

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.12502 of 2017

ORDER:

This is an application for cancellation of the anticipatory bail granted to the accused by the order of the learned III Additional Sessions Judge, Ranga Reddy District, on 27.11.2017 in CrI.M.P.No.4778 of 2017 in crime No.972 of 2017.

The supporting affidavit of the Inspector of Police, Mailardevpally Police Station, is that based on the telephonic message from Virinchi Hospital, Banjara Hills, Hyderabad, on 11.11.2017 at 04.30 PM by one patient Musthafa injured, defacto complainant was admitted in their hospital with bullet injury on his right side of abdomen. Nigh patrolling officer G.Rajesh, Sub Inspector of Police, rushed to the hospital and tried to record the statement of the victim but he was not in a condition to give statement. Immediately he enquired with available sources and ascertained through informers and came to know of said Musthafa and one Zubair who is the petitioner/accused of Kings colony with other friends assembled near Owaisi Hills at their office in kings colony and there were disputes and in that connection Zubair who is the petitioner might have opened fire on Musthafa with weapon which resulted in causing injury on his right side abdomen and the crime registered is for the offences punishable under Section 307 IPC and Sections 25(1)(B) and 27(1) of the Arms Act.

In the course of investigation, 11 witnesses were examined and CCTV footages recovered with tower location of mobiles of the accused, defacto complainant etc., and it disclosed that accused and victim along with others were present at the place of offence consequent to it. The learned III Additional Sessions Judge granted anticipatory bail sought by the petitioner-A.1 in the event of arrest by the SHO, Mailardevpally, on execution of self bond for Rs.50,000/- with two sureties to the satisfaction of the arresting authority-SHO and to cooperate with investigating agency if required and not to leave the country without prior permission of the Court.

Learned Public Prosecutor submits that the order is cause modified instead of before the SHO-arresting authority to surrender before the learned Magistrate Court concerned and consequent to it he surrendered and was enlarged on bail pursuant to the order.

The contentions in the application for cancellation of bail in the factual background supra are that A.1 in his bail application stated about he possess licensed revolver which he carries along with him wherever he goes on threat perception including on the date of incident and kept the same on the dashboard of the car and upon request of Mustafa, the victim, A.1 gave his car to him and he came to know that out of his curiosity he took out said revolver from the dash board and car jumped on speed breaker and weapon got fired and but for it goes to show that licensed revolver of the petitioner-A.1 was

triggered as such the weapon has to be recovered from A.1 to be sent to the expert to know as to whether locked of the revolver would automatically fire and so also the bullet entered into the body is from the very weapon and it is also to be verified whether it is a licensed revolver and if so why said revolver was kept in dash board without being in possession of the license holder in a reckless manner and for that custodial interrogation is necessary to ascertain all the relevant facts for the progress of the investigation. It is also averred that injured and other witnesses deliberately suppressing the truth as to how the gun was fired and A.1 is influential person having considerable wealth and trying to destroy the evidence and on account of threat witnesses are not coming forward to speak the truth who are along with the accused and when the weapon was fired, he filed WP.No.40608 of 2017 before the High Court that as if they are persistently questioned by the police. The injured and the family members are under fear to reveal the true facts. The respondent-accused No.1 when not present at the time of gun shot how he shift the injured to the hospital and how the CCTV footage covered the office he shows the movement of his vehicle going in high speed between 02.30 AM to 02.45 AM till admission of injured at hospital and on that aspect also he has to be interrogated as to why in the late night his vehicle moved to the hospital for admission of the injured at the hospital and thereby the custodial interrogation is required. It is also averred that he is involved in criminal activities in the area and

in other cases like crime No.711 of 2017 under Sections 447, 427 and 506 IPC of Mailardevpally PS and crime No.67 of 2010 under Sections 3 & 4 of AP Gaming Act of Chandrayangutta PS.

A perusal of the bail order of the learned Sessions Judge no way discussed the merits and demerits and how the crime perpetrated and propensity of the crime and impact on society and role of accused including in Paras 7 & 8 but for referring by cursorily the facts and the expression of the Apex Court in **Bhadresh Bipinbhai Sheth v. State of Gujarat**¹ of the considerations for grant of anticipatory bail are gravity of the accusation, the antecedents of the accused, possibility of accused fleeing from justice and likelihood to repeat similar or other offences, fair and full investigation and reasonable apprehension of tampering of the witness or apprehension of threat to the complainant. Even the expression not referred for reference and the learned Judge did not observe in any of the necessary conditions but for simply for execution of self bond for Rs.50,000/- with two sureties to the satisfaction of the SHO that too modified to the satisfaction of the learned Magistrate later and to cooperate with investigation if it is required and not to leave the country. Not even a condition which is to be envisaged under Section 437 Cr.P.C. of shall not be released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life; shall not be so released if such offence is a cognizable

¹ 2016 (1) SCC 152

offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence for three years or more. The proviso to Section 437(1) Cr.P.C. speaks in the event of release shall be of person is under the age of sixteen years or is a woman or is sick or infirm and another proviso speaks of for release it must be just and proper and for reasons. Even from that Section 437(5) any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody, leave about Section 439(2) Cr.P.C. also speaks of 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.

A perusal of the very provisions contained in Sections 437 to 439 Cr.P.C. no way says subsequent events alone to be considered as supervening circumstances for cancellation of bail after grant of bail.

Coming to the legal position, learned counsel for the petitioner placed reliance upon the expression of the Apex Court in **Hazari Lal Das Vs. State of West Bengal**² where by referring to the earlier expression in **Dolat Ram Vs. State of Harayana**³ observed of rejection of bail in a non-bailable offence at the initial stage and cancellation of bail already grant have to be

² (2009) 10 SCC 652

³ (1995) 1 SCC 349

considered differently and for cancellation very cogent and overwhelming circumstances are necessary for the same already granted and the grounds for cancellation particularly are interference or attempt to interfere with due course of administration of justice or evasion or attempt to evade due course of justice or abuse of concession granted to the accused in any manner like possibility of absconding etc., and what is no doubt observed is bail once granted cannot be cancelled in a mechanical manner without considering the circumstances that have rendered it no longer conducive to fair trial to allow the accused to retain his freedom of bail concession. The other expression of the Apex Court in **Savitri Agarwal Vs. State of Maharashtra**⁴ where said expression of **Dolat Ram supra** referred by reiterating the above principle.

In fact the latest three judge bench expression of the Apex Court in **Ms. X Vs. State of Telangana**⁵ also reiterating what is stated supra by referring to **Dolat Ram supra** among others. In fact in **Ms. X supra** expressions particularly of **Narendra K Amin (DR.) Vs. State of Gujarat**⁶ not referred nor brought to its notice leave about the other earlier three judge bench expression in **Aslam Babalal Desai Vs. State of Maharashtra**⁷. No doubt in **Aslam Babalal Desai supra** is in respect of the cancellation of a default bail subsequent to the filing of the final report where some observations in the record to the parameters

⁴ (2009) 8 SCC 325

⁵ 2018 (2) ALT (Crl.) 273 SC

⁶ 2008 13 SCC 584

⁷ 1992 4 SCC 272

for cancellation made however the principle succinctly laid down in the three judge expression of the Apex Court in **Narendra K Amin supra** where it is observed clearly that the Court dealing with cancellation application is required to find whether irrelevant material of substantial nature was taken into account or relevant material omitted for consideration while granting bail and if so order granted bail would be perverse and justifying cancellation, however Court should avoid re-appreciation of evidence. There the accused even a senior IPS officer, the bail granted was cancelled with observation of irrelevant material taken into consideration there the reference is only under Section 439(2) Cr.P.C. and the scope thereon in regard to the above. They also referred the earlier expression of the Apex Court in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan**⁸ in this regard regarding cancellation of bail. Thus, this Court cannot ignore **Narendra K Amin supra** also while considering the latest three judge bench in **Ms. X supra** that too when that judgment of **Narendra K Amin supra** when not referred of the earlier Constitution Bench.

Keeping these principles in mind now coming to the facts, the counter contentions opposing the cancellation, from the counter affidavit of the accused Zubairuddin are that with referring to the 2 cases referred those do not pertain to him in saying so far as crime No.711 of 2017 it is against one Suresh Agarwal and he is no way concerned and so far as crime No.67

⁸ 2004 7 SCC 528

of 2010 it is for the petty case of playing cards with no progress of the crime with trial. In fact that crime No.711/2017 even FIR no way finds his name. One of the bail cancellation application refers to it of he is also involved by the same police station by mere filing of the FIR with counter affidavit, the Court cannot ignore the averment in the bail cancellation application particularly at Para 9 by the selfsame police station with reference to the record. So far as the other crime concerned, it is no doubt under Sections 3 & 4 of AP Gaming Act of Chanchalguda PS admittedly pending against the petitioner. Crime No.711 of 2017 concerned for the offences punishable under Sections 447, 427 & 506 IPC undisputedly even from perusal of the FIR referred by the accused with his counter contest.

The other contention is injured already given his statement to the police as well as before the learned Magistrate of he was not shot by anyone by firing of the pistol but for it was accidental due to his negligent handling. It is the contention therefrom that when the very victim says his mis-handling caused the fire accident of the weapon in use no doubt negligently parted by the accused who is the licensed person in allowing or to deal with by the victim. The very cancellation of application mentioned several aspects of the incident to rely such version of the injured witness among others who were present there and it is mentioned of requirement of interrogation of the accused with custody.

No doubt in the bail order there is a stray reference of directed to cooperate with investigation agency if it is required even petitioner submit in the course of hearing that when police required his presence he could not attend as stated he was to attend at that time for hearing in a income tax matter. Practically it can be said no cooperation under that guise for even income tax matter if at all a counsel can appear to represent him not even a criminal case or compulsory appearance personally despite mentioned personal appearance. Leave it as it is of not to make a mountain of molehill for that incident, there is also default in the investigating agency that once there is an order to release in grant of anticipatory bail and even modified from the surrender before the arresting authority to surrender before the learned Magistrate Court concerned the police custody can be asked if at all within 15 days therefrom not even asked.

In this background when the bail application averments clearly show the need of the petitioner's presence and interrogation and there is legal bar after first 15 days from the first remand and surrender subsequently to consider in same crime for not in any different crime though it is a serious offence and the learned Sessions Judge should not have been granted the anticipatory bail so casual taking into consideration of the fact that from the date of granting to the date of filing of cancellation application it is only hardly 15 days gap, to sub

serve the ends of justice the petitioner is directed to follow the additional conditions:

[1]. The petitioner is directed to appear every day for a period of one month from the date of receipt of this order before the police including for the purpose of interrogation and disclose the facts which at all willing only truly and to cooperate for the investigation.

[2]. The petitioner shall not interfere with any of the witnesses including those present at the time of occurrence to meet or contact directly or indirectly to influence including by any messages or phone contact till end of trial. If at all there is anything the police are given liberty by virtue of this order to move for cancellation.

[3]. The petitioner shall produce the vehicle for the purpose of investigation.

Accordingly and in the result, this Criminal Petition is disposed of.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.09.2018
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