

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Criminal Petition No.788 of 2021

ORDER:

This Criminal Petition under Section 439(2) Cr.P.C. is filed to cancel the bail that was granted to A-1 in C.B.I. Case No.RC-04(S)/2020/SC-III/New Delhi, arising out of Crime No.84 of 2019 of U/G Police Station, Pulivendula, YSR Kadapa District.

2) Facts germane to dispose of the Criminal Petition may briefly be stated as follows:

(a) The deceased Sri Y.S.Vivekananda Reddy was former M.L.A. of Pulivendula Constituency in Andhra Pradesh State; former Member of Lok Sabha; former Member of A.P. Legislative Council; former Minister for Agriculture and he was also the Member of Parliamentary Committee on Science and Technology, Environment and Forests, constituted by the Government of India. He was found dead in his house at Bhakarapuram of Pulivendula Town in Kadapa District in the morning hours of 15.03.2019. His deadbody was found in a pool of blood in his house.

(b) Initially a case under Section 174 Cr.P.C. was registered by the local police i.e. U/G Police Station, Pulivendula in Crime No.84 of 2019. Subsequently, a case under Section 302 read with Section 120-B of IPC was

registered. Special Investigation Team (S.I.T.) was constituted and the said SIT has taken up the investigation. During the course of investigation, police arrested the respondent, who is A-1, in the said Crime on 28.03.2019 and he was remanded to judicial custody. As the investigation could not be completed within the stipulated period of time of 90 days, default bail was granted to A-1 by the learned Judicial Magistrate of First Class, Pulivendula, on 27.06.2019 under Section 167(2)(a)(i) of Cr.P.C. in Crl.M.P. No.2028 of 2019. He was released on bail as per the said order.

(c) Subsequently, as per order dated 11.03.2020, passed by this Court in W.P.No.3144 of 2019 and W.P.No.1639 of 2020, investigation in the above crime was entrusted to the CBI. Therefore, the CBI has taken up the investigation in the said case. The investigation revealed that a conspiracy was hatched up by A-1 to A-4 along with some other persons to kill the deceased and there are some influenced persons behind the said conspiracy. The investigation further disclosed that A-1 to A-4 have committed murder of the deceased on the intervening night of 14/15.03.2019 in a brutal manner as per their pre-planned strategy and thereafter caused disappearance of evidence at the scene of offence by washing of the blood on the floor in the house of the deceased and in the bathroom of

the deceased and escaped from the scene of offence. The watchman of the deceased by name Ranganna gave statement to the police that A-1 was with the deceased on that night in his house and A-2 to A-4 entered the house of the deceased on that night with the help of A-1 and that he has heard some sounds in the house and that thereafter he has seen A-1 to A-4 leaving the house of the deceased on that night and that A-1 warned him with dire-consequences not to disclose regarding the said incident to anyone. The CBI has also collected the other circumstantial evidence relating to the complicity of A-1 to A-4 in commission of the said offence of murder of the deceased in his house. While so, A-4, who was the former driver of the deceased, made a request to the CBI in writing stating that he intends to turn as an approver and that he would disclose all the facts relating to commission of the said offence including the conspiracy hatched up to kill the deceased. The CBI has accepted his request. Accordingly, a petition under Section 306 of Cr.P.C. was filed before the concerned Court to grant pardon to A-4 as he came forward to disclose the material facts relating to the commission of the said offence of murder. The said petition was allowed tendering pardon to A-4 on condition of disclosing all the facts relating to the offence of murder committed in this case. The said order was challenged by A-1 and A-3 by filing two separate Criminal Petitions before

this Court. This Court has dismissed both the petitions filed under Section 482 Cr.P.C. as per common order dated 16.02.2022 passed in Crl.P.Nos.6976 and 6980 of 2021, and confirmed the order of the learned Magistrate tendering pardon to A-4. Thereafter, the statement of A-4, as an approver, was recorded by the learned Magistrate on 21.02.2022.

(d) As it is revealed during the course of investigation that there are influenced persons behind the conspiracy hatched up to kill the deceased in this case, it is stated that the investigation is going on to find out the role played by the other persons in hatching up the conspiracy. Although, it is stated that a charge-sheet was filed on 26.10.2021 in the Court of the Judicial Magistrate of First Class, Pulivendula against A-1 to A-4 for the offences punishable under Sections 302 and 120-B of IPC, it is stated that the investigation is still going on to find out the persons who are involved in the said conspiracy.

3) In the background of the aforesaid factual scenario, it is stated in the present petition that there is every likelihood of A-1 influencing the material witnesses in the case and that the CBI is suspecting that several witnesses in this case are being influenced at the behest of A-1 and the other accused D.Siva Sankar Reddy and their close associates. It is further

stated that three witnesses by name (i) Sri Gangadhar Reddy; (ii) Sri J. Shankariah and (iii) Sri M.V.Krishna Reddy, who is the former P.A. of the deceased and the first informant, are already suspected to have come under the influence of A-1 and D. Siva Sankar Reddy and other conspirators. Therefore, the present petition for cancellation of the bail granted to A-1 was filed on the following grounds:

(i) When the CBI has examined the witness Gangadhar Reddy under Section 161 Cr.P.C. on 02.10.2021 that he stated that after the murder of Sri Y.S. Vivekananda Reddy that he was approached by D.Siva Sankar Reddy, who is one of the accused in the above crime, who is currently in judicial custody, in August, 2019, and requested him to take responsibility for the murder and offered Rs.10 Crores to him. Gangadhar Reddy on 25.11.2021 has given his willingness in writing to the Investigating Officer of CBI for recording his statement before the Magistrate and accordingly, when an application was filed by the CBI to that effect before the learned Chief Judicial Magistrate, Kadapa, he has nominated the Judicial Magistrate of First Class, Jammalamadugu to record the statement of the witness Gangadhar Reddy under Section 164 Cr.P.C. as per order dated 27.11.2021, but the said Gangadhar Reddy gave a statement before media on 29.11.2021 that he is being influenced by CBI to give the said statement before the

Magistrate and that he also gave a representation to that effect to the Superintendent of Police, Anantapuramu and that another witness by name Sri Jagadeeshar Reddy also submitted a complaint, dated 04.12.2021 to the Investigating Officer of CBI that he is being called and harassed by Sri V.N.K. Chaitanya, Dy.S.P., on the pretext of conducting enquiry.

(ii) Similarly, another witness Sri J.Shankaraiah, whose statement was also recorded under Section 161 Cr.P.C., gave his willingness to record his statement before the Magistrate and accordingly, when an application was filed to that effect before the Magistrate, he subsequently did not come forward to give statement and he refused to appear before the Magistrate and after one week of his refusal that his suspension was revoked on 06.10.2021 and he is reinstated into service.

(iii) Sri M.V.Krishna Reddy, P.A. of the deceased, is the person who initially furnished information to the local police regarding the death of the deceased. Accordingly, his statement was recorded under Section 161 Cr.P.C. He subsequently, on 13.12.2021 submitted a representation to the Superintendent of Police, Kadapa, alleging that he is being pressurized by the Investigating Officer by name Sri Ram Singh of CBI, to give false statement.

(iv) It is also the version of the CBI that the statement of the watchman Ranganna shows that the accused have already caused disappearance of evidence at the scene of offence and that the statement given by A-4, as an approver, before the learned Magistrate, shows that the associates of A-1, who are influenced persons in Pulivendula, are threatening to kill him.

4) Therefore, it is stated that the aforesaid facts show that the witnesses are being influenced by the accused and other associates of the accused have been interfering with the course investigation and making an attempt to tamper with the prosecution evidence and the said attempts of the accused and their associates would hamper the investigation process.

5) Therefore, Sri Ram Singh, Additional Superintendent of Police of CBI, SC-III, New Delhi, who has filed this Criminal Petition, prayed on behalf of CBI to cancel the default bail granted to A-1.

6) The respondent-accused No.1 filed counter-affidavit denying the allegations set out in the Criminal Petition filed by the CBI. Parawise denial of all the allegations are made in the counter-affidavit. It is pleaded that a petition to cancel

the bail that was granted to A-1 was already filed before the IV Additional District and Sessions Judge, Kadapa, in Crl.M.P.N.791 of 2021 on the same grounds and the said petition was dismissed as per order dated 30.11.2021. The CBI did not challenge the said order and it became final. Therefore, the present Criminal Petition filed again before this Court for cancellation of bail on the same grounds is not maintainable. It is further pleaded that unlike rejection of bail, cancellation of bail is a harsh order, as it amounts to interfering with the liberty of an individual and so cannot be lightly resorted to on vague allegations and that release of the accused on bail under the proviso to Section 167(2) Cr.P.C. is not defeated by lapse of time or filing of charge-sheet. Therefore, prayed to dismiss the Criminal Petition.

7) Heard Sri A.Chenna Keshavulu, learned Public Prosecutor for CBI, appearing for the petitioner and learned Senior Counsel Sri B.Adinarayana Rao, appearing for the respondent-accused No.1, at length.

8) Learned Public Prosecutor for CBI Sri A.Chenna Keshavulu would submit that the murder of the deceased was committed very designedly as per prior conspiracy and pre-planned strategy, on the intervening night of 14/15.03.2019 in the house of the deceased and the accused have also caused disappearance of evidence at the scene of

offence by cleaning the floor and washing of the blood found at the scene of offence. The local police and even the S.I.T. constituted to investigate the case, could not detect the conspiracy hatched up to commit the murder of the deceased and in the said circumstances, as per orders of this Court that the investigation was entrusted to the CBI and the CBI has taken-up the investigation in this case and the investigation revealed that there is a larger conspiracy behind the commission of the said murder of the deceased and some influenced persons are involved in hatching up a conspiracy to commit the murder of the deceased. Therefore, the investigation is still going on to find out the real culprits, who are behind the said conspiracy, who are responsible for the said murder of the deceased and they being the close associates of A-1 and other accused, have been influencing the witnesses in this case at the instance of A-1 and thereby all of them are making an attempt to tamper with the prosecution evidence. Therefore, they are interfering with the process of investigation and hampering the process of investigation. He would submit that the statement of the watchman Ranganna would establish that the accused have caused disappearance of evidence at the scene of offence and that A-1 has threatened him on the night of the date of offence after committing murder of the deceased not to disclose anything which he has seen at the house of the

deceased to any one, with dire-consequences. He would also submit that the statement of A-4, who is the approver, recorded before the learned Magistrate would also establish that the associates of A-1 have been threatening to kill A-4, who turned as an approver. He would also submit that two witnesses, who have agreed in writing to give statements under Section 164 Cr.P.C. before the Magistrate, subsequently, did not turn up for recording the statement before the Magistrate at the instance of the accused, which also establishes that the accused are managing and influencing the witnesses not to cooperate with the investigating officer to facilitate proper investigation in this case. He then contends that one witness also filed a private complaint before the Magistrate and got it forwarded under Section 156(3) Cr.P.C. to the police for registration of case and investigation against one of the CBI officials on the ground that he has been threatening him to give false evidence. When the said CBI official approached this Court by way of filing a petition under Section 482 Cr.P.C. that this Court has stayed further investigation, in view of the protection available to the police officials under Delhi Police Establishment Act. Therefore, as these facts establish that the accused and their associates are interfering with the process of investigation and making an attempt to tamper

with the prosecution evidence, he prayed for cancellation of the bail that was granted to A-1.

9) *Per contra*, learned Senior Counsel Sri B.Adinarayana Rao appearing for the respondent-accused No.1, would submit that in order to cancel the bail that was granted to A-1, prosecution has to establish that A-1 has made any attempt to tamper with the prosecution evidence and thereby misused the liberty granted to him by way of granting bail to him. He would submit that nowhere it is stated in the Criminal Petition filed by the CBI that A-1 has influenced any witness or that he has made any attempt to tamper with the prosecution evidence. He would submit that the statement of A-4, who is the approver, only shows that some other persons, who are not the accused in this case, threatened to kill him and A-4 did not state before the learned Magistrate in his statement that A-1 has threatened to kill him. He would submit that the statement of A-4 only shows that when he approached A-1 after he was released on bail in the year 2019 that A-1 informed him that he would pay money to him after the case is finalized. He would submit that except the said statement relating to the incident which took place in the year 2019, there is nothing to indicate in the statement of A-4 that he has threatened A-4 to kill him or that he is managing him or pressurizing him not to cooperate with the

investigation. So, he would submit that there is no material before this Court to substantiate that A-1 has been misusing his liberty of granting bail to him and making an attempt to tamper with the prosecution evidence. So, he would submit that the bail granted to A-1 cannot be cancelled on the said vague allegations. He then contends that the CBI has already filed a petition for cancellation of the bail before the learned Additional District and Sessions Judge, Kadapa with similar allegations and the said petition was already dismissed by the learned Additional District and Sessions Judge and the CBI did not challenge the said order and it became final. So, they cannot again now file petition for cancellation of bail on the similar allegations before this Court and as such, the present Criminal Petition is not maintainable. He would submit that an order of cancelling the bail is a harsh order and once the bail is granted that the Courts would not lightly interfere with the said order to cancel the same unless strong grounds are established by the prosecution with legal evidence regarding misuse of the liberty granted to the accused by way of granting of bail. Therefore, he would submit that there are absolutely no legal grounds emanating from the record to substantiate that A-1 has been interfering with the process of investigation and making an attempt to tamper with the prosecution evidence. Therefore, he prayed for dismissal of the Criminal Petition.

10) Perused the record.

11) Before adverting to the point whether the default bail that was granted to A-1 on 27.06.2019 by the learned Judicial Magistrate of First Class, Pulivendula, is liable to be cancelled or not, it is apposite to consider the cardinal principles enunciated by the Apex Court to be considered to cancel the bail that was already granted to the accused in a particular case. The Apex Court in the case of **Abdul Basit @ Raju v. Mohd. Abdul Kadir Chaudhary**¹ held as follows:

“Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e. the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (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. These grounds are illustrative and not exhaustive.”

12) Thus, seven grounds are enumerated, which are to be considered to cancel the bail that was already granted to an accused in a particular case.

¹ (2015) 1 SCC (Cri) 257

13) It is also settled principle of law that once the bail is granted, the same cannot be cancelled in a mechanical manner without considering as to whether any circumstances are there to show that the accused who is on bail misused the concession of bail or jumped bail.

14) Therefore, bearing in mind the aforesaid principles of law enunciated by the Apex Court, the present Criminal Petition filed for cancellation of bail granted to A-1 is to be considered.

15) While considering the prayer of the prosecution to cancel the bail of A-1, the Court is required to see whether after he was released on bail, he has indulged in any acts of influencing the witnesses, threatening the witnesses and interfering with the course of investigation by misusing the liberty that was granted to him or not. The prior incidents i.e. the incidents that took place prior to his arrest are not much relevant to consider the present Criminal Petition. His subsequent conduct after release on bail is to be considered.

16) As already noted supra, as can be seen from the contents of the Criminal Petition filed by the prosecution, the CBI sought cancellation of the bail of A-1 precisely on three grounds viz., (i) the witness Gangadhar Reddy stated before

the police at the time of recording his statement under Section 161 Cr.P.C. on 02.10.2021 that he was approached by one of the accused in the crime by name D.Siva Sankar Reddy, who is currently in judicial custody, in August, 2019 and requested him to take responsibility on him for murder of the deceased Sri Y.S. Vivekananda Reddy and offered Rs.10 Crores to him to take up the said responsibility and the said witness has given his willingness in writing to the Investigating Officer of CBI for recording the said statement before the Magistrate and accordingly, an application was filed by the CBI to that effect before the learned Chief Judicial Magistrate, Kadapa, who has nominated the Judicial Magistrate of First Class, Jammalamadugu to record the statement of the said witness Gangadhar Reddy under Section 164 Cr.P.C. as per order dated 27.11.2021, but the said Gangadhar Reddy gave a statement before media on 29.11.2021 that he is being influenced by CBI to give the said statement before the Magistrate and that he also gave a representation to that effect to the Superintendent of Police, Anantapuramu. Another witness by name Sri Jagadeeshar Reddy also submitted a report, dated 04.12.2021 to the Investigating Officer of CBI stating that he is being called and harassed by Sri V.N.K. Chaitanya, Dy.S.P., on the pretext of conducting enquiry in the said crime; (ii) Another witness Sri J.Shankaraiah, whose statement was also recorded under

Section 161 Cr.P.C., gave his willingness to record his statement before the Magistrate. Accordingly, when an application was filed to that effect before the Magistrate, he subsequently did not come forward to give statement and refused to appear before the Magistrate and after one week of his refusal that his suspension was revoked on 06.10.2021 and he is reinstated into service; (iii) Sri M.V.Krishna Reddy, P.A. of the deceased, is the person who initially furnished information to the local police regarding the death of the deceased. His statement was recorded under Section 161 Cr.P.C. He, subsequently, on 13.12.2021 submitted a representation to the Superintendent of Police, Kadapa, alleging that he is being pressurized by the Investigating Officer by name Sri Ram Singh of CBI, to give false statement.

17) Therefore, on the basis of the aforesaid facts, it is stated in the Criminal Petition that the CBI is suspecting that A-1, the other accused and their associates have been influencing and managing the witnesses which is hampering smooth investigation.

18) Apart from the aforesaid three grounds, as noticed supra, at the time of hearing, as per the submissions made by the learned Public Prosecutor for CBI, another three grounds are raised for cancellation of bail of A-1. They are

(i) the statement of the watchman by name Ranganna shows that the accused have already caused disappearance of evidence at the scene of offence by washing of the blood on the floor at the scene of offence i.e. the bedroom of the deceased and in the bathroom and that while the accused are leaving the house of the deceased on the intervening night of 14/15-03-2019 that A-1 threatened him with dire-consequences not to disclose the incident to any one and it shows that A-1 has been threatening the witnesses; (ii) A-4, who is one of the accused, who committed the murder of the deceased along with A-1 to A-3, turned as an approver as per the pardon granted by the Court and he gave a statement before the learned Magistrate recently on 21.02.2022 under Section 306(4)(a) of Cr.P.C. and he stated in the said statement that the associates of the accused are repeatedly contacting him to influence him not to give any statement against the accused and that he also stated that even today also that they are threatening to kill him and as such, the said statement of A-4, which was recently given, also shows that the accused are threatening A-4, who turned as an approver, and thereby interfering with the process of investigation; and (iii) one of the witnesses filed a private complaint against the CBI official in the Court alleging that he is threatening him to give false statement and got the

same forwarded to police to register the case and to investigate the same.

19) Therefore, precisely, on six grounds i.e. three grounds as mentioned in the Criminal Petition and other three grounds which are now urged at the time of hearing of the Criminal Petition, the prosecution sought for cancellation of bail granted to A-1.

20) Among the seven grounds which are enumerated by the Apex Court in **Abdul Basit @ Raju v. Mohd. Abdul Kadir Chaudhary**¹, ground Nos.1, 5, 6 and 7 are not relevant in the context to consider and they are not applicable to the present facts of the case. It is not the case of the prosecution that A-1 has indulged in similar criminal activity by misusing his liberty. It is not the case of the prosecution that there is likelihood of A-1 fleeing to another country. So, ground Nos.1 and 5 are not applicable to the facts of the case. It is not their case that A-1 is making any attempt to go underground or becoming unavailable to the Investigating Agency. So, ground No.6 is also inapplicable to the facts of the case. Similarly, it is not the case of the prosecution that A-1 is making any attempt to place himself beyond the reach of his surety. Consequently, ground No.7 is also not applicable to the facts of the case. So, only ground Nos.2 to 4

are relevant in the context to consider. Ground No.2 relates to interfering with the course of investigation. Ground No.3 relates to attempt to tamper with the evidence or witnesses and ground No.4 relates to threatening the witnesses or indulging in similar activities which would hamper smooth investigation.

21) Although it is contended by the learned Public Prosecutor for CBI that A-1 has been interfering with the course of investigation and attempting to tamper with the prosecution evidence and has been threatening the witnesses to invoke the aforesaid ground Nos.2 to 4 to cancel the bail that was granted to A-1, this Court has absolutely no hesitation to hold that the prosecution has failed to substantiate the said contention by producing any authenticated material before this Court to show that A-1 has been interfering with the course of investigation or making an attempt to tamper with the prosecution evidence or threatening the witnesses in the case.

22) It is significant to note that nowhere it is specifically stated in the entire affidavit filed in support of this Criminal Petition that A-1 has threatened the witnesses or made an attempt to tamper with the prosecution evidence or interfered with the course of investigation. All that is stated in para.22 of the affidavit is that there is likelihood of A-1

influencing the material witnesses. It is only stated that it is already suspected that several witnesses in the case are being influenced at the behest of A-1 and that it is already suspected that some of the witnesses have come under the influence of A-1 and other accused D.Siva Sankar Reddy and other conspirators. Therefore, except stating that they are suspecting that the witnesses are being influenced and that there is likelihood of A-1 influencing the witnesses and that they are suspecting that some of the witnesses have already come under the influence of the accused, it is not specifically stated anywhere in the Criminal Petition that A-1 has in fact influenced any of the witnesses or threatened the witnesses after he was released on bail. The said pleadings in para-22 of affidavit show that it is only their suspicion. On mere suspicion, bail cannot be cancelled.

23) Even as can be seen from the statement of the accused i.e. A-4, who turned as an approver, given before the learned Magistrate recently on 21.02.2022 under Section 306(4)(a) of Cr.P.C., it is nowhere stated by him in the entire statement that A-1 has threatened to kill him or that he has influenced him. A reading of the said statement only shows that after A-1 was released on bail on 27.06.2019 that A-4 met him and enquired from him about his future as the case was entrusted to C.B.I and that A-1 assured him that he will pay

money to him after the case is finalized. There is nothing to indicate from the contents of the entire statement that A-1 has either threatened A-4 or made any effort to influence him not to disclose any facts relating to the offence before the police or the Court. Eventhough, he stated that some persons by name Obul Reddy and Bhaskar Reddy etc. contacted him and discussed with him about the case, it is nowhere stated that they approached him and discussed with him at the instance of A-1. Eventhough, he has stated at the end of the statement that even as on the date of giving statement that they are threatening to kill him, he did not specifically state as to who are threatening to kill him. It appears to be a vague statement. He did not state specifically that A-1 has been threatening to kill him. Therefore, it cannot be said on the basis of the said statement given by him that A-1 is influencing him or threatening him with any dire-consequences and thereby making any attempt to tamper with the evidence of the witnesses.

24) The mere fact that some of the witnesses who have initially given their willingness to record their statements under Section 164 Cr.P.C. before the Magistrate have subsequently, resiled from their consent and refused to give statements before the Magistrate and that one of the said

witnesses has given a statement before the media that police are threatening him to give false statements by itself also cannot be a ground to hold that they resiled from their willingness to give the statement before the Magistrate at the instance of A-1 and that the statement before the media was given at the instance of A-1. No material is produced before the Court even to *prima facie* show that they subsequently refused to give the statement before the Magistrate under Section 164 Cr.P.C. at the instance of A-1 or that they gave statement before the media at the instance of A-1. Therefore, there is nothing on record to hold that they refused to give statements subsequently at the instance of A-1. So, nothing can be attributed to A-1 in this regard. Even the fact that some of the witnesses have complained to the Superintendent of Police, Kadapa, and to higher officials of CBI stating that the investigating officer is threatening them to give false statements also do not enure to the benefit of the case of the prosecution as there is nothing to indicate on record or to show that the said complaints are given by the said witnesses at the instance of A-1. Similarly, the fact that one of the witnesses filed a private complaint in the Court against the Investigating Officer of CBI alleging that he is threatening him to give statements and got it forwarded to police to register the F.I.R. and to investigate the same also by itself cannot be a ground to hold that the said complaint was filed

at the instance of A-1 sans any material or evidence to that effect placed before this Court to substantiate the said allegation. Even though the statement of the witness by name Ranganna, who is the Watchman in the house of the deceased, shows that A-1 has threatened him with dire consequences not to disclose the said incident anywhere, the said incident took place on the date of offence and before arrest of A-1. The said threat was not given to the witness by A-1 after he was released on bail to hold that he has misused his liberty and thereby threatened the witness. It is already noticed supra, the conduct of A-1 after his release on bail is relevant in the context to consider whether to cancel the bail that was granted to him or not.

25) The facts pleaded in the affidavit filed in support of the Criminal Petition only show that the prosecution got only suspicion that on account of influence being exerted by A-1 and his associates that the witnesses subsequently refused to give statements before the Magistrate and that some of the witnesses gave complaints to the higher police officials and filed a complaint in the Court and got it forwarded to the police for investigation. On mere suspicion, surmises and imaginary apprehension, bail granted to accused cannot be cancelled. Therefore, unless some evidence which *prima facie* establishes that A-1 has been in fact interfering with the

course of investigation or threatening the witnesses and thereby making an attempt to tamper with the prosecution evidence is produced, the default bail that was granted to A-1 cannot be cancelled.

26) It is also relevant to note here that the CBI has already filed a petition before the IV Additional District and Sessions Judge, Kadapa, in Crl.M.P.No.791 of 2021 to cancel the bail of A-1 on the similar grounds. The said petition was dismissed as per order dated 30.11.2021. The CBI did not challenge the said order and it became final. Now, again on the basis of the same allegations with one additional ground i.e. the statement of the approver, the present Criminal Petition is filed. Therefore, as the prosecution failed to establish even in this Criminal Petition also that A-1 has been interfering with the course of investigation by influencing the witnesses or that he is making an attempt to tamper with the prosecution evidence, the default bail that was granted to A-1 cannot be cancelled. The Apex Court in the case of **Myakala Dharmarajam v. State of Telangana**² held rejection of bail stands on one footing and cancellation of bail is a harsh order because it interferes with liberty of individual and hence, it must not be lightly resorted to. The ratio laid down in the aforesaid judgment squarely applies to the present facts of the case.

² (2020) 2 SCC 743

27) The judgment of the Apex Court, relied on by the learned Special Public Prosecutor for CBI, in the case of **State v. Amarmani Tripathi**³ has no application to the present facts of the case. In the said case, as can be seen from paras.20 and 21 of the judgment, the evidence that was collected by the prosecution disclosed that there were attempts made by the accused to interfere with the investigation and to side track the investigation and that threats are given to the witnesses. Therefore, in the said facts and circumstances of the case, as there is evidence produced to substantiate the fact that the accused therein are interfering with the course of investigation and threatening the witnesses, the Court held that the bail granted to the accused is liable to be cancelled. As already noticed supra, in the instant case, no such evidence is available in this case to substantiate the version of the prosecution that A-1 has been interfering with the course of investigation or threatening the witnesses, except suspicion raised to that effect.

28) Right of the accused to claim bail on account of default committed by the prosecuting agency in completing the investigation within the time stipulated in the statute is a statutory right of the accused and it is also an indefeasible

³ AIR 2005 SC 3490

right of the accused to claim bail. As the investigating agency failed to complete the investigation within the stipulated period of time, default bail was granted to A-1. The said indefeasible right of A-1 to claim bail cannot be defeated by cancelling the said bail on vague allegations that there is likelihood of A-1 influencing the witnesses sans any authenticated material produced to substantiate the same. In any way, right to bail touches the right of a citizen relating to his individual liberty what is guaranteed under Article 21 of the Constitution of India. When it is found that he was entitled to bail on account of default committed by the investigating agency in completing the investigation within the stipulated period of time and accordingly, he was enlarged on bail, the said bail cannot be subsequently cancelled on vague allegations depriving him of his right pertaining to his personal liberty what is guaranteed under Article 21 of the Constitution of India.

29) Therefore, the prosecution failed to establish with any acceptable and authenticated material that A-1 has been interfering with the course of investigation or influencing the witnesses or tampering with the prosecution evidence to cancel his bail.

30) However, the material that is produced by the prosecution *prima facie* shows that the other persons who are

not the accused in the crime are making an attempt to contact A-4. Though there is no material to show that at the instance of A-1 that they are contacting A-4, but the fact that remains established from the statement of approver is that an attempt is being made to influence A-4, who is the approver, not to cooperate with the investigating agency. The statement of A-4 also shows that there is also threat to his life from some persons. Therefore, the investigating agency has to take adequate steps to protect the life of A-4 who turned as an approver and also to provide protection to other witnesses in this case to ensure fair investigation and trial of the case.

31) Therefore, as the Criminal Petition is devoid of any legal ground required to cancel the bail that was granted to A-1, the Criminal Petition is liable to be dismissed.

32) Resultantly, the Criminal Petition is dismissed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:16-03-2022.

cs