

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

CRIMINAL PETITION No.7029 OF 2021

ORDER:-

This criminal petition under Section 439(2) of the Code of Criminal Procedure, 1973, is filed to cancel the bail that was granted to the accused in Crime No.202 of 2021 of Gadivemula Police Station, Kurnool District, by the impugned order dated 13.09.2021 passed in CrI.M.P.No.169 of 2021 on the file of learned III Additional District and Sessions Judge, Kurnool at Nandyal.

2. The accused are A-1, A-4, A-6 to A-9 in Crime No.202 of 2021 of Gadivemula Police Station, Kurnool District. A case under Sections 147, 148, 324, 307, 302 r/w 149 of the Indian Penal Code, 1860 was registered against them.

3. It is a case of double murder. It is the version of the prosecution that the respondents 3 to 8 herein along with other accused formed themselves into an unlawful assembly and attacked the two deceased persons, who are brothers and committed murder of the said two persons.

4. The accused herein were arrested on 25.06.2021. Thereafter they were remanded to judicial custody. Earlier two bail applications filed by the accused were dismissed by the learned Additional Sessions Judge. The 2nd bail application was dismissed on 25.08.2021. Thereafter, 3rd bail application was filed by them and it was allowed on 13.09.2021 enlarging said accused on bail on certain conditions.

5. Wife of one of the deceased has now filed this petition for cancellation of the said bail that was granted to the accused in the above crime on the ground that there are no change of circumstances for grant of bail after dismissal of the earlier bail application. It is also alleged that the accused through their men have been threatening the witnesses and interfering with the process of investigation. Therefore, on the aforesaid two grounds, the bail that was granted to the said accused is now sought to be cancelled.

6. Heard learned counsel for the petitioner, learned Additional Public Prosecutor for the State and learned counsel for the respondents/accused.

7. Learned counsel for the petitioner would submit that after the second bail application was dismissed on 25.08.2021, the 3rd bail application was allowed immediately on 13.09.2021 without there being any change of circumstances to entertain the said bail application. He would submit that absolutely there are no change of circumstances after dismissal of the earlier bail application and as such the impugned order granting bail to the accused is legally unsustainable. He would further submit that a representation was submitted by the petitioner herein stating that the accused through their men have been threatening the witnesses and thereby interfering with the process of investigation and the same is not being considered. Therefore, he would contend that as the accused are interfering with the process of investigation and making an attempt to tamper with the prosecution evidence, that they are not entitled to bail and he

would submit that the bail that was granted to them is liable to be cancelled. Therefore, on the aforesaid grounds, he sought for cancellation of the bail.

8. Learned Additional Public Prosecutor appearing for the State submits that a condition was imposed that the accused shall not enter the village and the accused have been complying with the said condition. He would further submit that no complaint was received by the police stating that the accused are making any attempt to threaten the witnesses through their men and that they have been interfering with the process of investigation. He would submit on instructions that the accused are not making any attempt to tamper with the prosecution evidence. He would also submit that the entire investigation in this case is completed and about 48 witnesses have been examined and only R.F.S.L. report is awaited to file the charge sheet. Therefore, he opposed the petition filed by the petitioner.

9. The respondents/accused have filed their counter denying the material averments made in the petition. It is stated that the respondents have been complying with the condition imposed against them at the time of granting bail and they did not even enter the village till today after they were enlarged on bail and as such, the question of the accused threatening the witnesses or interfering with the process of investigation does not arise. Learned counsel for the respondents would also reiterate the said facts while making her oral submissions opposing this petition and would submit that there are absolutely no valid grounds

emanating from the record warranting cancellation of the bail that was granted to the petitioners.

10. In support of her contention, she relied on the Judgment of the Honourable Apex Court in the case of ***Myakala Dharmarajam and others v. State of Telangana and another***¹. Therefore, she would pray for dismissal of the petition.

11. Perused the record.

12. The record reveals that the accused were arrested in the said case on 25.06.2021 and thereafter remanded to judicial custody. The earlier two bail applications filed by them were dismissed by the learned III Additional Sessions Judge. The second bail application was dismissed on 25.08.2021. However, while disposing of the third bail application, the learned III Additional Sessions Judge granted bail to the accused on 13.09.2021. No doubt, as can be seen from the orders dated 25.08.2021 and 13.09.2021, there are no change of circumstances to consider the third bail application in favour of the accused. The learned Sessions Judge held in the order dated 25.08.2021 that about 42 witnesses were examined. Even in the order dated 13.09.2021 also, it was held that 42 witnesses were examined as on that date. A perusal of the aforesaid two orders dated 25.08.2021 and 13.09.2021 reveal that there are no change of circumstances to consider the third bail application in favour of the accused. But the learned III Additional Sessions Judge in the order dated 13.09.2021 held that it is brought to

¹ 2020 (2) ALD (Cri.) 10 (SC)

the notice of the Court that a police personnel is deployed in the village as there is threat to the family members of the deceased and he further held that since the material witnesses were examined, that there will be no chance to the accused to interfere with the investigation.

13. Although, a perusal of the impugned order shows that it suffers from an infirmity as pointed out by the learned counsel for the petitioner that without there being any change of circumstances after dismissal of the earlier bail application, that the learned III Additional Sessions Judge considered the third bail application in favour of the accused, having regard to the facts and circumstances of the case and the present stage of investigation, this Court is of the considered view that fact by itself is not sufficient to cancel the bail that was granted to the accused. Particularly, in view of the fact that the learned Additional Public Prosecutor on instructions would submit that the entire investigation in this case is now completed after examining about 48 witnesses and that only R.F.S.L. report is awaited to file the charge sheet and also in view of the fact that learned Additional Public Prosecutor on instructions has stated that there is no material placed before them to show that the accused are interfering with the process of investigation by way of threatening the witnesses through their men. Further, the petitioners, according to the learned Additional Public Prosecutor have been complying with the conditions imposed at the time of granting bail and that they did not enter the village till today and they are residing outside the village.

14. In this context, it is relevant to note that the Honourable Apex Court in the case of **Raghubir Singh and others Etc vs. State of Bihar**² held that “... bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency and (vii) attempts to place himself beyond the reach of his surety, etc...”. It is stated that the above grounds are illustrative and not exhaustive.

15. Following the aforesaid Judgment, the Honourable Apex Court in the case of **Myakala Dharmarajam and others v. State of Telangana and another (referred supra)**, held that the alleged complaint that accused were influencing witnesses is vague and except making an omnibus allegation to that effect, there is no material to substantiate the same and as such, the bail that was granted earlier to the accused cannot be cancelled.

16. None of the grounds which are enumerated in the **Raghubir Singh and others Etc vs. State of Bihar (referred supra)** case is found to be existing in the present case. Although it is alleged that the accused are making an attempt to threaten the witnesses through their men, it appears to be a vague allegation without any valid basis.

² (1986) 4 SCC 481

17. It is significant to note here that learned Additional Public Prosecutor on instructions would submit that nothing was brought to the notice of the police or the investigating agency stating that the accused are interfering with course of investigation by way of threatening the witnesses through their men. Therefore, in the absence of any valid material to substantiate the said allegation, the bail that was granted to the accused earlier cannot be cancelled on the basis of the said vague allegation. Therefore, this Court finds no valid reasons emanating from the record to cancel the bail that was earlier granted to the accused.

18. Resultantly, this Criminal Petition is dismissed.

However, the accused, who are on bail, shall not enter the Pesaravayi village, where police are deploying, till the charge sheet is filed in this case.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date : 24-02-2022

ARR

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

CRIMINAL PETITION No.7029 OF 2021

Date : 24-02-2022

ARR