

Thakarse Vs. Jagdish and anr.

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Court : Rajasthan

Decided On : Oct-22-2008

Reported in : RLW2009(2)Raj965

Judge : Mahesh Bhagwati, J.

Appellant : Thakarse

Respondent : Jagdish and anr.

Disposition : Application dismissed

Judgement :

Mahesh Bhagwati, J.

1. This order governs the disposal of an application filed under Section 439(2) of Cr.P.C. by the petitioner Thakarse for the cancellation of bail of the respondent No. 1 who have been granted anticipatory bail vide order dated 15 July, 2008 by learned Sessions Judge, Jaipur.

2. Heard the learned Counsel for the petitioner, learned Public Prosecutor appearing for the State and perused the relevant provisions of law as also relevant material available on record.

3. Learned Counsel for the petitioner Thakurse Meena has contended that the respondent No. 1 Jagdish was granted anticipatory bail by the learned Sessions

Judge, Jaipur City, Jaipur on the ground that he was a bona fide purchaser whereas, the material available on record does not reveal this fact. He has further contended that it is the respondent No. 1 Jagdish who in connivance with Rampal purchased the land knowing it well that he was not a bona fide purchaser, hence, his anticipatory bail granted by the learned lower Court may be cancelled.

4. Learned Public Prosecutor appearing for the State has simply submitted that the learned Counsel for the petitioner has not assigned any cogent reason seeking cancellation of bail. The order of the learned Sessions Judge is just and proper which calls for no inference.

5. Hon'ble Supreme Court in the case of State v. Sanjay Gandhi : 1978 CriLJ952 has held that rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

6. Hon'ble Supreme Court has also held in the case of Dolatram and Ors. v. State of Haryana : (1995)1SCC349 that rejection of bail in a non-bailable case at the initial stage and the cancellation 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 for 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. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a

fair trial to allow the trial.

7. Hon'ble Rajasthan High Court has held in the case of Smt. Rajbala v. State of Rajasthan as under:

It is now well settled by a catena of cases of the Apex Court as well as of this Court that the grounds for cancellation of bail are distinct from the considerations for grant of bail. The bail once granted cannot and ought not to be normally cancelled in a mechanical manner unless there are cogent and overwhelming facts and circumstances on record to do so.

8. The learned Counsel for the petitioner has simply argued that the lower Court has granted the bail to the respondent No. 1 Jagdish merely on this ground that he was the bona fide purchaser of the land in question. But he has failed to assign any reason and project any evidence which could otherwise evince that he was not the bona fide purchaser. As has already been discussed that unless there are any acts of the respondent No. 1 Jagdish which tends to prejudice or jeopardize the course of justice, there will not be any necessity to approach the High Court for cancellation of bail. The opposition of the petition by the learned Public prosecutor itself indicates that the State is not interested in cancellation of bail. Hence, in my firm view, the application of the petitioner is found to be devoid of force and substance and the same deserves to be dismissed and the application filed by the petitioner under Section 439(2) seeking cancellation of bail stands dismissed accordingly.

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