018

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....Petitioners

v.

\$ The State of Telangana
Represented by its Public Prosecutor

.... Respondent

! Counsel for the Petitioners : Sri T.Pradyumna Kumar Reddy.

Counsel for Respondent: Public Prosecutor
(Telangana State)

<Gist :

>Head Note:

? Cases referred:

1. AIR 2014 Supreme Court 3062
2. 2013 (10) SCC 591
3. AIR 2018 Supreme Court 2466
4. 2018 (2) ALT (Crl.) 340 (A.P.)
5. AIR 1967 Supreme Court 286
6. 2000 Law Suit (SC) 2045
7. AIR 1991 SC 1260

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9898 OF 2018

ORDER:

This criminal petition is filed by petitioners/accused Nos.1 and 2 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 15.09.2018 passed in Crl.M.P.No.2606 of 2018 in Crl.M.P.No.357 of 2018 in Crl.A.No.744 of 2018 by the II Additional Metropolitan Sessions Judge, Hyderabad.

The petitioners are accused Nos.1 and 2 and appellants before the II Additional Metropolitan Sessions Judge, Hyderabad. They faced trial for the offences punishable under Sections 420, 468, 471, 120 (B), 109 read with 34 of Indian Penal Code (for short "I.P.C.") and under Section 12 (1) (a) (b) of Indian Passports Act, 1967 vide C.C.No.202 of 2017 on the file of Chief Metropolitan Magistrate, Hyderabad. The petitioners herein found guilty for the offences punishable under Sections 471 and 420 of I.P.C. and under Section 12 (1) (a) (b) of the Indian Passports Act. The petitioners/accused Nos.1 and 2 are sentenced to suffer simple imprisonment for a period of two (2) years for the offence punishable under Section 471 of I.P.C. and also to pay fine of Rs.2,000/- each and they are further sentenced to suffer simple imprisonment for a period of five (5) years for the offence punishable under Section 420 of I.P.C. and also to pay fine of Rs.2,000/- each and they are further sentenced to suffer simple imprisonment for a period of six (6) months for the offence punishable under Section 12 (1) (a) (b) of Indian Passports Act. Aggrieved by the conviction and sentence passed in C.C.No.202 of

2017, the petitioners preferred Criminal Appeal No.744 of 2018 and also filed a petition under Section 389 (1) of Cr.P.C. vide Crl.M.P.No.357 of 2018. The appellate Court suspended substantive sentence of imprisonment and enlarged the petitioners on bail.

The respondent – Telangana State filed an application under Section 439 (2) of Cr.P.C. to cancel the bail and set aside the order passed in Crl.M.P.No.357 of 2018 on the ground that the petitioner No.1 is a gangster/rowdy sheeter involved in 68 cases approximately, out of said 68 cases; 6 cases for the offence punishable under Section 302 of I.P.C., 8 cases for the offences punishable under Section 307 of I.P.C., 5 cases of TADA Act, 9 cases of Arms Act, 2 cases of NDPS Act, 2 cases of dacoit, 2 cases of robbery and 34 other cases for various offences besides other criminal cases which are pending for investigation and that the petitioner No.1/accused No.1 is a notorious criminal even at the age of 16 years. During the year 1990 he and his associates participated in communal riots, created panic in the minds of common public and started extortions at the point of daggers and deadly weapons. No witnesses and complainants are dare enough to depose evidence against the petitioner No.1 and in most of the cases, witnesses turned hostile due to his brutal behaviour and many a times he tried to attack the police with deadly weapons. It is further contended that the petitioners No.1/accused No.1 was also convicted for life imprisonment in a sensational murder case of practicing advocate Mannan Ghouri and while he was in jail, he hatched a plan and obtained fake passport.

During trial in C.C.No.202 of 2017, he committed the following offences.

- (i) Extortion case vide Crime No.31 of 2018 punishable under Sections 385, 506, 109 read with 34 I.P.C. of Kamatipura Police Station, which is under investigation.
- (ii) Trespass and criminal intimidation case vide C.C.No.282 of 2018 on the file of XVI Additional Chief Metropolitan Magistrate, Hyderabad for the offences punishable under Sections 448, 506, 109 read with 34 of I.P.C. of Falkunna Police Station, which is pending for trial.
- (iii) Wrongful confinement for forcible settlement vide Crime No.94 of 2018 under Sections 341, 506, 507, 109 read with 34 of I.P.C. of Rein Bazar Police Station, which is under investigation.

Thus, in view of criminal background of accused No.1, the petitioners created fake passports to leave the country and if the petitioners are let off on bail there is every possibility of fleeing from country and possibility of creating panic in the society. Therefore, requested to cancel the bail setting aside the order of suspension of substantive sentence and to direct them to surrender before the police within specific date fixed by the Court

The petitioners herein filed counter denying the allegations while contending that the accused No.1 was acquitted in all the cases except murder case, in which he was convicted by the Sessions Court and he was acquitted by the High Court and that

the alleged offences were not committed subsequent to enlarging the petitioners on bail; according to admission made by them the offences were allegedly committed while on bail during pendency of trial in C.C.No.202 of 2017 but no petition was filed to cancel the bail during pendency of C.C.No.202 of 2017, thereby question of fleeing away without facing the trial in other case and hearing of the appeal does not arise and that the grounds shown by the respondent – State are not sufficient to cancel the bail and issue a direction to appear before the Magistrate and requested to dismiss the petition filed by the respondent – State.

Upon hearing argument of learned Public Prosecutor for the State and the learned counsel for the petitioners herein, the appellate Court cancelled the bail and ordered the petitioners to surrender before the Chief Metropolitan Magistrate, Hyderabad on or before 18.09.2018 with a further direction to take necessary steps to secure their presence in the event of their failure to surrender as directed.

The order is now challenged before this Court raising several contentions. The main grounds urged before this Court are as follows:

- (1) The petitioners were already enlarged on bail in a petition filed under Section 389 (1) of Cr.P.C. suspending substantive sentence of imprisonment vide order in Crl.M.P.No.357 of 2018 in Crl.A.No.744 of 2018 and that the alleged offences referred in the petition committed while they were on bail prior to the conviction recorded by the trial Court and not after obtaining bail suspending substantive sentence of imprisonment exercising power

under Section 389 (1) of Cr.P.C. Therefore, such ground is not available to set aside the order cancelling the bail.

(2) It is further contended that the various criminal cases referred in the petition are ended in acquittal by the trial Court except one Sessions Case, where he was convicted by the Sessions Court. However, High Court reversed the finding and acquitted him. Thus, in none of the cases, he was found guilty and the alleged criminal track is without any basis and those cases were falsely foisted. But taking into consideration of the alleged cases committed by the petitioners prior to conviction, bail cannot be cancelled.

(3) Totality of the circumstances if taken into consideration, none of the grounds urged by the respondent – State, before the appellate Court are sufficient to pass an order, which is impugned in this petition and requested to set aside the order passed by the trial Court.

During hearing, Sri T.Pradyumna Kumar Reddy, learned counsel for the petitioners reiterated the grounds urged in the petition while contending that the alleged offences were not committed after suspending the substantive sentence of imprisonment, releasing the petitioners on bail and when those offences were committed after obtaining bail in C.C.No.202 of 2017, it is a ground to cancel the bail granted by the trial Court in C.C.NO.202 of 2017, but not a ground to cancel the bail granted subsequent to disposal of C.C.No.202 of 2017 by the appellate Court in Crl.M.P.No.357 of 2018 in Crl.A.No.744 of 2018. The respondent having kept quiet for all these years, now invented a story that the petitioner No.1 is a man of criminal track record, but

without alleging anything against the petitioner No.2, requested to set aside the order and cancel the bail, but the Sessions Judge without looking into the allegations made against the petitioner No.2 passed the order mechanically cancelling the bail, thereby the order is unsustainable under law.

Learned counsel for the petitioners, in support of his contentions, placed reliance on the judgments of Apex Court rendered in “**Atul Tripathi v. State of U.P.**”¹ “**Umesh Kumar v. State of Andhra Pradesh**”² “**Ms.X v. State of Telangana**”³ and judgment of this Court rendered in “**P.Kalpana v. State of Telangana**”⁴

Learned Public Prosecutor for the State of Telangana contended that mere quoting of wrong provision of law is not a ground to decline relief and the petition shall be treated as a petition filed under Section 389 (1) proviso (ii) as amended by Act 25 of 2005 with effect from 23.06.2006 and in view of petitioners criminal track record and commission of such offences while on bail misusing liberty granted by the Court, the Court can cancel the bail setting aside the suspension order of substantive sentence of imprisonment. Therefore, the order passed by the Court below is in accordance with law and the same cannot be interfered with by this Court.

Learned Public Prosecutor for the State of Telangana, in support of his contentions, placed reliance on the judgment of Apex Court rendered in “**Pampapathy v. State of Mysore**”⁵

¹ AIR 2014 Supreme Court 3062

² 2013 (10) SCC 591

³ AIR 2018 Supreme Court 2466

⁴ 2018 (2) ALT (Crl.) 340 (A.P.)

⁵ AIR 1967 Supreme Court 286

“Kiran Kumar v. State of Madhya Pradesh⁶” and requested to dismiss the petition.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

“(1) Whether the petitioner Nos.1 and 2 misused the liberty granted to them while on bail, suspending substantive sentence of imprisonment in Crl.M.P.No.357 of 2018, if so, whether the bail granted to the petitioners while suspending substantive sentence of imprisonment is liable to be recalled/cancelled?”

P O I N T:

The respondent – State filed a petition Crl.M.P.No.2606 of 2018 in Crl.M.P.No.357 of 2018 in Crl.Appeal No.744 of 2018 to cancel the bail and direct the petitioners to surrender before the Magistrate within specified time under Section 439 (2) of Cr.P.C. raising certain grounds which I referred in earlier paragraphs.

Section 439 (2) of Cr.P.C. deals with cancellation of bail and according to Section 439 (2) of Cr.P.C. a High Court or Court of Session may direct that any person who has been released on bail be arrested and commit him to custody. Therefore, the unequivocal language used in sub-section (2) of Sections 439 of Cr.P.C. indicates that only the orders passed under Chapter 33 alone liable to be cancelled by exercising power under sub-section (2) of Section 439 of Cr.P.C.

The order passed in a petition Crl.M.P.No.357 of 2018 filed under Section 389 (1) of Cr.P.C. is not covered by chapter XXXIII,

⁶ 2000 Law Suit (SC) 2045

but the same is totally under different chapter i.e. Chapter XXIX, which deals with appeals. Therefore, Section 439 (2) of Cr.P.C. cannot be applied to the present facts of the case. However, quoting of wrong provision by the Public Prosecutor for the State is not a ground to dismiss the petition and the Court may grant such relief if the State is otherwise entitled to claim such relief ignoring the wrong or misquoting of provision of law. Therefore, the petition filed before the Sessions Judge shall be treated as a petition filed under Section 389 (1) of Cr.P.C. proviso (ii).

Section 389 (1) proviso (ii) of Cr.P.C. made it clear that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

The grounds for cancellation of bail either under Section 439 (2) of Cr.P.C. or under Section 389 (1) Proviso (ii) of Cr.P.C. are one and the same. This Court on elaborate consideration of entire law on cancellation of bails in "**P.Kalpana v. State of Telangana**" (referred supra) and laid down principles for cancellation of bail under Section 439 (2) of Cr.P.C.

The gist of the principles laid down in "**P.Kalpana v. State of Telangana**" (referred supra) is that when the accused, who was released on bail, misuses his liberty and commits any offence or threatens any witnesses to be examined before the Court or failed to comply with any condition imposed by the Court while enlarging the petitioner on bail, the Court can cancel the bail and direct such accused to surrender before the concerned Court and on such surrender, he be arrested and commit to judicial custody.

In view of the language used in Section 389 (1) proviso (ii) of Cr.P.C., the same principles can be applied.

The only difference between Section 439 (2) and Section 389 (1) proviso (ii) of Cr.P.C. is that the grant of bail under Section 439 of Cr.P.C. is pre-trial stage, whereas Section 389 (1) of Cr.P.C. is post trial, after finding him guilty. At the pre-conviction stage i.e. during trial, an accused moves a bail petition under Section 439 of Cr.P.C. before the Sessions Court or the High Court or under Section 437 of Cr.P.C. as the case may be. Once the accused is convicted post-trial in a non-bailable offence and the sentence awarded is more than 3 years, the accused seeks suspension of the execution of sentence during the pendency of the appeal under Section 389 (1) of Cr.P.C. the appellate Court can release the accused on bail after suspending substantive sentence of imprisonment. If anyone is aggrieved by the grant of bail to the accused at the pre-conviction stage, two remedies are available. i.e. (1) if there is a breach of bail conditions imposed upon the accused or subsequently, he be arrested and commit him to custody. Thereby it shall be upon for anyone, irrespective of person being the victim, the complainant, the aggrieved person or the Public Prosecutor to approach the Court which granted bail to seek cancellation of the same under Section 439 (2) of Cr.P.C. (2) If anyone alleges an illegality in the order granting bail to the accused, such person can approach the higher forum.

At the post-conviction stage, if the appellate Court suspends the sentence under Section 389 of Cr.P.C. and one wishes to seek cancellation of such suspension, the criteria is not similar to Section 439 (2) of Cr.P.C. Section 389 (1) provision (ii) of Cr.P.C.

permits only Public Prosecutor to file such application for cancellation of bail. If these two provisions are read conjointly, it is clear from the use of word “provided further” in the second proviso. Interestingly, while Section 439 (2) of Cr.P.C. keeps it open-ended without any indication as to who may apply for cancellation of bail under the chapter 33, whereas under Section 389 (1) proviso (ii) of Cr.P.C. only Public Prosecutor can seek cancellation of bail. Firstly, there is no express right to seek cancellation of suspension of the sentence where the accused was not in confinement. Only when the accused was in confinement and was released on bail, the second proviso kicks in. Secondly, if the legislative intent was to allow anyone to seek cancellation of the suspension of sentence, the second proviso could have been worded to not indicate that it shall be open to the Public Prosecutor alone to file an application seeking cancellation. The role of complainant is limited in filing objections.

In “***Mahesh Pahade v. State of Madhya Pradesh*** (unreported order dated 18.07.2018 in I.A. No. 6367/2017 in Criminal Appeal No. 933/2014)” the Madhya Pradesh High Court in an application filed under Section 389 (1) proviso (ii) of Cr.P.C. seeking cancellation of bail, held that once the right of appeal has been given to a victim, it shall include all ancillary rights which are attached with the right to appeal. Such right to appeal will include right to seek cancellation of bail if the victim is aggrieved against such an order. But this is not the situation here, since the learned Public Prosecutor for the State himself filed such application

Though there is little difference between these two provisions, the grounds are identical and this Court in **“P.Kalpana v. State of Telangana”** (referred supra) on elaborate consideration of law, laid down certain principles for cancellation of bail.

Similarly in **“Atul Tripathi v. State of U.P.”** (referred supra) the Apex Court held that the provisos to Section 389 were introduced mainly pursuant to the 154th Report of the Law Commission of India submitted in 1996. The amendments were introduced by Act 25 of 2005 and they have come into effect from 23.06.2006. The Law Commission recommended for addition of two provisos. The recommendation reads as follows:

“47. Two provisos to Sub-section (1) of Section 389 of the Code be added to the effect that the Appellate Court would give notice to the prosecution before releasing a convicted person on bail, if he was convicted of an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and also to enable the prosecution to move an application for cancellation of such bail granted by the Appellate Court.”

In the said judgment, the Apex Court further held that there is a marked difference between the procedure for consideration of bail Under Section 439, which is pre conviction stage and Section 389 Code of Criminal Procedure, which is post conviction stage. In case of Section 439, the Code provides that only notice to the public prosecutor unless impractical be given before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Sessions or where the punishment for the offence is imprisonment for life; whereas in the case of post conviction bail Under Section 389 Code of Criminal Procedure,

where the conviction in respect of a serious offence having punishment with death or life imprisonment or imprisonment for a term not less than ten years, it is mandatory that the appellate court gives an opportunity to the public prosecutor for showing cause in writing against such release.

The Apex Court further held as follows:

“To sum up the legal position,

a. The appellate court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the public prosecutor to show cause in writing against such release.

b. On such opportunity being given, the State is required to file its objections, if any, in writing.

c. In case the public prosecutor does not file the objections in writing, the appellate court shall, in its order, specify that no objection had been filed despite the opportunity granted by the court.

d. The court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in court, etc. before passing an order for release.”

Similarly in “**Umesh Kumar v. State of Andhra Pradesh**” (referred supra), the Apex Court while referring to the judgment rendered in “**State of Bihar v. P.P.Sharma**”⁷ highlighted the scope of Section 482 of Cr.P.C. to quash the proceedings or orders, but the said judgment is not much relevant for deciding the present controversy.

⁷ AIR 1991 SC 1260

Learned counsel for the petitioners drawn the attention of this Court to the judgment of Apex Court rendered in “**Ms.X v. State of Telangana**” (referred supra), wherein cancellation of bail under Section 439 (2) of Cr.P.C. was considered by the Full Bench of Apex Court and held as follows:

“In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in *Dolatram v. State of Haryana* (1995) 1 SCC 349 observed that:

Rejection of a 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 the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of 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.”

If the principle laid down by the Apex Court in the said judgment is applied to the present facts of the case, only when the accused failed to comply with the conditions imposed by the Court which granted bail or misused the liberty given to the accused while on bail and involved in any other offence, the bail shall be cancelled.

In the present facts of the case, the substantive sentence was suspended while enlarging the petitioners on bail without notice to the Public Prosecutor since the punishment imposed by the trial Court is less than '10' years. Section 389 (1) Cr.P.C. mandates prior notice to the Public Prosecutor only in serious crimes and where the sentence is more than '10' years. Therefore, failure to issue notice to the Public Prosecutor is not a contravention of any of the provisions of Cr.P.C.

The main ground urged by the respondent – State for cancellation of bail is that the petitioner No.1 while on bail at pre-trial stage committed three cases and in other cases charge sheet is filed and it is pending for trial. The petitioners were found guilty by the Magistrate only on 07.08.2018, whereas the alleged crimes were registered against the petitioners i.e. Extortion case vide Crime No.31 of 2018 under Sections 385, 506, 109 read with 34 I.P.C. of Kamatipura Police Station, which is under investigation; Trespass and threat case vide C.C.No.282 of 2018 on the file of XVI Additional Chief Metropolitan Magistrate, Hyderabad for the offences punishable under Sections 448, 506, 109 read with 34 of I.P.C. of Falkunna Police Station, which is pending for trial; Wrongful confinement for forcible settlement vide Crime No.94 of 2018 under Sections 341, 506, 507, 109 read with 34 of I.P.C. of Rein Bazar Police Station, which is under investigation. But fortunately, learned Public Prosecutor himself specifically asserted that only during pendency of C.C.No.202 of 2017, wherein the petitioners were convicted, they committed the above offences, that means none of the offences were committed by the petitioners after their enlargement on bail suspending substantive sentence of

imprisonment. However, the respondent – State did not move its litter finger for cancellation of bail granted by the trial Court at pre-trial stage on any of the grounds. Having allowed the petitioners to enjoy the liberty and get the C.C.No.202 of 2017 disposed of, the respondent – State filed the petition when substantive sentence of imprisonment was suspended.

Learned counsel for the petitioners contended that if really the petitioners misused their liberty on their release on bail at pre-trial stage and committed any offence, the course open to the Public Prosecutor or any other person aggrieved is to file application under Section 439 (2) of Cr.P.C. before the Magistrate. Having maintained silence and kept quiet for such considerable period, the respondent No.2 filed a petition under Section 439 (2) of Cr.P.C. for cancellation of bail on the grounds, which are available at pre-trial stage. Therefore, the petitioners did commit no offence, misusing liberty granted to them while on bail after suspending substantive sentence of imprisonment under Section 389 (1) of Cr.P.C., who allegedly misused liberty during pre-trial stage on obtaining bail under Section 439 of Cr.P.C.

Learned Public Prosecutor for the State of Telangana while contending that the criminal track record of petitioner No.1 is sufficient to commit him to prison after cancellation of bail and drew the attention of this Court to the Full Bench Judgment of Apex Court rendered in “**Pampapathy v. State of Mysore**” (referred supra), wherein the Apex Court had an occasion to deal with the similar situation. In the said judgment, the Apex Court held that when a person convicted and released on bail, the High Court has inherent power to cancel order of suspension of

sentence and grant of bail to the appellant made under Section 426 of Cr.P.C. and to direct him to be re-arrested and committed to jail custody.

Based on the said principle, learned Public Prosecutor contended that when the petitioners *prima facie* misused their liberty granted to them by the Court and indulged in cases of violence, the same is sufficient to cancel the bail to prevent abuse of process of Court.

In “**Kiran Kumar v. State of Madhya Pradesh**” (referred supra) the Apex Court relied on “Bhagwanram Shinde v. State of Gujarat (1999 (4) SCC 421), wherein it was held that when a person is convicted and sentenced to a short term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal the appeal itself will become, for all practical purposes, infructuous so far as the appellant is concerned. It does not mean that the appellate Court should suspend the sentence, if its consequence would be danger to the society or any other similar difficulties.”

Though the petitioners were found guilty and sentenced to undergo simple imprisonment to the maximum period of five (5) years, the criminal track record of the petitioner No.1 is *ex facie* shows that he is a hardcore criminal and he was found not guilty and acquitted in all cases except in the crimes pending for

investigation and the calendar case for trial, for one reason or other. Merely because the petitioner No.1 did not misuse his liberty while on bail granted by suspending substantive sentence of imprisonment during pendency of bail, the criminal background of the petitioner No.1 would *prima facie* establish that he is involved in various crimes at pre-conviction stage, but not post conviction. When the petitioner No.1 is a man of such criminal track record, if he is enlarged on bail suspending substantive sentence of imprisonment, the possibility of petitioner No.1 involving in identical offence or other offences while on bail taking advantage of liberty granted to him cannot be ruled out.

Learned Public Prosecutor for the State of Telangana reported no objection to set aside the order passed against the petitioner No.2 herein since the petitioner No.2 did not involve in any crime and no criminal background is available against the petitioner No.2.

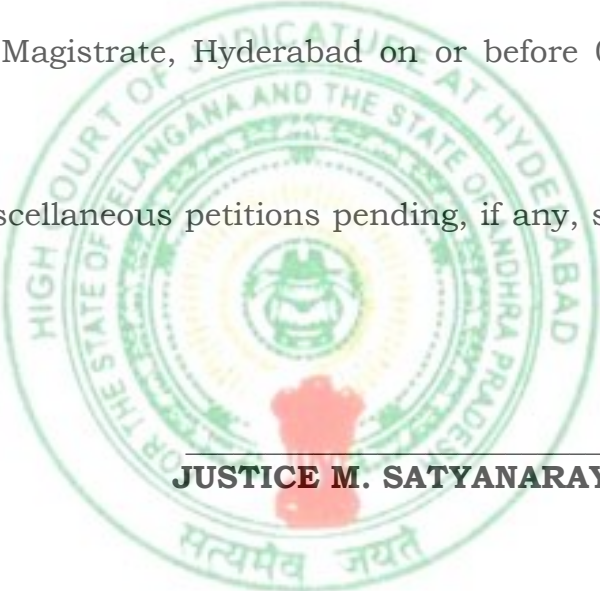
In view of the Full Bench Judgment of Apex Court in “**Pampapathy v. State of Mysore**” and the judgment of this Court rendered in “**P.Kalpana v. State of Telangana**” (referred supra), there is eminent threat to the society in the event the bail is not cancelled and in the public interest, such bail can be cancelled by exercising power under Section 389 (1) proviso (ii) of Cr.P.C.

Even if the contention of the petitioner No.1 is accepted that he did not involve in any criminal case post conviction and after his release on bail suspending substantive sentence of imprisonment, still he is a man having lot of criminal background and became threat to the society and in such case, the Court can cancel the bail granted in Crl.M.P.No.357 of 2018 in Crl.A.No.744

of 2018 to maintain public peace and tranquility and to protect the innocent public from the hands of such hardcore criminal allegedly. The point is answered accordingly.

In the result, the petition is partly allowed. The Order dated 15.09.2018 passed in Crl.M.P.No.2606 of 2018 in Crl.M.P.No.357 of 2018 in Crl.A.No.744 of 2018 by the II Additional Metropolitan Sessions Judge, Hyderabad is set aside against the petitioner No.2/accused No.2 while upholding the said order against the petitioner No.1/accused No.1 herein and the petitioner No.1/accused No.1 is directed to surrender before the Chief Metropolitan Magistrate, Hyderabad on or before 01.11.2018. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.



JUSTICE M. SATYANARAYANA MURTHY

30.10.2018

Note:
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