

(2015) 02 KAR CK 0150

In the Karnataka High Court

Case No : Criminal Petition Nos. 3210 and 3211 of 2014

Nagalingaswamy H.S.

APPELLANT

Vs

State of Karnataka Ors.

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407, 482

Citation : (2015) 02 KAR CK 0150

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : Hashmath Pasha, Advocate, for the Appellant; Prasanna Kumar P., Advocate for C.H. Jadhav, Senior Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

Budihal R.B., J.—Since petitioner-accused is same in both the petitions and it is in respect of same Crime No. 123/2013 of Ijoor police station and since common questions of law and facts are involved in the petitions, both the petitions are taken up together for disposal by a common order.

2. Heard the learned counsel appearing for petitioner-accused No. 4 in respect of both the petitions and also the learned Spl. P.P. appearing for the respondents.

3. It is the submission of the learned counsel appearing for the petitioner that after registering FIR in both the cases, investigation was taken up and after completing investigation charge sheets were filed and cases were numbered as C.C. Nos. 98/2013 and 99/2013 before the CJM Court at Ramanagaram. Earlier petitioner had approached the trial Court as well as this Court seeking his release on bail and both the Courts have rejected his bail application holding that investigation was still going on. Though earlier petitions were rejected, due to change in circumstances, petitioner-accused approached this Court seeking his release on bail after investigation was completed and charge sheet was filed. Subsequently, State Government consented that the investigation to be taken up

by the CBI and accordingly, notification was issued on 20.2.2014 and 5.4.2014. CBI has taken up fresh investigation registering case in R.C. No. 7(A)/2014 on 5.4.2014. Learned counsel also submitted that once FIR was registered, matter was investigated and charge sheet was filed, there cannot be registration of the second FIR and further investigation by any investigating agency. This itself is a ground to seek quashing of the proceedings taken up by CBI under Section 482 of Cr.P.C. It is also submitted that even after 10-11 months of CBI taking up investigation, investigation is not completed and trial Court also is in a dilemma whether to proceed with the trial of the case or not, as CBI is objecting before the trial Court that investigation is still going on. Even petitions were filed before this Court by the CBI seeking transfer of cases from the file of CJM to the file of the Special Court in CrI. Ps. 4416/2014 and 4451/2014. Learned counsel has submitted that in respect of the said petitions even without issuing notice or hearing the respondent-accused, petitions were allowed and Court has passed an order directing the CJM, Ramanagar to transmit the entire records pertaining to C.C. Nos. 98 and 99/2013 to the file of 46th Addl. City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore. Subsequently, accused filed application in the said case stating that he was not heard in the matter. However, this Court held that in view of the reasoning, petitions filed under Section 407 of Cr.P.C. are dismissed with liberty to the petitioner to approach this Court, if need arises in future, as noted in the body of the order and in pursuance of the order passed by the Court on 5.9.2014, if records have already been transmitted to the CBI Court, same have to be re-transmitted to the Principal Civil Judge (Sr. Dn.) and CJM, Ramanagar for further proceedings and he has to secure the presence of other accused and proceed with the case in accordance with law.

4. Learned counsel has submitted that because of these proceedings and change of circumstances, unnecessarily accused has to continue in the custody. When investigation is completed and charge sheet has been already filed, petitioner-accused is entitled to be granted with bail. It is submitted that in similar case pertaining to Mandya Urban Development Authority when petitioner approached this Court, this Court had allowed the petition and petitioner has been granted bail. He has produced the copy of the said order passed by this Court. It is also his submission that the petitioner is suffering from ailments. Even though treatment was given by the prison authorities, still he is suffering from such ailments, which also requires release of petitioner to take proper treatment. In support of his arguments, learned counsel for the petitioner-accused has relied upon the decisions filed along with list of authorities dated 27.2.2015 at Sl. Nos. 1 to 9. Hence, it is submitted that petitions be allowed.

Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Another,
T.T. Antony Vs. State of Kerala and Others,
State of Kerala Vs. Raneef,
Sanjay Chandra Vs. CBI,

Sunil K. Sinha Vs. State of Bihar through S.P. CBI,

Dipak Shubhashchandra Mehta Vs. C.B.I. and Another,

Bhagirathsinh Judeja Vs. State of Gujarat,

2014 AIR SCW 1722 (Dmubhai Boghabhai Solanki Vs. State of Gujarat)

Babu Singh and Others Vs. State of U.P.,

5. Per-contra, learned Spl. PP for the respondent-State during the course of his arguments submitted that in similar case of Mandya Urban Development Authority, this Court has rejected the bail petition filed by accused Nos. 2 - B.S. Shekar by taking into consideration the submission made by learned counsel herein with regard to CBI taking charge of investigation. The copy of which is produced. Learned Spl. PP has also submitted that in the decision relied upon by learned counsel for the petitioner reported in Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Another, with regard to registering second FIR, looking to the facts and circumstances involved in that particular decision their lordship's have observed in the last paragraph of the said decision that second FIR has been quashed and that it is not applicable to the facts of this case. As the investigation by the CBI is still going on, at this stage, petitioner is not entitled to be released on bail. It is also his contention that if at all according to the petitioner there is change of circumstances, petitioner has to first approach the trial Court and without doing that directly he has approached this Court. When the bail application of accused No. 1 has been rejected by the trial Court as well by this Court and when he approached the Apex Court, rejecting the petition petitioner-accused No. 1 was directed that if the trial is not completed within a period of six months then he has to move the trial Court by filing the bail application. Therefore, the learned Spl. PP has submitted that first petitioner has to approach the trial Court and directly he cannot come before this Court even on the ground that there are changed circumstances. It is submitted that when earlier bail petitions were rejected by this Court, the present petitions are not maintainable. Hence, it is submitted to reject the same.

6. Perused the averments made in the bail petitions, the decisions relied upon by the learned counsel for the petitioner-accused in respect of both the petitions and also submission of the learned counsel on both sides.

7. As rightly submitted by the learned counsel for the petitioner herein, petitioner earlier had approached this Court by filing the CrI. P. No. 1247/2014 and this Court by order dated 13.3.2014 after considering the materials on record, came to the conclusion that petitioner is not entitled to be granted with bail. Now with regard to the contention of the petitioner herein that there are changed circumstances that CBI has taken up investigation by registering the second FIR and hence, there will be further delay in the matter, this is not the forum. If at all it is not maintainable petitioner has to challenge the same seeking quashing of the registration of second FIR and also all further proceedings, before the

appropriate forum under the relevant provisions of law. When it is the case of the respondent-CBI that investigation is still going on, petitioner is not entitled to be granted with bail at this stage.

8. I have perused the materials placed on record in the earlier petition. So far as prima facie case is concerned, Court has taken into consideration those aspects and has ultimately rejected the bail petition. Regarding the contention of the learned counsel for the petitioner that in the similar matter this Court has allowed the bail petition of petitioner in respect of Mandya Urban Development Authority, the respondent also relied upon the decision of this Court passed in Crl. P. No. 1301/2014 connected with Crl. P. No. 6627/2014 wherein this Court has considered all the aspects of the matter and ultimately, rejected the petition holding that the investigation by the CBI is still going on.

9. Looking to these materials on record, so also submission of the learned Spl. PP that without approaching the trial Court on the changed circumstances petitioner has directly approached this Court, if at all there are any changed circumstances, it is for the petitioner to first exhaust that remedy by approaching the concerned trial Court. Accordingly, petitions are hereby disposed of with liberty to the petitioner to approach the trial Court.