

(2013) 10 KAR CK 0110

In the Karnataka High Court

Case No : Criminal Revision Petition No. 2270 of 2013

Dr. Rajesh Sugur

APPELLANT

Vs

State of Karnataka and N. Shivakumar Gouda

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 439(2)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 34

Citation : (2013) 10 KAR CK 0110

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : Ganapathi M. Bhat, for the Appellant; V.M. Banakar ASPP. for R1 and Sri. Ramakrishna Hegde, for M/s. Ramakrishna Hegde Assts. for R2, for the Respondent

Final Decision : Allowed

Judgement

Dr. Jawad Rahim, J.—This petition is u/s 397 of Cr.P.C. questioning the order of the learned Sessions Judge passed in Criminal Misc. Petition No. 521/2013 u/s 439(2) of Cr.P.C. canceling the bail granted to the petitioner. Heard both sides. Perused the records.

2. The facts not in dispute are, petitioner-Dr. Rajesh Sugar is arrayed as accused in Crime No. 338/2012 along with his parents for an offence punishable u/s 304B read with Section 34 of the I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act regarding the death of his wife Dr. Rupa. During investigation, he was arrested and was in detention. He applied to the Sessions Court seeking grant of bail, who considered his request on merit and by order dated 04.03.2013 in CrI. Misc. Petition No. 114/2013 enlarged him on bail on certain conditions, one amongst which was that he shall not tamper or threaten with the prosecution witnesses. Similarly, his parents were also granted anticipatory bail by order dated 18.01.2013 in CrI. Misc. Petition No. 10/2012. The contention of petitioner

is he has complied with all the conditions and his bail was granted and he has not contravened any of the conditions.

3. In this revision petition, he has challenged the order passed by the learned Sessions Judge in Crl. Misc. Petition No. 521/2013, canceling the bail granted to him by order dated 04.03.2013 in the following circumstances:-

(I) That Respondent No. 2/N. Shivakumar Gouda lodged a report on 14.05.2013 before the Sadar Bazar Police Station of Raichur alleging that on 13.05.2013 at about 5.30 p.m., when he and his son Mallikarjuna were returning home on a motor-cycle after filling petrol and had reached Parasa Garden in Raichur, a person stopped their motor-cycle and then started threatening him and his son, claiming that he is the brother-in-law of the petitioner herein and will not spare them unless they withdraw the case filed against the petitioner Dr. Rajesh.

(II) Based on such report, a case has been registered in Crime No. 104/2013 and it appears the police have filed a negative report in the form of "B" Report on 02.09.2013, seeking permission of the Court to close the investigation describing the complaint as false. Referring to the said incident, respondent No. 2 has sought cancellation of bail of the petitioner through his petition in Crl. Misc. Petition No. 521/2013. He had also filed affidavits of his son and one Shamshuddin, who had claimed to be the witness to the incident.

(III) The learned Sessions Judge has accepted the petition for cancellation of bail and by the impugned order in Crl. Misc. Petition No. 521/2013 has cancelled the bail. Assailing which, this revision petition is filed.

4. As could be seen, no doubt, the High Court or a Sessions Court, as the case may be, are conferred with the power to cancel the bail and order re-arrest of a person if the circumstances warrant. In the instant case, it is not in dispute that the petitioner was successful in obtaining bail and he is at liberty. The incident on 13.05.2013 is said to be result of threat caused by a person named Anil claiming to be the brother-in-law of petitioner herein. The positive allegation is that he had held threat and there has been no physical act on the part of the said Anil also to cause any threat to respondent No. 2.

5. How far the claim made by Anil that he has acted on behalf of petitioner is tenable is a question that require an enquiry. The police officers have found the complaint to be false and have filed a final report. That material was available before the learned Sessions Judge while dealing with Crl. Misc. Petition No. 521/2013. The learned Sessions Judge has totally ignored the said material and has referred to the order passed by him in granting bail on certain conditions. No doubt, if a beneficiary of the bail indulges in any act adverse to the prosecution or the victims or contravenes or violates the conditions of bail, cancellation of bail will be justified. When the allegation is made by some other person that he had acted on behalf of the petitioner, then enquiry is necessary. In the instant case, learned Sessions Judge, on mere statement of the petitioner that the threat caused to him was only for and on behalf of the petitioner, has cancelled

the bail. This is totally against the settled principle of law that when the bail is granted on merit, cancellation of bail should be an exception. In this case, learned Sessions Judge has not taken into consideration the fact that police have filed a "C" report describing the complaint regarding alleged threat is false.

Hence, the revision petition is allowed. The order passed by learned Sessions Judge in Criminal Misc. Petition No. 521/2012 is set aside. The petitioner is entitled to enjoy the bail granted by order in Criminal Misc. Petition No. 114/2013.