

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

CRIMINAL PETITION No.9246 OF 2021

ORDER:

Heard Mr. S.Sri Venkatesh, learned counsel for the petitioner and Mr. K.Surender, learned Special Public Prosecutor for Central Bureau of Investigation (CBI) (as his Lordship then was) i.e., respondent No.1.

2. This criminal petition has been filed by Kanumuru Raghu Ramakrishna Raju under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (Cr.P.C) for cancellation of the bail granted to respondent No.2 in Criminal M.P.No.1388 of 2013 by the Principal Special Judge for CBI Cases, Nampally, Hyderabad; further seeking a direction for taking respondent No.2 into judicial custody to ensure speedy and fair trial.

3. It is stated that petitioner is a Member of Parliament from the State of Andhra Pradesh. Though he is a third party, he has filed the present petition for cancellation of bail of respondent No.2 and for lodging him in judicial custody to ensure fair and speedy trial in C.C.No.8 of 2012.

4. Following investigation in RC.No.19(A)/2011-CBI/HYD, CBI submitted charge sheet before the Court of Special Judge for CBI Cases, Hyderabad (briefly, 'CBI Court' hereinafter). On cognizance being taken, C.C.No.8 of 2012 was registered, wherein respondent No.2 has been named as accused No.1.

5. Allegation against the second respondent is that he had exercised undue influence over his late father Y.S.Rajasekhara Reddy, the then Chief Minister of the State of Andhra Pradesh to confer illegal benefits to accused Nos.3 to 8, like allotment of land etc. Those accused persons in turn paid bribes to accused No.1 in the form of buying shares in the companies floated by accused No.1 at highly inflated premia as *quid pro quo*.

6. Respondent No.2 was arrested on 27.05.2012. He filed CrI.M.P.No.1388 of 2013 before the learned CBI Court for grant of bail. By order dated 23.09.2013, learned CBI Court granted bail to respondent No.2. It was ordered as follows:

- (i) Y.S.Jagan Mohan Reddy/Petitioner/A-1 shall be enlarged on bail on his executing a bond for

Rs.2,00,000/- (Rupees two lakh only) with two sureties each for like sum to the satisfaction of this Court.

(ii) The petitioner/A-1 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(iii) Petitioner/A-1 shall stay at Hyderabad and shall not leave Hyderabad without prior permission of the Court.

(iv) The petitioner/A-1 shall appear before this Court on the dates fixed for hearing of the case without fail. He may remain absent only in unavoidable circumstances and with the permission of the Court.

(v) The respondent/CBI has liberty to make a proper application for cancellation of the bail, if the petitioner/A-1 violates any of the conditions imposed by this Court.

7. Thereafter, respondent No.2 filed application under Section 439(1)(b) Cr.P.C for relaxation of bail conditions Nos.(iii) and (iv). The said application was registered as CrI.M.P.No.2323 of 2015. By order dated 11.12.2015 the said application was partly allowed in the following manner:

In the result, this petition is allowed in-part relaxing condition No.(iii) imposed in CrI.M.P.No.1388 of 2013 by an order dated 23.09.2013 and condition No.(iv) is modified to the extent of permitting the petitioner to remain absent only in any unavoidable circumstances, for appropriate reasons to be made out, subject to filing

an appropriate application and if represented by his advocate. Requirement as to prior permission of this Court to remain absent in such circumstances, as directed in condition Nos.(iii) & (iv) in CrI.M.P.No.1388 of 2013, dated 23.09.2013 stands dispensed with and is relaxed.

8. While relaxing bail conditions Nos.(iii) and (iv) as above, CBI Court made the following observation:

...It is further to be noted that from the date of grant of bail in CrI.M.P.No.1388/2013 dated 23.09.2013, till this day (11.12.2015), it is borne from the record that the petitioner/Y.S.Jagan Mohan Reddy (Respondent No.2 herein) has not violated any of the conditions nor any such instance is brought to the notice of this Court by CBI...

9. Long thereafter i.e., almost eight years after bail was granted to respondent No.2, petitioner filed an application before the learned CBI Court under Section 439(2) Cr.P.C praying for cancellation of the bail granted to respondent No.2 and to order judicial custody of respondent No.2. The same was registered as CrI.M.P.No.421 of 2021. It was contended before the learned CBI Court that though petitioner was a third party, he was deeply concerned with the state of affairs in the State of Andhra Pradesh, more particularly the

activities of respondent No.2 who had by then become the Chief Minister of the State. It was alleged that respondent No.2 had misused his freedom and by virtue of his office, he was attempting to influence the witnesses. It was further alleged that respondent No.2 had violated the bail conditions.

10. CrI.M.P.No.421 of 2021 was contested by respondent No.2 by contending that the said application was filed in a *mala fide* manner and that it was nothing but an abuse of the process of the Court. After hearing learned counsel for the parties, learned CBI Court framed two questions for consideration:

1. Whether petitioner being a third party had *locus standi* to file application for cancellation of bail of respondent No.2?
2. If the answer to the above question was in the affirmative, then whether the petitioner had made out a case for cancellation of bail granted to respondent No.2?

11. After due deliberation, learned CBI Court vide the order dated 15.09.2021 answered the first question in favour of the petitioner by holding that though the petitioner was a third party, he had the *locus standi* to file application for

cancellation of bail granted to respondent No.2. In so far the second question was concerned, learned CBI Court held that petitioner did not place any record to show that respondent No.2 was threatening the witnesses either directly or indirectly by using police machinery. Petitioner did not even refer to the names of the witnesses to show which witnesses were being threatened or induced by respondent No.2. Petitioner also could not place any material before the learned CBI Court to show that respondent No.2 had misused the liberty granted to him in the form of bail or that respondent No.2 had interfered with the case by threatening the witnesses. Respondent No.2 had not violated any of the conditions in the bail order dated 23.09.2013 as on 15.09.2021. Thus, petitioner had failed to make out a case for cancellation of bail granted to respondent No.2. Therefore, the petition filed by the petitioner for cancellation of bail granted to respondent No.2 i.e., CrI.M.P.No.421 of 2021 was dismissed.

12. It was thereafter that the present criminal petition came to be filed.

13. Learned counsel for the petitioner submits that all the witnesses are under the control of respondent No.2, the witnesses being bureaucrats serving in the administration of respondent No.2. Though there cannot be any direct instances of threatening witnesses by respondent No.2, what is happening is that there is indirect threat and/or allurement of the witnesses at the instance of respondent No.2 which may affect the fair trial. Adverting to the averments made in paragraph 22 of the supporting affidavit, he submits that bail granted to respondent No.2 should be cancelled. Learned counsel for the petitioner has placed reliance on a number of decisions of the Supreme Court including in **R.Rathinam v. State**¹ (Criminal Appeal No.152 of 2000; decided on 08.02.2000) to contend that a third party can file an application for cancellation of bail.

14. On the other hand, learned Special Public Prosecutor for CBI submitted that a similar prayer was made by the petitioner before the learned CBI Court, which was rejected by

¹ (2000) 2 SCC 391

a reasoned order dated 15.09.2021. He submits that from 15.09.2021, there has been no change in the circumstances.

15. Submissions made by learned counsel for the parties have been duly considered.

16. Though learned counsel for the petitioner vehemently argued that notice should be issued to respondent No.2, in the absence of any specific allegation in the supporting affidavit, this Court declined to issue notice to respondent No.2.

17. A notice by the Court is not a mere formality, more particularly in a petition for cancellation of bail. When a notice is issued, it means that the Court is *prima facie* satisfied about the contents of the petition/relief sought for. For issuance of notice in a case of this nature, petitioner has to make out a case by giving specific instances.

18. Section 439 Cr.P.C deals with special powers of High Court or Court of Session regarding bail. Sub-section (2) thereof says that a High Court or a Court of Session may

direct that any person who has been released on bail under Chapter XXXIII Cr.P.C, which deals with provisions as to bail and bonds, be arrested and commit him to custody.

19. In **State (Delhi Administration) v. Sanjay Gandhi**², Supreme Court held that in an application for cancellation of bail, prosecution can show/establish its case on a preponderance of probabilities that the accused has attempted to tamper or has tampered with the witnesses. Prosecution has to establish that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice. Supreme Court, however, sounded a note of caution that the power to cancel bail is of an extraordinary nature. It is meant to be exercised only in appropriate cases.

20. Those observations were made in the context of the prosecution seeking cancellation of bail. In the present case, it is at the instance of a third party with the prosecution satisfied with the conduct of respondent No.2.

² (1978) 2 SCC 411

21. Supreme Court in **Dolat Ram v. State of Haryana**³, explained the difference between rejection of bail in a non-bailable case and cancellation of bail so granted. Supreme Court held that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted. Thereafter, Supreme Court by way of illustration gave examples for which bail granted can be cancelled, such as, interference or attempt to interfere with the due course 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. Again, sounding a note of caution, Supreme Court reiterated that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive for enjoying the concession of bail.

22. Elaborating further, Supreme Court in **Mehboob Dawood Shaikh v. State of Maharashtra**⁴ observed that when a person to whom bail has been granted either tries to interfere with the

³ (1995) 1 SCC 349

⁴ (2004) 2 SCC 362

course of justice or attempts to tamper with the evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. Distinguishing cancellation of bail from rejection of bail, Supreme Court observed that cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

23. Very cogent and overwhelming circumstances are necessary for cancellation of bail already granted, observed the Supreme Court in **Bhagirathsingh v. State of Gujarat**⁵. Likewise in **Samarendra Nath Bhattacharjee v. State of West Bengal**⁶, Supreme Court held that intimidation of witnesses by the accused has to be satisfactorily proved for the High Court to cancel the bail granted to the accused.

⁵ (1984) 1 SCC 284

⁶ (2004) 11 SCC 165

24. Finally, in **X v. State of Telangana**⁷ Supreme Court held that bail once granted cannot be cancelled unless a cogent case based on supervening events is made out.

25. Having surveyed the legal position as above, a perusal of the supporting affidavit would go to show that the same is devoid of any particulars. Petitioner has not mentioned the names of the witnesses, whom respondent No.2 has allegedly intimidated or allured. Merely saying that respondent No.2 has been abusing his official position by giving important posts/offices to other co-accused to tamper evidence by influencing witnesses is not adequate to cancel the bail granted to respondent No.2. Further, saying that respondent No.2 has no regard for democracy and judiciary is no ground to cancel the bail granted to respondent No.2. The supporting affidavit is conspicuous by complete absence of any details whatsoever essential for considering a prayer for cancellation of bail. No single instance of violation of the bail conditions has been mentioned by the petitioner.

⁷ AIR 2018 SC 2466

26. On the other hand, learned Special Public Prosecutor for CBI fairly submitted before the Court that after similar petition of the petitioner was rejected by the CBI Court on 15.09.2021, there has been no change in the circumstances.

27. Therefore, on a thorough consideration of all aspects of the matter, Court is of the opinion that no case for cancellation of bail of respondent No.2 is made out. The instant criminal petition is misconceived and is accordingly dismissed.

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

UJJAL BHUYAN, CJ

28.10.2022
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