

Manuel Vs. State of Kerala

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Court : Kerala

Decided On : Jul-08-2005

Reported in : 2005(3)KLT553

Judge : V. Ramkumar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 362, 439(2) and 482;
Indian Penal Code (IPC) - Sections 436

Appeal No. : CrI. M.C. No. 1664 of 2005

Appellant : Manuel

Respondent : State of Kerala

Advocate for Def. : C.P. Peethambaran, Adv. and; P.A. Raziya, Public Prosecutor

Advocate for Pet/Ap. : P. Sreekumar and; K.S. Manu, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V. Ramkumar, J.

1. This is a petition under Section 482 Cr.P.C. seeking cancellation of the anticipatory bail granted to the 3rd respondent in the petition. This petition was

filed on 10-6-2005. Anticipatory bail was granted to the 3rd respondent herein as per order dated 24-5-2005 in B.A. No. 3134/05 directing the Hosdurg Police to release the petitioner on bail for a period of one month in the event of his arrest in connection with Crime No. 335/2003 of the Hosdurg Police Station, for an offence punishable under Section 436 I.P.C.

2. According to the petitioner, the 3rd respondent is an accused in 11 crimes made mention of in the petition and the antecedents of the 3rd respondent are so bad that he ought not have been granted anticipatory bail by this Court.

3. The 3rd respondent has filed a counter-affidavit refuting the above allegations and stating that he was acquitted in 9 out of 11 cases and one case has been stayed by this Court and the remaining one case alone is pending and that he has not so far been convicted of the offence alleged therein.

4. The learned Public Prosecutor submitted that on the date when the petition for anticipatory bail was moved, the 3rd respondent herein was not an accused and that he was arrayed as an accused only subsequently i.e. on 17-6-2005.

5. It may not be necessary for me to go into the merits of the allegations and counter-allegations. The fact that the 3rd respondent herein was subsequently arrayed as an accused in this case (Crime No. 335/03 of Hosdurg Police Station) justified his apprehension of arrest by the police. On 24-5-2005, this Court granted anticipatory bail to the petitioner ordering that he shall be released on bail for a period of one month on certain conditions in the event of his arrest in connection with Crime No. 335/03 of the Hosdurg Police Station. Even on the date on which this petition was filed, the 3rd respondent had not been arrested or released on bail in compliance with the order for anticipatory bail.

6. The learned counsel for the 3rd respondent submits that he has since been arrested on 5-7-2005.

7. The main question for consideration is as to whether the anticipatory bail can be cancelled by resort to Section 482 Cr.P.C. when there is a specific provision for the said purpose under Section 439(2) Cr.P.C. The learned counsel for the

petitioner would submit that eventhough the prayer in this petition is for cancellation of bail, the case of the petitioner is that the 3rd respondent should not have been granted anticipatory bail and he cannot put forward this prayer in a petition under Section 439(2) Cr.P.C.

8. When an order for anticipatory bail has been granted, the only mode by which it can be cancelled is only by resort to under Section 439(2) which applies to every person released on bail under Chapter XXXIII Cr.P.C. and that includes a person released in pursuance of an order for anticipatory bail as well. On the date of filing of this petition, the 3rd respondent was neither arrested nor released on bail pursuant to the order dated 24-5-2005 granting him anticipatory bail. If this petition is allowed and the anticipatory bail is cancelled it will indirectly amount to review by this Court of its own order which is tabooed under Section 362 Cr.P.C. Such a power of review cannot be exercised under the cloak of Section 482 Cr.P.C. (Vide Hari Singh Mann v. Harbhajan Singh Bajwa, 2001 SCC (Crl) 113. Now that the 3rd respondent has been released on bail on 5-7-2005 for one month pursuant to the anticipatory bail order, it is open to the petitioner to move this Court for cancellation of bail, in case, the 3rd respondent abuses his liberty or violates any of the bail conditions which include a condition that he shall not commit any offence while on bail. Hence this petition is dismissed without prejudice to the right of the petitioner to move this Court for cancellation of bail under Section 439(2) Cr.P.C.

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