

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER
CRIMINAL PETITION Nos.10912 AND 10915 OF 2018

COMMON ORDER:

Criminal Petition Nos.10912 of 2018 and 10915 of 2018, under Section 439(2) of the Code of Criminal Procedure, 1973, are filed by the petitioner/*de facto* complainant seeking a direction to arrest and commit respondents/A-1, A-2 and A-4, and A-3 by cancelling the bail granted to them in CrI.M.P.Nos.1392 of 2018 and 1393 of 2018 respectively on the file of the learned II Additional Sessions Judge, Kurnool at Adoni for the offences alleged under Sections 498-A and 306 read with 34 I.P.C.

2. Heard the learned counsel for the petitioner/*de facto* complainant, the learned Additional Public Prosecutor representing respondent No.1/State, Sri Syed Khader Mastan representing respondents/A-1 to A-4 and perused the record.

3. Learned counsel for the petitioner/*de facto* complainant would contend that the Court below had mechanically passed the impugned orders granting bail to A-1 to A-4 without there being any justifiable reason; that the gravity and the nature of the offences alleged are high and *prima facie* case is made out; that the Court below had not taken the factors germane for determining the grant of bail; that there are serious infirmities and the Court below ignored the relevant material *prima facie* establishing the involvement of A-1 to A-4 in commission of the offences alleged and ultimately, prayed to set aside the impugned orders and allow these applications by cancelling the bail granted to A-1 to A-4. In

support of his contention, learned counsel for the petitioner relied on a decision reported in **Kanwar Singh Meena vs. State of Rajasthan and another**¹.

4. On the other hand, learned counsel appearing for respondents/A-1 to A-4 would contend that the Court below, having examined the whole material on record, rightly passed the impugned orders; that dismissal of bail is an exception; that there is no record to establish that A-1 to A-4 indulged in threatening the witnesses or tampering the record after granting bail; that these applications are filed on all false grounds and ultimately, prayed to dismiss these applications.

5. In view of the submissions made by the learned counsel on either side, the point that arises for determination is:

“Whether the bails granted in favour of A-1, A-2 and A-4, and A-3 in CrI.M.P.Nos.1392 of 2018 and 1393 of 2018 respectively on the file of the learned II Additional Sessions Judge, Kurnool at Adoni are liable to be cancelled?”

6. **POINT:-**

In the decision referred by the learned counsel for the petitioner in **Kanwar Singh Meena’s** case (1 supra), it is held at para No.10 as under:

“Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his

¹ (2012) 12 Supreme Court Cases 180

tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under [Section 439\(2\)](#) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

7. While dealing with the bail application of the respondents/ A-1 to A-4, the Court below had examined the C.D. file and came to a conclusion that five witnesses were examined, conduct of inquest over the dead body of the deceased was over and incriminating material was seized from the place of offence and

that practically, the investigation is completed in the instant case. Thereafter, the Court below was pleased to enlarge the respondents/A-1 to A-4 on regular bail under Section 439 Cr.P.C. As seen from the record, the Court below did not ignore any relevant material. The Court below did not take any irrelevant material into consideration while granting bail in favour of the respondents/A-1 to A-4. Merely because the respondents/A-1 to A-4 were granted bail after five days of remand, it cannot be said that it amounted to miscarriage of justice. As per the records placed before the Court below, most of the witnesses are the relatives of the deceased. There is no possibility of winning over them or threatening them. As the incriminating material was collected, there is no possibility of causing disappearance of the same. No irrelevant material was considered and the regular bail was granted basing on the material on record. Therefore, in the facts and circumstances of the case, the facts in the decision relied upon by the learned counsel for the petitioner are distinct from the facts of the instant case. There is justification on the part of the Court below in granting bail in favour of the respondents/A-1 to A-4. There is no miscarriage and there is no infirmity in the impugned orders. The applications are devoid of merit and are liable to be dismissed.

8. Accordingly, both the Criminal Petitions are dismissed.

9. Miscellaneous petitions pending, if any, in these Criminal Petitions shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 04.12.2018
AMD

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