

HON'BLE JUSTICE G. SRI DEVI

CRIMINAL PETITION Nos. 3729 and 3730 of 2019

COMMON ORDER:

1. Both the petitions are filed under Section 439 (2) Cr.P.C. seeking cancellation of bail granted to accused Nos. 1 to 15 in Crime No.155 of 2019 of Karimnagar Rural Police Station, vide orders dated 07.05.2019, passed in CrI.M.P.No.402 of 2019 and CrI.M.P.No.403 of 2019 on the file of the Principal Sessions Judge, Karimnagar.

2. Since the issue involved in both the petitions is one and the same, they are being disposed of by this common order.

3. The facts in issue are as under:

One Bojja Samatha @ Vijaya/*de facto* complainant, who is the petitioner herein, lodged a report on 19.04.2019 before the police, alleging that her husband Bojja Thirupathi, was the President of Fisheries Co-operative Society of Chamanapalli Village. There were some quarrels between their caste people regarding catching of fishes in Rajasamudram and Appannapalli tanks and the accused were removed from the society by canceling their membership. On that, the accused bore grudge against her husband. While so, on 19.04.2019 in the mid-day, as the water level in Appanapalli tank was decreased, her husband left to Chamanapalli by saying that he will fill the water into the tank from the nearby agricultural wells.

At about 5.00 p.m., when her husband was laying pipes to Appanapalli tank from the agricultural well of one Pabbathi Prathapa Reddy, the accused with an intention to kill her husband, attacked on her husband, killed her husband by beating with stones on his head and also strangled with a towel. Basing on the said report, a case in Crime No.155 of 2019 came to be registered by the Karimnagar Rural Police Station for the offences punishable under Sections 148, 120-B and 302 read with 149 of I.P.C. Accused were arrested on 22.04.2019 and remanded to judicial custody. On 07.05.2019, the learned Principal Sessions Judge, Karimnagar, after considering the material on record, granted bail to the accused. The present applications are being filed seeking cancellation of bail granted to accused Nos.1 to 15.

4. A counter came to be filed on behalf of the accused contending that after taking into consideration the entire material on record only the Court below granted bail to the accused by imposing stringent conditions and that the accused are complying with the said conditions. Moreover, entire investigation is completed except filing of the charge sheet and as such the question of tampering with the witnesses would not arise. It is also stated that the present applications are filed basing on unfounded apprehensions without there being any iota of proof of evidence. Only to gain vengeance against the accused and to see them behind the bar the present

applications are filed and there are no just and valid grounds for cancellation of the bail granted to the accused.

5. Learned counsel for the petitioner/*de facto complainant* mainly submits that without assigning any reasons the Court below granted bail within 15 days of the occurrence. It is further stated that the Court below did not even take into consideration the past history of the accused as there are several criminal complaints pending against them at difference stages. Without considering the fact that there would be possibility of further attacks and also possibility of destroying the evidence and threatening the witnesses, the Court below granted bail to the accused. It is further stated that the accused are notorious rowdies and habitual offenders and even after their release on bail, they threatened the witnesses and one Bojja Ravinder lodged a complaint before the Commissioner of Police, Karimnagar. It is also stated that a case in Crime No.214 of 2019 has been registered against the accused for an offence under Section 107 Cr.P.C. He relied on the judgments of the Apex Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee*¹ and *State of Bihar v. Rajballav Prasad @ Rajballav Pd.Yadav @ Rajballabh Yadav*².

6. On the other hand, the learned Counsel for the respondents/accused contends that there is no material to show that they have threatened the witnesses. He further submits that the contention of the learned counsel for the petitioner that the orders

¹ (2010) 0 SCJ online (SC) 1810

² (2016) 10 SCJ 752

under challenge are bereft of any reasons is incorrect. According to him, as on the date of granting bail, 15 witnesses were examined by the prosecution. The Court granted bail since all the material witnesses were examined by then. He further submits that the cancellation of bail would arise only when there is interference with the process of investigation or tampering with the evidence. He further submits that now the police filed charge sheet, which was taken cognizance as P.R.C.No.39 of 2019. By an order, dated 01.08.2019, the learned II Additional Judicial Magistrate of First Class, Karimnagar, committed the said case to the Court of Sessions, Karimnagar, as required under Section 209 (a) Cr.P.C. He placed on record the charge sheet and committal order. He relied on the judgment of the Apex Court in *Narendra K.Amin (Dr.) v. State of Gujarat and another*³

7. The point that arises for consideration in the case on hand is "whether there are any grounds to cancel the bail granted to the respondents/accused".

8. In **Prasanta Kumar Sarkar v. Ashis Chatterjee (1 supra)** it was held as to what are the factors to be borne in mind while considering an application for bail:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

³ (2008) 13 SCC 584

- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail. (Emphasis supplied).

9. I may also refer to the following principles relating to grant or refusal of bail stated by the Apex Court in Para No.11 of **Kalyan Chandra Sarkar v. Rajesh Ranjan**⁴.

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.”

10. In the case of **Neeru Yadav v. State of Uttar Pradesh and another** (Crl.A.No.2587 of 2014 arising out of S.L.P.(Crl.) No.8469 of 2014) the Hon’ble Apex Court, observed as under:

⁴ (2004) 7 SCC 528

“The pivotal issue that emanates for consideration is whether the impugned order passed by the High Court deserves legitimate acceptance and put in the compartment of a legal, sustainable order so that this Court should not interfere with the same in exercise of jurisdiction under Article 136 of the Constitution of India. In this context, a fruitful reference be made to the pronouncement in *Ram Govind Upadhyay v. Sudarshan Singh*⁵, wherein this Court has observed that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary, capricious and injudicious, for the heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependant on the factual matrix of the matter.”

11. The Apex Court in **Masroor Vs. State of Uttar Pradesh**⁶ observed that the grant of bail without recording reasons is impermissible equally in failure to consider the relevant factors for such granting that deserves cancellation of bail undoubtedly under Section 439(2) of Cr.P.C.

12. It is true that the learned Sessions Judge while granting bail to the accused did not record reasons for grant of bail. The learned Sessions Judge only observed that “since all most all the investigation has been completed, it is a fit case to grant bail”. The Court ought to have given some reasons in view of the settled principles of law.

⁵ (2002) 3 SCC 598

⁶ (2009) 14 SCC 286

13. In **Narendra K.Amin(Dr.) Vs. State of Gujarat (3 supra)** relied upon by the learned counsel for the accused also, the Apex Court in para-23 held that “the Court dealing with an application for cancellation of bail invariably under Section 439(2) of Cr.P.C. can consider whether irrelevant material was taken into consideration or relevant material was not taken into consideration in granting bail”.

14. In the instant case, the material disclosed that previously the respondents/accused were involved in Crime Nos.325 of 2014, 412 of 2014, 73 of 2014, 168 of 2015, 338 of 2018 of Karimnagar Rural Police Station and the accused were also convicted in C.C.No.144 of 2002 on the file of the Judicial First Class Magistrate-cum-Special Mobile Court vide judgment dated 07.07.2003. Without considering the relevant material such as nature and gravity of the accusation; severity of the punishment in the event of conviction; character, behaviour and involvement of the accused in criminal cases prior to granting of bail, the learned Sessions Judge, granted bail to them. The material further discloses that the bail was granted to the accused in this case on 07.05.2019. After grant of bail, on 03.06.2019, a case in Crime No.214 of 2019 came to be registered against the accused. Apart from that, the accused intentionally abused the concession of bail by involving themselves in threatening one Bojja Ravinder, who is an eye witness to the present crime, on 27.05.2019.

15. In **State of Bihar v. Rajballav Prasad**⁷, the Apex Court by scanning the law and dealt with the concept of fair trial not only for the accused but also for victim, observed that “Threat and intimidation has been one of the major causes for the hostility of witnesses.”

16. The record shows that the learned Principal Sessions Judge, Karimnagar, enlarged the respondents/accused on bail without any appropriate consideration of the material available on record and the criminal history of the respondents/accused 1 to 15. Even subsequent to the grant of bail in the aforesaid matter, which clearly provided that the respondents/accused have given an undertaking before the Court concerned that they will not tamper with the evidence and threaten the witnesses after their release on bail and shall co-operate with the trial of the case by the trial Court. But the fact remains that there has been gross violation of the said undertaking as there is evidence on record to show that the respondents/accused have been tampering with the evidence, threatened the witnesses, for which criminal case has already been filed by an eye witness (Bojja Ravinder) and on this ground also the present Criminal Petitions filed for cancellation of bail deserves to be allowed. As such the bail granted to the respondents/accused Nos.1 to 15 is hereby cancelled.

⁷ 2017 2 SCC 178

17. Accordingly, both the Criminal Petitions are allowed and the orders, dated 07.05.2019 passed in CrI.M.P.Nos.402 and 403 of 2019, on the file of the Principal Sessions Judge, Karimnagar, are hereby set aside. The respondents/Accused Nos.1 to 15 are directed to surrender before the Sessions Court concerned, on or before 20.09.2019.

18. Miscellaneous petitions, if any pending, shall stand dismissed.

09.09.2019
Gkv/Gsn

JUSTICE G. SRI DEVI



