(2013) 11 AP CK 0040

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 9903 of 2003

State of Andhra Pradesh APPELLANT

Vs

Surender Kumar Joshi and Another RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 2 ALD(Cri) 35 : (2014) 1 ALD(Cri) 226

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : Public Prosecutor, for the Appellant; Damodar Mundra, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Chandra Kumar, J.—The State of Andhra Pradesh represented by its Public Prosecutor filed this application seeking cancellation of the anticipatory bail granted to the respondents by this Court by order dated 18.08.2013 in Criminal Petition No. 8230 of 2013. The brief facts of the case are as follows:-

One K. Sanjeeva Reddy, the de facto complainant in Crime No. 16 of 2012 of Bibinagar Police Station, lodged a compliant against the respondents herein alleging that he is the GPA holder of Barla Uppari Krishna Reddy and others and that he executed a sale deed in favour of the respondents on 18.03.2011 in respect of 10 acres of agricultural land for a sale consideration of Rs. 90 lakhs, but he never received the sale consideration amount. It is also alleged that the respondents lured him that they would give him 1000 tonnes of steel and that the amount of Rs. 90 lakhs mentioned as sale consideration amount is also not a correct figure. It is further alleged that subsequently, the respondents cheated him by not paying the said amount of sale consideration and when he insisted the respondents for the sale consideration or the steel, they executed a letter on Rs. 100/- Non-Judicial stamp paper on 04.07.2011 promising to return the property and subsequently failed to fulfill their promise and thus cheated him.

2. The respondents filed a Criminal Petition in Crl.P. No. 2036 of 2012 to quash the above referred Crime No. 16 of 2012 and this Court, by order dated 23.02.2012 in Crl.M.P. No. 2169 of 2012, granted stay of all further proceedings in the above referred crime.

3. One Nakkala Sreedhar Reddy lodged another complaint in Crime No. 17 of 2012 on the file of the same police station against the respondents, making almost similar allegations as made in Crime No. 16 of 2012 pertaining to two acres of agricultural land for a sale consideration of Rs. 18 lakhs. In the said complaint also, it is alleged that the respondents executed a letter on Rs. 100/- Non-Judicial stamp paper on 04.07.2011 promising to give 200 tonnes of steel or return the property, but subsequently cheated him by not fulfilling the promise. The first respondent herein obtained anticipatory bail by filing Criminal Petition No. 5505 of 2012 by order dated 16.07.2012 in that case from this Court.

4. The respondents filed Criminal Petition No. 3557 of 2012 to quash the FIR in Crime No. 17 of 2012 and this Court stayed all further proceedings. It appears that K. Sanjeeva Reddy and others filed a civil suit in O.S. No. 111 of 2012 on the file of the District Judge, Nalgonda with regard to the property referred in Crime No. 16 of 2012.

5. As the matter stood thus, one Smt. P. Lakshmi Nancharamma and 9 others (including K. Sanjeeva Reddy, the de facto complainant in Crime No. 16 of 2012 and N. Sreedhar Reddy, the de facto complainant in Crime No. 17 of 2012) lodged a complaint against one J. Aruna Reddy, W/o Late Madhusudhan Reddy (A-1) and C. Narasimha Redy, S/o Malla Reddy, alleging that they cheated the innocent public by promising to arrange gold and steel at cheaper rate than the prevailing market rate and that they also issued cheques without any balance in their accounts and that when asked to return the money, they threatened with dire consequences. It is also alleged that more than 100 people were cheated by those persons and several cases have been registered against them. Basing on the said complaint, the police, CCS, Hyderabad, registered a case in Crime No. 83 of 2013 for the offences punishable under Sections 420, 406 & 120(b) r/w 34 IPC against the accused in that crime. During the course of investigation, the police arrested J. Aruna Reddy (A-1) on 15.07.2013 and came to know about the involvement of the respondents and others in the said crime. It is alleged that the respondents and others have also indulged in cheating the public by executing several false documents. The police seems to have obtained search proceedings u/s 165 Cr.P.C. against the respondents. In the above circumstances, the respondents approached this Court and filed Criminal Petition No. 8230 of 2013 seeking anticipatory bail.

6. In the Remand Case Diary of one J. Aruna Reddy (A-1), it is alleged that she induced K. Sanjeeva Reddy, the de facto complainant in crime No. 16 of 2012 to register his land in the name of the first respondent herein to an extent of 10 acres situated at Bhongir, Nalgonda District and 200 square yards of plot at Nagole, Hyderabad in the name of his sister Padma Latha and three acres of land

in the name of the second respondent and similarly, induced N. Sreedhar Reddy, the de facto complainant in Crime No. 17 of 2012 to register the lands in favour of the respondents and others.

7. It was argued before this Court in Criminal Petition No. 8230 of 2013 that in the earlier complainants, basing upon which the FIRs in Crime Nos. 16 of 2012 and 17 of 2012 of Bibinagar Police Station were registered, there is no whisper that J. Aruna Reddy (A-1) induced K. Sanjeeva Reddy and N. Sreedhar Reddy the de facto complainants in those cases to register their lands in favour of the respondents and others and, therefore, this Court, having considered the fact that on the earlier occasion it was never alleged that J. Aruna Redy (A-1) induced the de facto complainant in Crime Nos. 16 and 17 of 2012 to register their lands in favour of the respondents and another, granted Anticipatory Bail to the respondents with certain conditions.

8. Now the prosecution filed this application to cancel the bail granted to the respondents as referred above.

9. The petitioner/prosecution alleges that the respondents and others were in hand-in-glove with J. Aruna Reddy (A-1) and cheated the innocent public and that J. Aruna Reddy (A-1) paid huge amounts to A-2, A-9 and the respondents from the amounts collected by her by cheating the innocent public. It is also contended that J. Aruna Reddy (A-1) and the respondents used to meet K. Sanjeeva Reddy and N. Sreedhar Reddy and induced them to sell their lands to the respondents. It is also alleged that J. Aruna Reddy (A-1) and others and the respondents have hatched a plan eliminate the prime victim and witness K. Sanjeeva Reddy with the help of rowdy-sheeters (A-6, A-7 and A-8) and offered them huge amounts for execution of their plan. It is also alleged that the first respondent is the strong supporter of A-1 and encouraged her in her illegal activities and cheated the innocent public by collecting huge amounts from them. It is also alleged that they have cheated the Court by not placing all the facts before this Court. It is also alleged that the first respondent (A-10) got released the gold ornaments of A-1 worth Rs. 90 lakhs from Muthoot Finance, Clock Tower Branch, Secunderabad by paying Rs. 60 lakhs with interest and kept the said gold ornaments with him and that the said gold ornaments were acquired by A-1 with the amount collected by her by cheating the innocent public.

10. The respondents filed a counter denying all the allegations made by the prosecution. It is their contention that they are business people carrying on business of tours and travels in the name and style of ''Sharma Travels, Secunderabad'' and that they are having good reputation and goodwill in the society and that the allegations made by the prosecution are utterly false and that they have no dealings with J. Aruna Reddy (A-1). It is also denied by the first respondent that he got released the gold ornaments belonging to J. Aruna Reddy (A-1) worth Rs. 90 lakhs from Muthoot Finance, Clock Tower Branch, Secunderabad and kept the same with him.

11. The learned Additional Public Prosecutor submitted that when serious allegations have been made alleging that J. Aruna Reddy (A-1) paid huge amount to the respondents and that the respondents are also a party to the criminal conspiracy to eliminate K. Sanjeeva Reddy, the de facto complainant in Crime No. 16 of 2012 and when the first respondent got the gold ornaments of A-1 released from Muthoot Finance, it is reasonable to cancel the anticipatory bail granted to the respondents to enable the investigating agency to complete the investigation. It is also vehemently argued that these facts were not brought to the notice of the Court when anticipatory bail was granted to the respondents. It is further argued that when the respondents are a party to the criminal conspiracy to eliminate K. Sanjeeva Reddy, the de facto complainant in Crime No. 16 of 2012 and when the first respondent got released the gold ornaments, his arrest and custodial interrogation is necessary.

12. Per contra, the learned counsel for the respondents submits that all false cases have been registered against the respondents at the instance of K. Sanjeeva Reddy, the de facto complainant in Crime No. 16 of 2012, and N. Sreedhar Reddy, the de facto complainant in Crime No. 17 of 2012, who, having received huge amounts from the respondents an others, executed registered sale deeds and the recitals of the said sale deeds would go to show that the entire sale consideration was already paid to K. Sanjeeva Reddy and N. Sreedhar Reddy and another and that there is no truth in the allegations made by the prosecution. It is also his submission that a fair reading of the contents of complaints in Crime No. 16 and 17 of 2012 of Bibinagar Police Station would clearly reveal that there is no whisper about the role played by J. Aruna Reddy (A-1) and that no where it is alleged that A-1 induced K. Sanjeeva Reddy and N. Sreedhar Reddy to execute the sale deeds in favour of the respondents. It is further submitted that when this Court, having considered all the facts and circumstances of the case, granted anticipatory bail to the respondents, such orders cannot be cancelled. In support of his contentions, learned counsel for the respondents placed reliance on the judgment of this Court in the cases between Aveena Gudipati Vs. Vangapandu Srikanth, Kolli Kishore and The State of Andhra Pradesh, and the judgment of the Apex Court in the case between Dolat Ram and Others Vs. State of Haryana, . Placing reliance on the judgment of the Apex Court in the case between Nityanand Rai Vs. State of Bihar and Another, it is argued that the ground for cancellation of bail should be those which arose after grant of bail and should be referable to the conduct of the accused.

13. The only point that arises for consideration in this petition is whether the anticipatory bail granted to the respondents has to be cancelled.

14. As seen from the record, this Court had taken into consideration the contents of the complaints in Crime Nos. 16 and 17 of 2012 of Bibinagar Police Station and since it is never alleged that J. Aruna Reddy (A-1) induced K. Sanjeeva Reddy, the de facto complainant in Crime No. 16 of 2012 or N. Sreedhar Reddy, the de facto complainant in Crime No. 17 of 2012, to register their lands in

favour of the respondents, this Court granted anticipatory bail to the respondents. It is most unfortunate that certain facts were not brought to the notice of this Court while considering the Criminal Petition No. 8230 of 2013. Now in the affidavit filed by J. Rama Rao, Assistant Commissioner of Police, CCS, DD, Hyderabad, some additional allegations have been made against the respondents.

15. I have gone through the decisions cited by the learned counsel for the respondent. In Aveena Gudipati Vs. Vangapandu Srikanth, Kolli Kishore and The State of Andhra Pradesh, this Court observed that it is not open to the de facto complainant to file an application for cancellation of the bail when there is no perversity in the bail order granted earlier and when all necessary details were considered while granting anticipatory bail.

16. Similar view was taken by the Apex Court in Dolat Ram and Others Vs. State of Haryana,

17. In Nityanand Rai Vs. State of Bihar and Another, cancellation of bail was sought on the ground that the accused indulged in threatening the de facto complainant and others, but however, on facts, it was found that the accused were in jail when they were alleged to have threatened the witnesses. In the above circumstances, the allegations made against the accused therein were not taken into consideration.

18. The truth or otherwise of those allegations have to be verified basing on the material placed before this Court. The possibility of collecting material to reveal the role played by an accused in the commission of offence or in criminal conspiracy during the course of investigation cannot be ruled out. Now the additional allegations made in this petition go to show that J. Aruna Reddy (A-1) paid huge amounts to these respondents and others from the amount collected by her by cheating the innocent people and that the first respondent got released the gold ornaments of A-1 from Muthoot Finance, Clock Tower Branch, Secunderabad, by paying Rs. 60 lakhs with interest and kept the same with him. It is also alleged that there is a criminal conspiracy to eliminate K. Sanjeeva Reddy, the main victim and the de facto complainant in Crime No. 16 of 2012. Thus, it is clear that serious allegations involving the respondents showing their role in commission of offence have been made, besides the allegation of cheating K. Sanjeeva Reddy and others. Of course, it appears that there is some force in the contention of the learned counsel for the respondents that the confessional statement of J. Aruna Reddy (A-1) or Shiva Raj (A-9) do not substantiate the allegations made by the Assistant Commissioner of Police, CCS, DD, Hyderabad, in the present application. But the records of Muthoot Finance may substantiate some of the allegations made by the prosecution against the first respondent. In my considered view, the prosecution has made out a case for cancellation of order granting anticipatory bail to the first respondent herein by alleging that he got released the gold ornaments of A-1 by paying Rs. 60 lakhs with interest to Muthoot Finance, Clock Tower branch, Secunderabad. This allegation prima facie

reveals that there is close contact between the first respondent and J. Aruna Reddy (A-1). It also supports the allegation that the first respondent might have played a major role in cheating the innocent public.

19. The law with regard to cancellation of bail has been well settled. The bail already granted can be cancelled when (i) where the accused misuses his liberty after release by indulging in any criminal act; (ii) interferes with the investigation; (iii) attempts to tamper with evidence or witnesses; (iv) threatens the witnesses or indulges in similar activities which would hamper further investigation; (v) where there is likelihood of the accused fleeing away from justice; and (vi) where full particulars have not been placed before the Court at the time of hearing bail application i.e., where the Court was mislead due to suppression of material facts while granting bail.

20. Another important circumstance is where certain facts which were not known to the investigation agency earlier have come to light during the course of investigation, the subsequent turn of events also may be grounds for cancellation of bail. A situation may arise where grave offence other than that alleged in the FIR is subsequently made out. For example, where the accused is granted bail when a case is registered against him for the offence punishable u/s 324 or 326 IPC, but subsequently the section of law is altered to Section 302 IPC after the death of the injured; or where a case is registered against the accused for the offence of kidnapping and he was granted bail, but during the course of investigation it came to light that the victim was wrongfully confined and raped. A situation may arise where during the course of investigation, specific overt acts attracting more serious nature of offence or criminal conspiracy to commit a major offence, though not referred in FIR or initial investigation, may surface and there may be reasonable grounds to believe those allegations. Thus, where in a case during the course of investigation, certain new facts have come to surface which were not available to the Court as on the date of granting bail to the accused, the prosecution may bring those new facts to the notice of the Court for cancellation of the bail granted earlier. Where it is alleged that the accused, who was earlier granted bail has received a major portion of stolen property or is in possession of the huge amount or gold, which is the subject matter of the crime or any incriminating material is in possession of the accused which was not known to the investigating agency as on the date of granting bail, then the prosecution may bring these facts to the notice of the Court. Thus, during the cause of investigation, it may be found that the accused has played key role in the commission of offence or the valuable property may be in his possession. However, the possibility of making false allegations only with a view to see that the bail granted to the accused is cancelled cannot be ruled out. Therefore, the Court has to carefully consider all the facts and circumstances of the case. Unless it appears to the Court that there is some basis, i.e., material to believe those allegations, the Court should be slow in disturbing the earlier order of bail or anticipatory bail. There must be some basis, i.e., some evidence, i.e., reasonable grounds to substantiate the allegations. The Courts must come to a conclusion

that cancellation of bail is necessary in the facts and circumstances of the case in the interest of justice and for fair conclusion of the investigation to unearth all the facts or the dimensions of the crime. In some cases, the arrest of the accused may become necessary to ascertain the facts or to recover the valuable property or incriminating material. Order granting anticipatory bail should not hamper the further investigation. Therefore, there is no difficulty to reconsider the order of anticipatory bail with the help of the material subsequently placed before the Court. There is nothing wrong in reconsidering the order of granting bail or anticipatory bail when certain new facts have been brought to the notice of the Court. But, however, the Court must not cancel the bail in routine manner. The Court must be satisfied that in view of the allegations made and the material placed before the Court, it is necessary to cancel the bail.

21. Having given serious consideration to the rival contentions in this case and having gone through all the material papers filed by both the parties, it appears that at this stage, the material placed by the prosecution may not be sufficient to substantiate the allegation that J. Aruna Reddy (A-1) induced K. Sanjeeva Reddy and N. Sreedhar Reddy to sell their lands or that the respondents are parties to the criminal conspiracy to eliminate K. Sanjeeva Reddy and thereby to cancel the anticipatory bail granted earlier to the respondents on those allegations. However, I am convinced that the prosecution has brought certain important new facts to the notice of this Court and it is specifically alleged that the first respondent got released the gold ornaments of A-1 from Muthoot Finance, Clock Tower branch, Secunderabad, by paying huge amount of Rs. 60 lakhs with interest. Of course, this allegation is denied by the first respondent. But it appears that the records of Muthoot Finance, Clock Tower branch, Secunderabad, may substantiate the same. Moreover, a senior officer of the cadre of Assistant Commissioner of Police has made this allegation which gives an impression that the first respondent played a major role in this crime and may be in hand-in-glove with A-1 in cheating the innocent public. In the affidavit filed by the Assistant Commissioner of Police, it is specifically alleged that the first respondent (A-10) is a strong supporter of A-1 and encouraged her illegal activities and cheating, who collected huge amounts from innocent public. Thus, it appears that the case of the first respondent can be separated from the case of the second respondent, since the nature and seriousness of the allegations made against both of them are differing. It is not in dispute that these aspects were not brought to the notice of this Court while passing orders on 18.08.2013. In the circumstances, it appears that the anticipatory bail granted to the first respondent herein has to be cancelled to enable the investigating agency to do effective and complete investigation. Accordingly, this criminal petition is allowed in part and the anticipatory bail granted to the first respondent by this Court by order dated 18.08.2013 passed in Criminal Petition No. 8230 of 2013 is cancelled. The petition, insofar it relates to the second respondent, stands dismissed.