

Pedda Mareppa and Others Vs. State of A.P., (Through Public Prosecutor)

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Court : Andhra Pradesh

Decided On : Mar-16-2012

Judge : K.C. Bhanu

Appeal No. : CRIMINAL PETITION No.2723 of 2012

Appellant : Pedda Mareppa and Others

Respondent : State of A.P., (Through Public Prosecutor)

Judgement :

This criminal petition is filed under Section 482 Cr.P.C., by the petitioners/A1 to A7, seeking to set aside the order dated 05.03.2012 in CrI.MP.No.252 of 2012 in CrI.MP.No.149 of 2012 in P.R.C.No.21 of 2011, passed by the I-Addl. Sessions Judge, Anantapur, and relax the condition imposed by the learned Sessions Judge by order dated 13.02.2012 in CrI.MP.No.149 of 2012 in the said P.R.C. by granting another five days time to the petitioners to surrender before the Judicial Magistrate of the First Class, Rayadurg, Anantapur District.

On the basis of a private complaint filed by one K. Manekka-the defacto complainant before the Judicial Magistrate of the First Class, Rayadurg, a case was registered for the offences punishable under Sections 324 and 354 r/w 34 IPC, and summons were issued to the petitioners. Since the offences alleged are exclusively triable by the Court of Sessions, the case was numbered as PRC No.21 of 2011, and while committing it to the Court to Sessions, Anantapur, the

Magistrate directed the petitioners to approach the I-Addl.Sessions Judge, Anantapur, for preferring bail applications. The petitioners filed CrI.MP.No.149 of 2012 in the said PRC seeking anticipatory bail. The Sessions Judge by order dated 13.02.2012 allowed the anticipatory bail applications, but however, instead of granting anticipatory bail, directed the petitioners to surrender before the Judicial Magistrate of the First Class, Rayadurg, within five days from the date of that order, upon which they would be released on bail on executing personal bonds for Rs.7,500/- each with two sureties for the like sum to the satisfaction of the said Magistrate. The petitioners failed to surrender before the Magistrate within the time stipulated by the learned Sessions Judge, and instead they filed CrI.MP.No.252 of 2012 before the I-Addl.Sessions Judge, Anantapur, once again seeking anticipatory bail. The learned Sessions Judge, by impugned order dated 05.03.2012, dismissed their application, observing that they had not utilized the opportunity given to them in CrI.MP.149 of 2012 by surrendering themselves before the Magistrate. Assailing the order dated 05.03.2012, and seeking extension of time granted in the order dated 13.02.2012 in CrI.MP.No.149 of 2012, for a period of five days, to enable them surrender before the Judicial Magistrate of the First Class, Rayadurg, this petition is filed by the petitioners/A1 to A7.

Learned counsel for the petitioners contended that as one of the close relatives of the petitioners died, they could not surrender before the Magistrate as directed by the I-Addl. Sessions Judge in CrI.MP.No.149 of 2012, and hence the failure to surrender before the Magistrate was not willful or wanton, and hence prays to set aside the impugned order in CrI.MP.No.252 of 2012, and consequently extend the time granted for the petitioners in CrI.MP.No.149 of 2012 to surrender before the Magistrate.

The distinction between an ordinary bail and anticipatory bail is that the former being after arrest means release from the judicial custody, the latter being in anticipation of arrest, is effective at the very moment of arrest. The High Court or the Sessions Court is given discretionary power to grant anticipatory bail on the particular facts and circumstances of the case. In other words, Section 438 Cr.P.C. contemplates an application to be made by a person who apprehends that he may be arrested on an allegation of having committed a non-bailable offence. It is an

application on an apprehension of arrest that invites the exercise of the power under Section 438 Cr.P.C. It is true that the Court considering an application under Section 438 Cr.P.C. has got a discretion and on an overall consideration of facts and circumstances of the case, may reject or grant the prayer made thereunder on merits. The judicial discretion granted under Section 438 Cr.P.C. should not be read down by reading into it conditions that are not there. The petitioner has undoubtedly to make out a case for the grant of anticipatory bail.

Instead of granting or rejecting the prayer for anticipatory bail, the Court of Sessions, in the first instance directed the petitioners to surrender before the learned Magistrate and, secondly, on such surrender, he shall be released on bail on executing a personal bond for Rs.7,500/- each with two sureties. In pursuance of first condition, if the petitioners surrender before a Judicial Magistrate of the First Class Court, the concerned Magistrate gets jurisdiction to grant bail or not by virtue of Section 437 Cr.P.C. The High Court or Court of Sessions cannot exercise the jurisdiction under Section 437 Cr.P.C. in granting or rejecting the bail. When a person is detained in judicial custody, Section 439 bestows judicial discretion on the High Court or Court of Sessions in the matter of granting or rejecting the bail. In pursuance of first direction in the impugned proceedings, the learned Judge becomes *functus officio* to exercise the jurisdiction under Section 438 Cr.P.C. By virtue of second condition, the learned Judge is usurping the jurisdiction of the Judicial Magistrate of the First Class, under Section 437 Cr.P.C. Section 437 Cr.P.C. confers power to grant bail or not with the Court of Magistrate; High Court and Court of Sessions have no powers to exercise the power under Section 437 Cr.P.C. Therefore, the impugned order passed by the learned Judge lacks jurisdiction. Question of extension of time for surrender shall not be granted in as much as an illegality cannot be perpetuated, and hence the petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed.

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