

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.9923 of 2021

ORDER:

This petition is filed under Section 439(2) Cr.P.C., seeking cancellation of bail granted to the respondents/A1, A7, A9 to A12, A15, A16, A14, A8, A13, A18, A2, A3, A5 and A17, by order dated 20.12.2021 in CrI.M.P.No.343 of 2021 in Cr.No.102 of 2021 on the file of the Sessions Judge at Adilabad.

2. Heard learned Public Prosecutor for the petitioner-State and Mr.R. Sushanth Reddy, learned counsel for the respondents.

3. Learned Public Prosecutor submits that the Court below, while granting bail to the respondents, has failed to take into consideration the relevant factors and absolutely, the order is bereft of reasons. He further submits that the learned Judge has observed that "this is the second bail application and the earlier bail petition was dismissed as the investigation is reportedly pending. Even now also, it is reported that the investigation is pending. However, the case diary shows that major part of investigation is completed. Therefore, this Court feels that the petitioners can be granted bail, however by imposing certain conditions as charge sheet is not yet filed." Learned Assistant Public Prosecutor further submits that the situation in the village is very delicate and that there are about 18 accused in this case and in view of the law and order situation prevailing in the village from the date of incident till today, a police picket was set up in the village, and in fact, the Government has addressed a letter dated 10.12.2021, to the Registrar General, High Court for the State of Telangana, Hyderabad, for establishment of Fast Track Court to try this case and the High Court was pleased to designate the District and Sessions Court at Adilabad as a Special Court to conduct speedy trial of the case. Learned Assistant Public Prosecutor has relied on the judgments of the Apex Court in **Ramesh**

Bhavan Rathod v. Vishanbhai Hirabhai Makwana Makwana (Koli) and another (Crl.A.No.422 of 2021); **Harjit Singh v. Inderpreet Singh @ Inder and another** (Crl.A.No.883 of 2021) ; **Vipan Kumar Dhir v. State of Punjab and another** (Crl.Appeal Nos.1161-1162 of 2021); **Brijmani Devi v. Pappu Kumar and another** (unnumbered Criminal Appeal of 2021 arising out of SLP(Crl.)No.6335 of 2021); **and Manoj Kumar Khokhar v. State of Rajasthan and another (Crl.A.No.36 of 2022)**. He further submits that the Court below has committed serious infirmity in the order where without considering any of the contentions raised by the prosecution and the other crucial aspects has granted bail. He further submits that A1, who is the king pin, is a ganja vendor, and he was involved in total 9 cases including murder, dacoity, SCs & STs (POA) Act case and also attempt to murder and if he is released on bail, there is every likelihood that he may tamper with the evidence and influence the witnesses and also the apprehension of the prosecution is that fair trial may not be possible. He further submits that in this case, two villagers have lost their lives and the Court below has not taken into consideration the relevant factors, gravity of the offences and the conduct of the accused, and in fact, the societal impact has also to be taken into consideration by the Court and the Court below has miserably failed to take into consideration the same and hence, the bail granted by the Court below to the respondents may be cancelled. Learned Assistant Public Prosecutor also submits that this Court, by order dated 22.12.2021 has suspended the bail order dated 20.12.2021 in Crl.M.P.No.343 of 2021 in Cr.No.102 of 2021 (P.S.Ichoda, Adilabad) on the file of the Sessions Judge at Adilabad.

4. On the other hand, Mr. R. Sushanth Reddy, learned counsel appearing for the respondents, submits that the Court below has taken into consideration the relevant factors while granting bail to the accused. He submits that the bail order need not contain specific reasons and the relevant factors were taken into consideration. Learned counsel further submits that

the Court below, after taking into consideration the case diary, has taken view that the material part of the investigation is completed and then, granted bail to the respondents. He further submits that the grounds raised in the petition and the arguments advanced by the State before this Court are as if they preferred an appeal, but the instant application is only for cancellation of the bail. Learned counsel further submits that all the accused belong to the same village and eking out their livelihood by doing agriculture and they have no criminal antecedents and that the apprehension put forth by the prosecution that if the respondents are released on bail, they may tamper with the evidence and influence the prosecution witnesses in the village has no legs to stand. Learned counsel has relied on the judgments of the Apex Court in **X v State of Telangana and another**¹, wherein the Apex Court held as under;

“14. 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* observed that:

“4. 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 or 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.”

15. These principles have been reiterated by another two Judge Bench decision in *Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan* 5 and more recently in *Dataram Singh v State of Uttar Pradesh*⁶:

" 23.It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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."

¹ (2018) 16 SCC 511

He relied on the judgments of the Apex Court in **Nityanand Rai v. State of Bihar and another**²; **Ramcharan v. State of M.P.**³; **Myakala Dharmarajam v. State of Telangana**⁴ wherein it was held as under;

“7. The factors to be considered while granting bail have been held by this Court to be 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 tampering with the evidence and witnesses, and obstructing the course of justice etc. 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. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

8. [In Raghubir Singh v. State of Bihar](#)² this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material 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.

Learned counsel also relied on the judgment of the Apex Court in **Mohammad Farheen v. The State of Telangana and others** (Crl.P.No.6799 of 2021 dated 08.12.2021). He submits that absolutely the prosecution could not make out any grounds seeking interference of the order passed by the Court below while granting bail to the respondents.

² (2005) 4 SCC 178

³ (2004) 13 SCC 617

⁴ (2020) 2 SCC 743

5. Having heard the learned counsel on either side, perused the material on record. Admittedly, apart from the other offences, this is a case registered for the offence under Section 302 IPC, where two persons have lost their lives. It is also stated that there is sensitive situation prevailing in the village and a police picket was also set up in the village. Looking at the order passed by the Court below, except stating that the investigation is completed as per the case diary, it failed to record any reasons, particularly where the offence is under Section 302 IPC apart from other offences. Though as rightly contended by the learned counsel for the respondents that the Court need not give elaborate reasons, but while considering the bail application, *prima facie* reasons have to be recorded by the Court, particularly in an offence of this nature. Apparently in this case, the Court below has failed to record any reasonable grounds for granting bail except stating that the investigation is completed.

6. Taking into consideration the fact that respondent No.1/A1 is the main accused and there are criminal antecedents against him and the sensitive situation prevailing in the village as submitted by the learned Public Prosecutor, this Court is of the view that A1 ought not to have been granted bail. Accordingly, the bail granted to A1 is cancelled.

7. As far as the other respondents are concerned, who are alleged to be the followers of A1, this Court is not inclined to cancel the bail granted to them. Balancing the interest of the accused as well as the prosecution, this Court deems it appropriate to impose a condition directing respondent Nos.2 to 16/A7, A9 to A12, A15, A16, A14, A8, A13, A18, A2, A3, A5 and A17 not to enter into the village for a period of two months from today, and basing on the situation, they are at liberty to move an appropriate application at a later point of time.

8. Accordingly, the Criminal Petition is partly allowed by cancelling the bail granted to A1 by the trial Court by order dated 20.12.2021 in

Crl.M.P.No.343 of 2021 in Cr.No.102 of 2021 on the file of the Sessions Judge at Adilabad, and the application in respect of respondent Nos.2 to 16/ A7, A9 to A12, A15, A16, A14, A8, A13, A18, A2, A3, A5 and A17 is dismissed.

9. Miscellaneous petitions, if any pending in this criminal petition, shall stand closed.

LALITHA KANNEGANTI, J

3rd February, 2022

sj