

E.Sanjeeva Reddy Vs. the State of A.P

E.Sanjeeva Reddy Vs. the State of A.P

SooperKanoon Citation : sooperkanoon.com/923211

Court : Andhra Pradesh

Decided On : Aug-16-2011

Judge : Samudrala Govindarajulu, J.

Acts : Indian Penal Code (IPC) - Sections 302, 147, 148, 149; Code of Criminal Procedure (CrPC) - Sections 439(2), 482; [Constitution of India](#) - Article 136

Appeal No. : CRIMINAL PETITION No.5699 of 2011

Appellant : E.Sanjeeva Reddy

Respondent : The State of A.P

Advocate for Pet/Ap. : Sri Gandra Mohan Rao, Adv.

Judgement :

1) The petitioner is witness No.11 in Crime No.168/2011 of Chandanagar Police Station of Cyberabad relating to offences punishable under Sections 147, 148, 302/149 I.P.C and Sections 25 of the Indian Arms Act. He seeks cancellation of bail granted by this Court to the 2nd respondent/3rd accused in CrI.P.No.4843 of 2011 by order dated 27.06.2011.

2) The offence pertains to ghastly murder of a practising advocate by name S.Ashok Reddy which took place on 26.03.2011. At about 10.55 A.M on that day when the deceased was going into Mandal Revenue Office, Serilingampalli mandal, the assailants attacked him by throwing chilli powder on his face and

stabbing him with knives. As many as 33 stab injuries were inflicted on body of the deceased. The deceased died on the spot. As on today, the police completed investigation and filed charge sheet before the Magistrate. It is alleged by the prosecution that six of the accused persons stabbed the deceased while four of the accused persons guarded the scene of offence and one accused person was driving the motor vehicle for taking all the accused to the scene and returning from the scene after commission of the offence. It is alleged that the 2nd respondent/A-3 was one of the accused persons who attacked and stabbed the deceased with knife. According to the prosecution, the offence is an offshoot of civil litigation between the petitioner/witness No.11 and the 5th accused for a land located in Nanakramguda of Cyberabad which is stated to be a prime locality, and which civil litigation was won by the petitioner in the Supreme Court of India; and the deceased was going to Mandal Revenue Office, Serilingampalli Mandal for the purpose of mutation of name of the petitioner/witness No.11 in revenue records for the disputed land which has been in possession of the accused. The petitioner/A-3 was in judicial custody since 17.04.2011. He was ordered to be released on bail on 27.06.2011.

3) The police did not move any application through the Public Prosecutor for cancellation of bail to the 2nd respondent/A-3 by invoking Section 439(2) Cr.P.C. The petitioner moved this petition under Sections 482 and 439(2) Cr.P.C on the ground that the accused attacked and killed the petitioner's advocate with an intention to see that no advocate should appear on behalf of the petitioner. It is further alleged in this petition that the petitioner has got life threat from the 2nd respondent/A-3 and that on 07.07.2011 he gave report in Rayadurgam Police Station when some persons made attempt to trespass into his house. According to the petitioner, when he enquired about those persons, he came to know that they are associates of the 2nd respondent/A-3 and they were conducting rekki to attack on his house.

4) On the petitioner's locus standi to maintain an application of this nature, particularly when he is not the defacto-complainant and when the police did not move the Court for cancellation of bail under Section 439(2) Cr.P.C, the petitioner's counsel placed reliance on R.Rathinam V. State¹ of the Supreme

Court. Wherein it was observed:

"7. The frame of the sub-section indicates that it is a power conferred on the said Courts. Exercise of that power is not banned on the premise that bail was earlier granted by the High Court on judicial consideration. In fact the power can be exercised only in respect of a person who was released on bail by an order already passed. There is nothing to indicate that the said power can be exercised only if the State or investigating agency or even a public prosecutor moves for it by a petition.

8. It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court. If so, any members of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 the Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open for the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law."

5) It is contended by the petitioner's counsel that certain observations of this Court in the bail order dated 27.06.2011 are not factually correct and that when specific overt acts were attributed to the 2nd respondent/A-3 against the deceased with knife, this Court should not have been granted bail to the 2nd respondent in this ghastly case. In my opinion this submission of the petitioner's counsel is not available before this Court under Section 439(2) Cr.P.C, as entertaining of this contention would amount to entertaining a review petition on the ground of a mistake apparent on the face of the earlier order. It is for the aggrieved party to take the matter to higher Court i.e., the Supreme Court of India by filing Special

Leave Petition under Article 136 of the [Constitution of India](#) and urge therein this ground for setting aside the order granting bail to the 2nd respondent/A-3. In *Samarendra Nath Bhattacharjee V. State of W.B2* the Supreme Court did not approve the approach of considering a petition under Section 482 and 439(2) Cr.P.C as if it was an appeal against conviction by giving findings on factual issues.

6) In *State of U.P V. Madhumani Tripathi*³ the Supreme Court quoted the following ratio rendered in its earlier pronouncement in *Dolat Ram V. State of Haryana*⁴:

"4.Rejection 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 accused to retain his freedom by enjoying the concession of bail during the trial."

Therefore, in this petition, this Court cannot either review or reconsider or reweigh the circumstances which prompted this Court to grant bail to the 2nd respondent/A-3 by order dated 27.06.2011.

7) The only other ground on which the petitioner claims cancellation of bail is that there is life threat to him. The petitioner is stated to have given a report in Rayadurgam Police Station on an incident in which some persons attempted to trespass into his house. Even as per the petitioner's case, the said attempt was not accomplished. Even as per the petitioner, A-3 was not one of such persons who attempted to trespass into his house. He claims that his enquiries revealed

that those persons were men of A-3 and they came there to conduct rekki of his house. The petitioner did not give details of the alleged enquiries made by himself to find out the reason why some persons attempted to trespass into his house. He did not also state as to details of those persons, except alleging that they were men of A-3. It is a vague and bald allegation. There is no basis to conclude that the alleged persons who attempted to trespass into his house were connected to A-3. It is nothing but the petitioner's assumption based on no ground. It is not the petitioner's case that any persons hurled any threats on him or any persons muchless A-3 attempted on his life.

8) The Additional Public Prosecutor stated that after receipt of report from the petitioner, the Assistant Commissioner of Police gave necessary instructions to the Inspector of Police, Rayadurgam Police Station and that now a police beat point is located at the petitioner's house and that day patrolling as well as night patrolling by the police in the locality of petitioner's house is increased and that steps have been started for opening rowdy sheets on all the accused including 2nd respondent/A-3 in this crime. In that view of the matter, the police have taken appropriate steps on the apprehensions of the petitioner though there is no basis for such apprehensions of the petitioner. Therefore, this is not a fit case for cancelling bail granted to the 2nd respondent/A-3 by this Court earlier, exercising the power either under Section 482 Cr.P.C or under Section 439(2) Cr.P.C.

9) Hence, the petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com