

(2024) 08 KAR CK 0003
In the Karnataka High Court
Case No : Criminal Petition No. 3493 Of 2024

A. Sunil Kumar

APPELLANT

Vs

State By Begur P.S Bengaluru Represented By SPP High Court
Of Karnataa Bangalore - 560001 & Others

RESPONDENT

Date of Decision : 01-08-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439, 439(2)

Indian Penal Code, 1860 — Section 143, 144, 147, 148, 149, 302, 307, 341, 447, 504

Citation : (2024) 08 KAR CK 0003

Hon'ble Judges : S Vishwajith Shetty, J

Bench : Single Bench

Advocate : Vandana P.L, Shyam Sundaar M.S, Veeranna G. Tigadi

Final Decision : Allowed

Judgement

S Vishwajith Shetty, J

1. The defacto complainant is before this Court under Section 439(2) of Cr.PC with a prayer to cancel the bail granted to accused nos.1, 2 & 4 in S.C.No.95/2020 by the Court of LXVIII Addl. City Civil & Sessions Judge, Bengaluru, vide order dated 22.03.2024.

2. Heard the learned Counsel for the parties.

3. Respondent nos.2 to 4 herein are arrayed as accused nos.1, 2 & 4 in S.C.No.95/2020 pending before the Trial Court arising out of Crime No.117/2019 for the offences punishable under Sections 447, 143, 144, 147, 148, 302, 341, 307, 504 read with 149 IPC. Bail application filed by respondent nos.2 to 4 herein under Section 439 of Cr.P.C. before the Trial Court was rejected. Respondent no.4, thereafter, had approached this Court in CrI.P.No.216/2020 which was dismissed by the coordinate bench of this Court by order dated 18.02.2020. Subsequently, respondent no.4 once again had approached this Court in CrI.P.No.219/2021 and the same was dismissed as against him on

06.08.2021. Respondent nos.2 & 3 had approached this Court in CrI.P.No.6632/2023 which was disposed of by this Court on 08.11.2023 with a direction to the Trial Court to expedite the trial in S.C.No.95/2020 and dispose of the main case within a period of six months from the next date of hearing before the Trial Court. Thereafter, respondent nos.2 to 4 had filed fresh bail application before the Trial Court and the same was allowed vide the order impugned. Challenging the same, the defacto complainant is before this Court.

4. Learned Counsel for the petitioner submits that the earlier petitions filed by respondent nos.2 to 4 before this Court was dismissed on merits and without there being any change in circumstance, the Trial Court has allowed their successive bail application vide the impugned order. She submits that though this Court in CrI.P.No.6632/2023 had directed the Trial Court to dispose of the main case in S.C.No.95/2020 within a period of six months from the next date of hearing before the Trial Court, even before the expiry of the said period, fresh bail application was filed by the parties and the same was allowed by the Trial Court. She submits that the Trial Court has allowed the bail application on the ground that the material charge sheet witnesses are already examined, and therefore, there cannot be any apprehension by the prosecution that the accused persons are likely to tamper with the prosecution witnesses.

5. Per contra, learned Counsel for respondent nos.2 to 4 has opposed the petition. He submits that considering the long period of incarceration suffered by respondent nos.2 to 4 and also taking into consideration that all the material witnesses have been examined in the present case, the Trial Court has allowed the successive bail application of respondent nos.2 to 4. No fault can be found with the same. He submits that the case is at the stage of fag end of trial, and therefore, there is no necessity to interfere with the order impugned.

6. Respondent Nos.2 to 4 in this petition are accused Nos.1, 2 and 4 before the Trial Court in S.C.No.95/2020. Bail application filed by respondent Nos.2 to 4 before the Trial Court was rejected. Thereafter, accused No.4 had approached this Court in CrI.P.No.216/2020 which was dismissed by the Co-ordinate of this Court on 18.02.2020. Respondent No.4 thereafter filed a successive bail application before this Court in CrI.P.No.219/2021 and the same was also dismissed by the co-ordinate Bench of this Court on 06.08.2021. Respondent Nos.2 and 3 had approached this Court in CrI.P.No.6632/2023 which was disposed of by this Court on 08.11.2023 with a direction to the Trial Court to expedite trial in S.C.No.95/2020 and dispose of the main case within a period of six months from the next date of hearing before the Trial Court provided the accused and the learned counsel appearing for the accused co-operate with the Trial Court for early disposal of the case. This Court also had directed that the Trial Court shall not give unnecessary adjournment to either of the parties.

7. Subsequent to the disposal of CrI.P.No.6632/2023, the material witnesses have been examined before the Trial Court, who according to the de-facto complainant, have supported the case of the prosecution. At that stage, on

06.03.2024, application was filed by accused Nos.1, 2 and 4 before the Trial Court under Section 439 of Cr.P.C. to enlarge them on bail. The prosecution had opposed the same by filing objections. The Trial Court vide the order impugned dated 22.03.2024 has allowed the said application on the ground that since material charge sheet witnesses have already been examined by the prosecution, there cannot be any apprehension that the accused persons are likely to tamper with the prosecution witnesses.

8. The allegations against the accused persons in the present case is that they had committed murder of complainant's father Anand Reddy and his friend Prakash Reddy in view of the dispute between them with regard to certain property at Devarachikkanahalli. There are eye witnesses to the incident in question. Considering the gravity of the offences and the manner in which the crime was committed by the accused, this Court has rejected the bail application of respondent Nos.2 and 3 in CrI.P.No.6632/2023 with a direction to the Trial Court to expedite the trial since the accused persons were in custody for a period of more than four years. In compliance of the submission made before this Court in CrI.P.No.6632/2023, the prosecution has examined all the material witnesses expeditiously before the Trial Court and according to the prosecution, material witnesses examined have supported the case of the prosecution. But even before lapse of six months period from the date of disposal of CrI.P.No.6632/2023, respondent Nos.2 to 4 filed an application before the Trial Court and the same has been allowed by the Trial Court vide order impugned which is also prior to the expiry of the period of six months granted by this Court to dispose of the main case on merits. The Trial Court has granted bail to respondent Nos.2 to 4 on the ground that material charge sheet witnesses have already been examined by the prosecution and therefore, there cannot be any apprehension that they are likely to tamper with the prosecution witnesses.

9. It is trite that successive bail applications can be entertained only when there is a change in circumstance which is substantive and material. No such change in circumstance is found in the case on hand and merely for the reason that material charge sheet witnesses have been examined, the Trial Court was not justified in granting bail to respondent Nos.2 to 4 when this Court has successively rejected the bail applications of respondent Nos.2 to 4 taking into consideration the gravity of the offences and the manner in which the crime was committed by them. The Trial Court was also not justified in entertaining the application of respondent Nos.2 to 4 before the expiry of period of six months within which period, the Trial Court was directed to dispose of S.C.No.95/2020 on its merits. The order passed by the Trial Court does not reflect due application of judicial mind and the well established principles of law are also not followed by the Trial Court while considering the successive bail application made by respondent Nos.2 to 4. The Trial Court apparently has failed to maintain the minimum judicial discipline and has erred in passing the impugned order. Under the circumstances, I am of the opinion that the impugned order granting regular bail to respondent Nos.2 to 4 cannot be sustained. Accordingly, the following

order:-

10. Criminal Petition is allowed. The impugned order dated 22.03.2024 passed by the Court of LXVIII Addl. City Civil and Sessions Judge, Bengaluru in S.C.No.95/2020, is set-aside. Respondent Nos.2 to 4 shall be forthwith taken to custody.