

Mohammad Mustafa and Another Vs. Vijeth Kumar and Others

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Court : Karnataka

Decided On : Dec-14-2016

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No. 2056 of 2016 C/W Criminal Petition No. 1928 of 2016

Appellant : Mohammad Mustafa and Another

Respondent : Vijeth Kumar and Others

Judgement :

(Prayer: This Criminal Petition is filed U/S 439(2) CR.P.C praying that this Honourable Court may be pleased to order of cancellation of Bail against the respondent No.1 to 3 in the above case i.e in CR.NO.200/2015 on the file of the Addl. Civil Judge (JR.DN) and JMFC, Bantwala, D.K and against the impugned order dated 09.09.2015 passed in CRL.MISC.NO.815/2015 for the alleged offences P/U/Ss 341,324,326,307 R/W 34 of IPC.)

(Prayer: This Criminal Petition is filed under section 439(2) CR.P.C., by the petitioner/State praying to cancel the order dated 09.09.2015 passed by the IV ADDL.DIST and S.J.,D.K., Mangaluru in CRL.MISC.No.815/2015 releasing the Respondents/Accused on bail in CR.No.200/2015 of Bantwal P.S., for the offences P/U/Ss 341,324,326,307,302 R/W 34 of IPC.

These criminal petitions coming on for orders this day, the Court made the following:)

1. Heard the learned counsel appearing for the petitioner in Crl.P.No.2056/2016 and also the learned High Court Government Pleader appearing for the petitioner/State in Crl.P.No.1928/2016 filed for cancellation of bail granted in favour of Respondent Nos. 1 to 3 in Crl.Misc.No.815/2015 by IV Additional District and Sessions Judge, Dakshina Kannada District, Mangaluru, vide order dated 09.09.2015.

2. The factual matrix that emanate from the records are that a person by name Mohammed Mustafa has lodged a complaint on 07.08.2015 stating that, on that day at about 10.30 p.m., himself and his friend Nasir were proceeding in an autorickshaw to go to Subash Nagar Quarters. The complainant was actually driving the autorickshaw and when they reached near Kandoor Shishu Mandir, four persons came in two motor bikes and they asked for way to a place called Bollai and the complainant told the way to Bollai and thereafter, the autorickshaw was proceeding towards Kandoor. At that time, the said persons, who were on two motor bikes suddenly came and intercepted the autorickshaw and assaulted the complainant and Nasir, the inmate of autorickshaw with Talwars. As a result the complainant sustained injury to his right elbow and in fact he escaped from the clutches of the accused persons. However, the said persons have assaulted Nasir mercilessly. The complainant has actually seen the accused persons assaulting Nasir and Nasir sustained severe injuries. Thereafter, in the same autorickshaw, he went to a person by name Anwar and intimated about the incident. Immediately, the said Anwar also came to the spot and both complainant and Anwar brought the injured Nasir to the hospital. It appears the said Nasir succumbed to injuries later.

3. It is clear from the above said complaint of the complainant that the accused persons were unknown so far as this complainant is concerned, subsequently, during the course of investigation, the police have investigated the matter and Identification Parade has also been conducted and it is alleged that the accused persons have been indentified, etc.. In this background, learned counsel for the

petitioner strenuously contends that the trial Court without giving proper reasons for granting bail and not considering the materials available on that particular day, has granted bail only on the ground that the complainant does not disclose the name of the accused persons and the complaint is only against some unknown persons, and the police subsequently, arrested the accused persons and interrogated them. Except that, nothing has been stated as to whether the Court has secured the case diary of the police to ascertain as to what exactly the stage at that particular time for granting bail. As rightly contended by the learned counsel, the remand application filed by the police has also not been looked into by the Court to ascertain as to what exactly the investigation by that time done by the police.

4. Per contra, the learned counsel for the respondents contended that though the Court has not adverted any special reason for granting of bail, but nevertheless, the court has considered the averments made in the complaint and as well as objections filed by the public prosecutor and thereafter, released the accused on the bail.

5. After hearing the arguments of the learned counsel on both sides, it is just and necessary to quote a portion of the order passed by the trial court, by which the trial court has granted bail in favour of the respondents, which reads thus:-

Therefore, considering the aforesaid judgments and also the facts of the case wherein it clearly discloses de-facto complainant has lodged the complaint against the unknown persons and on the basis of the suspicious ground 1st petitioner was questioned and he had confessed for committing the offence and mentioned regarding the other accused. Subsequently the other two petitioners were also arrested and interrogated but not sought for police custody. Therefore, the documents produced by the petitioners and also respondent show that weapon used for the alleged commission of offences was seized and also collected all the evidence and also collected statement of witness. Further custodial investigation is not necessary .

6. On a plain reading of the above said observations made by the trial court, in fact the trial Court appears to have not been looked into the case papers produced by

the police nor the remand application filed by the police to ascertain about the antecedents of the accused persons and the complainant, and any other witnesses have already been examined by the police. It is argued by the learned counsel that the jurisdictional Magistrate has given permission to the police to conduct Identification Parade and the Identification Parade in fact has been conducted on 07.09.2015, even prior to granting bail, which was granted on 09.09.2015. The report of Identification Parade and the other materials on record have not been looked into and whether there was any prima facie case or not, has not been ascertained by the trial court.

7. It is worth to note here the principles laid down by the Honourable Apex Court in Crl.A.No.2587/2014 regarding the considerations made by the court while dealing with the bail petitions in a case reported in Prahlaad Singh Bhati Versus Delhi (2002) 3 SCC 598, which are as under:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witness being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail .

8. In Crl. A. 2587/2014, the Honourable Supreme Court also while referring the decision reported in Chamanlal versus State of U.P[(2004)7 SCC 525], has observed thus:-

the court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge which are to be kept in mind .

9. Though the learned counsel for the accused/respondents tried to convince this Court stating that once bail is already granted to the accused person (the respondents herein) and when they have not indulged in tampering the prosecution witnesses or hampering the investigation, and also when they abide by the conditions already imposed by the trial court, there may not be any reason to cancel the bail, as the matter is already set-up for trial. But the fact remains that the trial court has not even adverted to consider the factual matrix of the case. In this regard, it is worth to mention here a decisions of the Honourable Apex Court rendered in Criminal Appeal No.2587/2014 between Neeru Yadav versus State of U.P and another, wherein the Honourable Apex Court has observed in para-13 thus:

13. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior Court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.

10. In view of the above observation made by the Hounourable Apex Court, when once the trial Court has not considered the merits or demerits of the case to ascertain whether a prima facie case is made-out by the prosecution or any ground has been made-out by the accused for grant of bail, the question of considering whether the accused persons have indulged in hampering the investigation or tampering the prosecution witnesses, for cancellation of bail does not arise for consideration. If the bail is granted after considering the merits or demerits of the case, after finding that there was no prima facie case is available to the prosecution, in such an eventuality, the subsequent conduct of the accused play a dominant role either to continue bail or cancel the same. In the above facts and circumstances, it is crystal clear that consideration of the conduct of the accused at this stage does not arise for consideration.

11. In the above facts and circumstances of the case, I am of the opinion that the order passed by the trial Court deserves to be set aside. However, as the trial Court has granted bail on 09.09.2015 and the accused persons are enjoying the bail continuously, in my opinion, this Court has to continue the bail granted by the trial Court as if an interim bail granted by this Court with a direction to the trial Court to dispose of the bail petition, if any filed by the respondents before the trial Court afresh, after considering the merits and demerits of the case and after ascertaining the prima facie case against the accused persons or otherwise entitlement of bail.

12. With the above observation the following order is passed:-

The order passed by the trial Court in Crl. Mis. No.815/2015 is hereby set aside. However, this Court grants an interim bail to the accused persons for a limited period with a direction to the accused/respondents that they have to make a fresh bail petition before the Court under Section 439 of Cr.P.C and in such an event, the trial Court after giving an opportunity to the State and as well as to the defacto complainant and also keeping in view the guidelines given by the Honourable Apex Court in the decision cited in the body of this order, the Court has to consider the bail petition afresh in accordance with law.

The respondents shall file bail petition afresh before the trial Court within 15 days from the date of receipt of a copy of this order and thereafter, the trial Court shall dispose of the same within one month from the date of filing of the application before it. However, it is made clear that till the disposal of the bail petition by the trial Court, this interim order of bail shall remain in force.

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