

THE HONOURABLE DR.JUSTICE G. RADHA RANI

CRIMINAL PETITION NO.1461 OF 2023

ORDER:

This petition is filed by the petitioner – de-facto complainant under Section 439 (2) of Cr.P.C. to set aside the order dated 06.12.2022 passed in Criminal M.P.No.74 of 2022 in Criminal M.P.No.429 of 2022 in C.C.No.2211 of 2021 pertaining to Crime No.98 of 2021 of PS Miyapur by the VI Additional District Judge cum VI Additional Metropolitan Sessions Judge cum Family Court, Rangareddy District at Kukatpally and consequently to cancel the bail order dated 06.12.2022 in Criminal Petition No.429 of 2022 granted by the said court.

2. The case of the petitioner in brief was that she was the de-facto complainant / victim in the case. On her complaint against the 2nd respondent / A1 and his family members, Police Miyapur registered the above crime and filed charge-sheet against A2 to A5 for the offences under Sections 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act and the same was pending as C.C.No.2211/2021 on

the file of the VIII Additional Metropolitan Magistrate, Kukatpally. The Police had shown A1 as absconding in the charge-sheet, as he did not turn up or appear before the investigating officer for enquiry. A1 was residing in Japan and was not cooperating in investigation or in the proceedings of the case despite being aware of the pending of the case before Police Miyapur. On 31.03.2022, the petitioner addressed a letter to the Regional Passport Officer to impound the passport of A1, as he was absconding and evading the due process of law. Police issued a Look Out Circular (LOC). The passport authorities consulted with the Consulate General of India (Tokyo, Japan). Having observed the development, the accused No.1 came to India on 04.06.2022. On his arrival, he was detained in Delhi Airport by the Immigration Authorities in view of the pending LOC and passed on information to PS Miyapur and handed over the accused No.1.

2.1. The XV Additional Metropolitan Sessions Judge, Rangareddy District at Kukatpally vide order dated 30.05.2022 in Criminal M.P.No.429 of 2022 granted anticipatory bail to A1 on the ground that A1 already came to India and was ready to face the trial and to

prove his innocence. Infact A1 made a false representation before the court that he was present in India as on 13.05.2022 by the date of filing the bail application, though he came to India only on 04.06.2022, thereby he misrepresented and misled the court. The vakalath of accused No.1 that was filed along with the bail application would show that he had signed it on 13.05.2022, which was identified by his counsel Sri Md.Khasim Razee on 19.05.2022 that the accused No.1 signed it in the presence of an advocate. The respondent No.2 - Accused No.1 filed a forged vakalath with impersonation and was trying to evade the process of law since the registration of the case and was not cooperating with the investigating agency. He was very much required in the proceedings of the case and there was every possibility of his fleeing away to abroad without intimation to the court, in which case it would be very difficult to apprehend him. In the said circumstances, the petitioner filed Criminal M.P.No.74 of 2022 in Criminal M.P.No.429 of 2022 seeking for cancellation of bail, but the same was dismissed by the court vide order dated 06.12.2022. Aggrieved by the same, she preferred the present criminal petition.

3. Heard the learned counsel for the petitioner - complainant and the learned Additional Public Prosecutor representing the respondent No.1 - State and the learned counsel representing the respondent No.2 - Accused No.1.

4. The learned counsel for the petitioner - de-facto complainant not pressed the contentions on the forgery of the vakalath and the report given by Truth Labs on such forgery. He only pressed the contention that the respondent No.2 / Accused No.1 obtained anticipatory bail by misrepresenting the facts stating that he was in India though he was in Japan at the time of filing and hearing the bail application, though he admittedly returned to India only on 04.06.2022, as per the entries made in his passport and such misrepresentation would entail for cancellation of bail and relied upon the judgment of this Court in **The State of Telangana v. Akaram Ranjith**¹ in Criminal Petition No.5994 of 2020 dated 05.01.2021. He also relied upon the judgment of the High Court of Allahabad in **Brijeshwar Dayal Verma v. State of Uttar Pradesh and Another**² dated 03.09.1991, wherein the

¹ MANU/TL/0005/2021

² MANU/UP/0335/1991

accused obtained an order of bail in his favour by misrepresenting the facts, it was held that such an order was bound to be recalled.

5. The learned Additional Public Prosecutor submitted that as per the entries in the passport of the respondent No.2 - A1, he left to Japan on 07.12.2019 and returned to India (Hyderabad) on 04.06.2022 and that the bail application was filed on 13.05.2022 and the same was granted on 30.05.2022 and that the respondent No.2 / A1 was not in India by the date of filing the bail application or granting the bail and supported the contentions of the learned counsel for the petitioner - de-facto complainant.

6. The learned counsel for the respondent No.2 - A1 on the other hand contended that the petition seeking cancellation of bail filed by the de-facto complainant was not maintainable as the same was filed without seeking permission from the prosecution. No conditions were imposed by the court while granting bail. As such, there was no question of violation of orders passed by the court in Criminal M.P.No.429 of 2022. The Police, Miyapur had completed the entire investigation and filed the charge-sheet. There were no valid grounds

for cancellation of bail as it would amount to review of a decision already made and could by and large be permitted only by reason of any supervening circumstances or to prove that the accused was interfering with the investigation and prayed to dismiss the petition.

7. Perused the record.

8. The record would disclose that the respondent No.2 / A1 was granted anticipatory bail by the XV Additional Metropolitan Sessions Judge, Rangareddy at Kukatpally in Criminal M.P.No.429 of 2022 on 30.05.2022, considering the submission of the learned counsel for the accused No.1 that A1 came to India and was ready to face the trial and to prove his innocence and he was apprehending his arrest by the Police. But the entries in the copy of passport filed by the petitioner – de-facto complainant as well as the instructions filed by the SI of Police, Miyapur PS enclosing the copies of the entries made in the passport of respondent No.2 / A1 would disclose that he returned to India (Hyderabad) from Japan only on 04.06.2022 and that he made a misrepresentation before the court stating that he came to India and

was apprehending his arrest by the Police and that he was ready to face the trial, which fact was not true.

9. This Court in the citations relied by the learned counsel for the petitioner - de-facto complainant in **The State of Telangana v. Akaram Ranjith** (1 supra) by also considering the judgment of the Allahabad High Court in **Brijeshwar Dayal Verma v. State of Uttar Pradesh & Another** (2 supra), considered the issue of cancellation of bail by misrepresentation of facts and held that where an accused obtained an order of bail in his favour by misrepresenting true facts and by playing fraud upon the court, such an order for bail is bound to be recalled.

10. The Court in **Akaram Ranjith Case** (1 supra) also placed reliance upon the judgment of the Patna High Court in **Manoj Kuru @ Dinesh Choudhary v. State of Bihar** in Cri.Misc.No.38892 of 2006, decided on 01.12.2008, wherein also the accused obtained bail on misrepresentation of fact that a co-accused was granted bail and on considering of the said fact, the Patna High Court cancelled the bail granted to the accused and of the judgment of the Punjab and Haryana

High Court in **Gurwinder Singh v. State of Punjab** in CrI.Misc.No.M-23922 of 2008, dated 22.05.2009 on a misrepresentation of fact with regard to nature of injuries sustained by the victim, cancelled the bail granted to the accused.

11. In the present case also, the respondent No.2 - A1 obtained bail by misrepresenting the fact that he was in India though he was not in India at the time of granting the bail. Hence, it is considered fit to cancel the bail obtained by the petitioner - A1 in Criminal M.P.No.429 of 2022 dated 30.05.2022 in Crime No.98 of 2021 of PS Miyapur.

12. In the result, the Criminal Petition is allowed cancelling the bail application obtained by the accused No.1. The respondent No.2 / A1 is directed to surrender before the Station House Officer, Miyapur Police within fifteen (15) days from today and the Police are directed to follow the procedure laid down under Section 41 (A) of Cr.P.C. and to conduct investigation.

Miscellaneous applications pending, if any, shall stand closed.

03rd April, 2023
nsk.

Dr. G.RADHA RANI, J