

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition No.62 of 2015

%02.04.2015

Between:

Syed Abdul Majid @ Majid

and others.Petitioners

AND

M.A.Jabbar

and another. Respondents

! Counsel for Petitioners : Sri Mir Masood Khan

^ Counsel for Respondent No.1 : Sri L. Harish

^ Counsel for Respondent No.2 : Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

1. 2002 (2) ALT (CrI.) 231 (AP)
2. (1995) 1 SCC 349
3. 2004 CrI.L.J. 1451
4. MANU/AP.0538/2011 = CrI.P.No.5699 of 2011 dt.16.08.2011
5. AIR 2011 SC 312

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.62 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A1 to A5 seek to set aside the order dated 08.01.2015 in CrI.M.P.No.734 of

2014 passed by learned III Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar canceling the bail earlier granted by him in CrI.M.P.No.3362 of 2014.

2) Factual matrix of the case is thus:

a) In Cr.No.435 of 2014 of Pahadishareef PS, the petitioners/accused are alleged to have committed murder of *defacto* complainant's elder son viz. M.A.Rafeeq on 29.04.2014 and hence crime was registered against them under Section 302 r/w 34 IPC and investigation is in progress. During the course of investigation the accused were arrested on 06.11.2014 and remanded to judicial custody and they applied for bail in CrI.M.P.No.3362 of 2014. Learned III Additional District and Sessions Judge, Ranga Reddy District in his order dated 12.12.2014 granted them bail considering the fact that investigation was completed and police have already prepared charge sheet and no prejudice would be caused to prosecution if the bail were to be granted. Accordingly, he directed the accused be released on bail on their executing bond for Rs.20,000/- with two sureties each for a like sum to the satisfaction of XIV Metropolitan Magistrate, Cyberabad, L.B.Nagar.

b) Be that it may, the *defacto* complainant filed CrI.M.P.No.734 of 2014 under Section 439(2) Cr.P.C. before the learned III Additional District and Sessions Judge, Ranga Reddy District and sought for cancellation of the bail granted in CrI.M.P.No.3362 of 2014 on the allegations that even when the accused were in judicial custody some unknown persons on their behalf started threatening the *defacto* complainant with dire consequences if he does not come forward to compromise in the case and in view of the said threat he lodged a report to SHO, Mylardevpally PS and SI of police having taken permission from VIII Metropolitan Magistrate, Cyberabad Rajendranagar registered a case in Cr.No.705 of 2014 under Sections 506 and 507 IPC since the offences are not cognizable in nature and that the investigation is pending.

c) He further alleged that even as per the remand case diary, A1 was

involved in a murder case in Cr.No.79 of 2008 of Bahadurpura PS and rowdy sheet was opened against him and maintained in that PS and further he was also involved in two more cases in Rajendranagar PS limits. Similarly, as per remand case diary, A3 was also involved in a brutal murder case in Cr.No.124 of 2011 in the limits of Narayanaguda PS. Thus, he alleged that A1 to A5 are notorious criminals and on their behalf some unknown persons are making telephone calls to the *defacto* complainant and threatening him with dire consequences. He finally submitted that material objects and weapons seized on the confession of the accused were sent to Forensic Science Laboratory (FSL) and its report is awaited and hence the investigation is not completed and even assuming that investigation is completed, there is life threat to *defacto* complainant in the hands of accused. With the above allegations, he sought for cancellation of bail.

3) Respondents/accused filed counter and staunchly denied the allegations.

4) Learned III Additional District and Sessions Judge, Ranga Reddy District taking into consideration the factum of registration of Cr.No.705 of 2014 and also criminal background of all the accused came to the conclusion that accused persons are not entitled to bail and accordingly cancelled the bail earlier granted by him in CrI.M.P.No.3362 of 2014 and directed them to surrender before the XIV Metropolitan Magistrate, L.B.Nagar within a period of one week from the date of his order.

Hence, the instant petition.

5 a) The first and foremost argument of learned counsel for petitioners/accused is that in this case, learned III Additional District and Sessions Judge granted bail after taking totality of circumstances including the completion of investigation into consideration and the prosecution has not raised any objection nor filed any application for cancellation of bail but strangely, the *defacto* complainant himself filed petition under Section 439(2) Cr.P.C. for

cancellation of bail contrary to the provisions of Cr.P.C. Since under Section 225 Cr.P.C., trial before a Court of Session has to be conducted by the Public Prosecutor and none others have to intervene, the learned III Additional District and Sessions Judge, at the threshold ought not to have entertained the petition filed by *defacto* complainant. In this context he relied upon a decision reported in ***B.Janakiramaiah Chetty v. A.K.Parthasarathi***.

b) Secondly, on the merits of the application, learned counsel argued that even assuming that *defacto* complainant can file such a petition, still his allegations do not merit any consideration so as to curtail the fundamental right of personal liberty of the petitioners/A1 to A5 inasmuch as his allegations are that some unknown persons allegedly threatened him with dire consequences and asked him to compromise and no material, much less, tangible material was placed by him before the Court for its consideration to come to a conclusion that what was alleged was true. He vehemently argued that except bald submissions coupled with FIR, the complainant nor the prosecution could produce any material to connect the accused to the alleged threat. Learned counsel submitted that the lower Court simply cancelled the bail without testing the veracity of FIR allegations. He argued that the parameters for granting bails and cancellation of bails are quite different and distinct and the bail which was granted after a hot contest and upon consideration of all relevant facts, should not ordinarily be cancelled without there being a strong material showing that the accused have misutilized their freedom. In this context he relied upon the following decisions.

1. Dolat Ram and others vs. State of Haryana

2. Biman Chatterjee vs. Sanchita Chatterjee and another

3. E.Sanjeeva Reddy vs. State of A.P.

He submitted that there are no valid reasons for cancellation of bail and hence the impugned order which curtails the personal liberty of the accused without their fault may be set aside.

6 a) In oppugnation, learned Additional Public Prosecutor and

learned counsel for second respondent/*defacto* complainant firstly argued that society particularly the *defacto* complainant has a stake in the matter of granting bail to an accused and also in case if the accused misutilized his freedom and causes any personal harm to complainant or meddles with the progress of the case. In that context of the matter, they argued, the *defacto* complaint has every right to file an application seeking to cancel the bail granted earlier and there is no procedural irregularity in it. On this aspect they relied upon the decision reported in ***Siddaram Satlingappa Mhetre v. State of Maharashtra***.

b) Nextly, they argued that in view of threats made by unknown persons and registration of FIR and also in view of criminal background of accused the trial Court has rightly cancelled the bail. They prayed to dismiss the petition.

7) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

8 a) The first ground on which the petitioners challenged the impugned order is that the petition to cancel the bail was not moved either by the State or by the Public Prosecutor and it was moved by *defacto* complainant which is untenable. It is argued, under Section 225 Cr.P.C. the prosecution in a Sessions case can be conducted by Public Prosecutor alone and none others have any say and hence the learned III Additional District and Sessions Judge ought to have rejected the petition outrightly.

b) The above argument is untenable. Sections 225 and 301 Cr.P.C. deal with the privilege of Public Prosecutor or Assistant Public Prosecutor to appear and conduct the case. Sections 225 and 301 read thus:

Section 225 - Trial to be conducted by Public Prosecutor

In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Section 301 - Appearance by public prosecutors

(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

So, the above provisions would deal with the general authority of Public Prosecutor and Assistant Public Prosecutor to appear and plead without any written authority before any Court in which the case is under inquiry, trial or appeal. Section 301 sub-section (2) further tells about the limited role of pleader engaged by the private person to act under the direction of Public Prosecutor or Assistant Public Prosecutor and to submit written arguments with the permission of the Court.

c) Be that it may, in the instant case, the procedure envisaged under the above provisions cannot be said to be violated. The matter is only in the crime stage and still under investigation and accused have obtained bail and the *defacto* complainant only moved the petition to cancel the bail under Section 439(2) Cr.P.C. The impugned order would show that learned Additional Public Prosecutor appeared and advanced the arguments. So, merely because bail cancellation petition under Section 439(2) Cr.P.C. was moved by *defacto* complainant it cannot be said that there occurred any procedural violation, much less, violation of Section 225 Cr.P.C. The *defacto* complainant whose son was murdered in the incident has a stake not only in the outcome of the main case but also in other proceedings connected to the case including granting or refusal of bail to the concerned accused. This aspect was reiterated by Honourable Apex Court in **Siddaram Satlingappa Mhetre's** case (5 supra) wherein it was held thus:

“103. It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the public prosecutor or the complainant on finding new material or circumstances at any point of time.”

Therefore, it cannot be argued that lower Court committed error in entertaining cancellation petition filed by *defacto* complainant.

d) The decision in ***B.Janakiramaiah Chetty***'s case (1 supra) can be distinguished on facts. In that case, in S.C.No.334 of 1999 pending on the file of Assistant Sessions Judge, Puttur the *defacto* complainant filed a petition under Section 301 (2) Cr.P.C. seeking permission to allow his counsel to conduct prosecution under the directions of Public Prosecutor. The said petition was dismissed by the lower Court and the High Court upheld the order reiterating the privilege of Public Prosecutor to conduct trial in Sessions Court. As already stated, in this case, matter is in crime stage and application for cancellation though moved by *defacto* complainant, it was argued by Additional Public Prosecutor only. Hence, the decision has no application.

9) Coming to the second point raised by the petitioners, it is their argument that even according to *defacto* complainant none of the accused has threatened him but some unknown persons, allegedly on behalf of accused, threatened the *defacto* complainant with dire consequences if he does not come forward to compromise with the accused in this case. It is contended that this allegation is too vague and learned lower Court without testing the veracity of allegations and ascertaining the connection of accused with the alleged unknown persons, has cancelled the bail simply because FIR was registered on the basis of complaint.

a) The rebuttal argument on behalf of prosecution and *defacto* complainant is that the fact that unknown persons threatened the *defacto* complainant to compromise in the instant case itself is an indicative of the hand of the accused behind the threat and the lower Court considering the same and criminal back ground of the accused

has rightly cancelled the bail.

10) After hearing both sides and considering the entire material, this Court is of the considered view that the Court below acted in a hasty manner while canceling the bail. It is true that under Section 439(2) Cr.P.C. the High Court and Court of Session has the power to cancel the bail and direct that the accused be arrested and committed to the custody. However, this power must be exercised with utmost circumspection rather than neglect. The Apex Court has many times reiterated the circumstances under which bail which has been granted can be cancelled. One such instance, in **Dolat Ram's** case (2 supra) it held thus:

“4. Rejection of 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 of cancellation of bail, 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.”

11) Coming to the instant case, a perusal of the petition in CrI.M.P.No.734 of 2014 would show that the allegation of *defacto* complainant is that some unknown persons on behalf of the accused, even though they were in judicial custody, started threatening him with dire consequences if he does not come forward to compromise with them in the case and in view of such threat he lodged report and consequently Cr.No.705 of 2014 was registered under Sections 506 and 507 IPC. Apart from it, the complainant also narrated that some of the accused were involved in other cases and rowdy sheet was opened against A1. The lower Court cancelled the bail taking the above allegations into consideration. It must be noted that the threat allegations are under investigation and the persons who allegedly threatened the *defacto*

complainant and the connection of accused with them if any has to be found out only after through investigation by the concerned police. However, before that exercise being completed, the lower Court came to a premature conclusion about the correctness of the allegations and cancelled the bail in a posthaste manner. In the considered view of this Court, the lower Court ought to have directed concerned police to complete the investigation in Cr.No.705 of 2014 expeditiously and basing on the result of the investigation it ought to have passed an appropriate order regarding cancellation of bail. By virtue of the order of lower Court, the personal liberty of the accused was jeopardized even before establishing their hand in the threat allegedly caused to the *defacto* complainant. Such an order of lower Court cannot be upheld. Therefore, to protect the personal liberty of accused on one hand and the right of fair investigation and fair trial to the complainant in Cr.No.435 of 2014 on the other, this Court passed the following order.

1. The impugned order passed by the learned III Additional District and Sessions Judge, Ranga Reddy District in CrI.M.P.No.734 of 2014 is set aside and the accused are directed to be on bail.
2. In Cr.No.705 of 2014, the concerned police are directed to complete the investigation expeditiously and file report within three (3) months from the date of this order. Till such time the accused are directed to appear before the Station House Officer, Pahadishareef police station on every day and sign in the book opened by SHO for this purpose. The accused shall take the prior permission of the Court of III Additional District and Sessions Judge, Ranga Reddy District for non-compliance of aforesaid direction due to any valid reason.
3. Depending on the result of the investigation in Cr.No.705 of 2014, the defacto complainant is at liberty to move

the Court of III Additional District and Sessions Judge, Ranga Reddy District for cancellation of bail of the accused, in which case, the said Court shall pass appropriate orders on merits.

12) Accordingly this Criminal Petition is allowed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.04.2015

Note: L.R.Copy to be marked Yes / No

Murthy