

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.452 OF 2019

ORDER:

This Criminal Petition, under Section 439(2) of the Code of Criminal Procedure, 1973, (for short 'the Cr.P.C.') is filed by the petitioner/*de facto* complainant to cancel the bail granted in favour of the respondents/A.1 and A.2 *vide* docket order dated 30.12.2018 in Crime No.985 of 2018 on the file of the XXIV Additional Metropolitan Magistrate, Cyberabad at Hayathnagar.

2. Heard the learned counsel for the petitioner/*de facto* complainant, the learned Additional Public Prosecutor representing respondent No.1/State, the learned counsel for respondent Nos.2 and 3/A.1 and A.2 and perused the record.

3. Learned counsel for the petitioner/*de facto* complainant would submit that the learned Judge erroneously held that the alleged offences under Sections 494 and 506 of IPC are bailable and without notice to the learned Additional Public Prosecutor as per Section 437 of Cr.P.C. was pleased to grant bail, which is erroneous and ultimately, prayed to allow the petition as prayed for.

4. Learned Additional Public Prosecutor representing respondent No.1/State supported the said contention.

5. Learned counsel for respondents/accused would contend that there is no violation of terms and conditions of bail order. Therefore, this petition for cancellation of bail under Section

439(2) of Cr.P.C. merits no consideration and ultimately prayed to dismiss the petition.

6. In view of the above submissions, the point that arises for consideration is:

“Whether the bail granted in favour of respondent Nos.2 and 3/ A.1 and A.2 *vide* order dated 30.12.2018 in Crime No.985 of 2018 can be cancelled?”

7. As per the amended proviso to the Code of Criminal Procedure, the offence under Section 494 of I.P.C. is non-bailable. The punishment for the said offence would extend upto seven years of imprisonment. It is also appropriate to extract the provision of Section 437 of Cr.P.C., which reads as under:-

“437. When bail may be taken in case of non-bailable offence.---¹

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but---

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable 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 punishable with imprisonment for three years or more but not less than seven years):

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.]

[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

8. As per the mandate given under Section 437 of Cr.P.C., a notice is required to be given to the Public Prosecutor in the event of grant of bail to the accused for non-bailable offences for which the punishment of imprisonment would be seven years or more. In the subject case, the imprisonment for the offence under Section 494 of IPC would extend upto seven years. A notice to the Public Prosecutor is mandatory and condition precedent before granting bail. The learned Judge in the impugned order held that the offences under Sections 494 and 506 of IPC are bailable and without notice to the Public Prosecutor was pleased to grant bail to the respondents/accused.

9. It is pertinent to state that on 31.12.2018, the learned Public Prosecutor concerned was pleased to file a memo bringing to the notice of the lower Court that as per the amended Act *vide* A.P. Act 3 of 1992 (w.e.f. 15.02.1992), Section 494 of IPC was made non-bailable and cognizable in the State of Andhra Pradesh and the same was adopted by Telangana State, *vide* Section 101 of Andhra Pradesh Reorganisation Act, 2014. So, the record establishes that the offence under Section 494 of IPC is non-bailable and the punishment for the said offence may

extend upto seven years of imprisonment. Therefore, a notice is necessary to be given to the Public Prosecutor before granting bail to the accused for the said offences. Since the bail granted to the respondents/accused was without notice to the Public Prosecutor as per Section 437 of Cr.P.C., the same is liable to be cancelled.

10. For the foregoing reasons, the order of granting bail dated 30.12.2018 passed by the XXIV Additional Metropolitan Magistrate, Cyberabad at Hayathnagar in Crime No.985 of 2018 in favour of the respondents/accused is set aside. The respondents/accused are directed to surrender before the Station House Officer concerned forthwith and file bail application before the lower Court. In case of failure to do so, the learned Magistrate shall issue arrest warrant against the respondents/accused and proceed in accordance with law.

11. The Criminal Petition is, accordingly, allowed.

Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 25.03.2019
ssp