

(2014) 07 AP CK 0071

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5795 of 2014

The State of A.P.

APPELLANT

Vs

Kollam Gangi Reddy

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 439(2)
Forest Act, 1927 — Section 10, 20(1)(3), 29(1)(2)(b)
Passports Act, 1967 — Section 12(1)(b), 22, 6, 6(2)(f)
Penal Code, 1860 (IPC) — Section 120-B, 177, 379, 420
Wild Life (Protection) Act, 1972 — Section 27, 29, 31, 51

Citation : (2014) 2 ALD(Cri) 684 : (2015) 1 ALT(Cri) 105 : (2015) 3 Crimes 270

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : Ram Murthy Reddy, Advocate for the Respondent

Final Decision : Allowed

Judgement

B. Siva Sankara Rao, J.—This Criminal petition is filed u/s 439(2) Cr.P.C by the State against the accused No.33 (in crime No.36 of 2014 of Dhone Town Police Station) seeking to cancel the bail granted to him in CrI.P.No.5492 of 2014 by this Court on 15.05.2014. The crime registered for the offences punishable under Sections 379, 120-B IPC, Section 20(1)(3), 10, 29(1)(2)(b) of Indian Forest Act and Rule 3 of Red Sandal Wood Possession and Transit Rules and Sections 27, 29, 31 and 51 of Wild Life Protection Act against 16 out of 35 accused.

2. Thus, from the above, leave about other accused, the main accusation against the respondent-K.Gangi Reddy that he was arrested on 05.04.2014 and seized 14 red sandal logs worth Rs.7.00 lakhs in pursuance of his confession and the respondent along with some others were smuggling the red sandal load by conspiring each other from the forest, Tirupathi and the same was being transported to Dubai, Mumbai and other areas and earning the money illegally by having links with international smuggler Shaul Bai and the respondent has been indulging in red sandal smuggling by directly having links with Chennai based

international smuggler Shaul Bai who is now said to be at Dubai and earned crores of rupees, that the respondent herein recently visited Dubai, for which it is suspected that this respondent invested his illegal money in his construction company by name Sai Balaji, HR mineral factories and also purchased valuable assets in Tirupathi, Hyderabad etc.,

3. The accused moved for regular bail in CrI.P.No.5492 of 2014 and this Court (another bench) granted bail to the respondent herein on 15.05.2014 and it is stated by the petitioner that after obtaining bail he absconded from India and left for Bahrain, that there is a large scope and he may pave the way for other accused to abscond from the State of Andhra Pradesh or even from India to flee from justice, that by staying outside he may hatch the plans of conspiracy to smuggle more red sanders by illegal means to cause ecological imbalance for personal gains. It is also made a mention before this Court that the respondent involved in inter-continental smuggling of red sandals by conspiring with smugglers did not reveal the truth and correct facts and he did not disclose the details pertaining to passport also concealed the facts with an intention to prevent the investigating agency from taking further steps so as to escape from the Indian borders on the basis of passport without giving any scope for impounding.

4. The respondent involved in two more crimes viz., Crime No.73 of 2013 of Pullampet police Station, Kadapa District registered for the offences punishable under Sections 379 I.P.C and Section 20(1)(c)(2) of A.P. Forest Act and Crime No.254 of 2014 of Tirupathi East Police Station, Chittoor District registered for the offences punishable under Sections 177, 420 I.P.C and Section 12(1)(b) of Indian Passport Act, 1967.

5. In this application for cancellation of bail granted to him in CrI.P.No.5492 of 2014, dated 15.05.2014 having been admitted, notice ordered to the respondent/A-33 K.Gangi Reddy, the said notice was received by his wife Smt.K.Malavika on 30.06.2014. It is on 07.07.2014 this application came for hearing, notice served on accused/respondent on his wife being the inmate and family member. One Advocate Sri S.Rama Murthy Reddy appeared before the Court and claiming as advocate for wife of A-33 and represents on her behalf and bring the notice of factum of receiving notice by her. However to intimate to her husband who is the respondent/A-33 herein, his whereabouts are not known even to her. However, in saying there are no grounds for cancellation of bail sought for to her husband whereabouts not intimated her to oppose. It is not even the claim by the advocate that at the instructions of the wife of the respondent/accused, he is appearing as advocate for accused to give any audience of hearing but for to take for deciding on merits from notice as required to be served at his residence with permanent address that is also given by him in his bail application where his wife received, he abstained even from said service suffice to come and oppose the bail cancellation petition. It is there from the record of the learned Magistrate Court where the accused was released pursuant to order of this Court, by

submission of bonds on the date of hearing in the crime before Court for appearance fixed if any, pending investigation, if any dispensed with and as to the stage of the case and any earlier bail application filed by the accused before that Court called for and posted from 07.07.2014 to 09.07.2014. Again on 09.07.2014 said Advocate Sri Rama Murthy Reddy also appeared and reiterated the facts supra. It is thereby taken the said argument on her behalf for all purposes rather than saying this Court constrained to take it as heard the accused for his abstaining from attending to the hearing to decide on merits and heard the learned Public Prosecutor at length and perused the material on record including the record received from the learned Magistrate.

6. Now the points for consideration are :

1. Whether there are any Just grounds to recall or cancel the bail order granted to the respondent-A-33 and if so, on what grounds and under which provision ?

2. To what result?

7. The learned Public Prosecutor in support of his submissions, mainly placed reliance upon two expressions of the Apex Court viz, in Kalyanchandrasarkar Vs Rajeshranjan @ Pappu Yadav and State through C.B.I V. Amarmani Tripathy. In Amarmani Tripathy supra it was observed at para-4 in support of the submissions of the Additional Solicitor General from the material on record before the Court showing the factual position at page-684 of High Court judgment that

i) That the murder of pregnant Madhumita, a heinous crime -----

ii) That Amarmani was interfering with investigation-----

iii) That after release on bail in pursuance to the order of the High Court, Amarmani was attempting to threaten/coerce/buy over witnesses.

iv) That Madhumani had already absconded earlier. Only the rejection of bail application of her husband on that ground made her to surrender. There is every likelihood of her again fleeing, if she continuous to be on bail. Further, if Amarmani alone is denied bail, the threatening of witnesses will be taken over by Madhumani.

8. the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime.... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation.

14. We are conscious of the fact that evidence in this case has yet not been led in the Court. Wherever we have referred to the word evidence in this order the

same may be read as material collected by the prosecution. Reference to the material collected and the findings recorded herein are for the purposes of these appeals only. This may not be taken as an expression of opinion. The Court would be at liberty to decide the matter in the light of evidence which shall come on record after it is led de hors any finding recorded in this order.

For the reasons stated above, the orders dated 29th April, 2004 and 8th July, 2004 passed by the High Court are set aside. The bail bonds of the respondents in each of these cases are cancelled, respondents are directed to surrender forthwith and in case they fail to do so, the State should take effective steps to take the respondents in custody.

7. In Kalyan Chandra Sarkar (supra) paras 18 to 20 it was held that It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and / or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application -for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so. In our humble opinion, in the case of Jayendra Saraswathi (supra), this Court only distinguished the facts of that case from the facts of the present case in hand and the question of overruling a judgment on facts does not arise unless, of course, the court is sitting in appeal over the judgment sought to be distinguished. This Court in Kalyan Chandra Sarkar (supra) decided the said case on the facts of that case only, so the question of the said case being overruled in another case does not arise. It is clear from the perusal of Jayendra Saraswathi's case as well as Kalyan Chandra Sarkar (supra) that both the cases have been decided by this Court on their individual facts only.

8. While deciding the cases on facts, more so in criminal cases the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case (See: Pandurang and Anr. Vs. State of Hyderabad. It is also a well established principle that while considering the ratio laid down in one case, the court will

have to bear in mind that every judgement must be read as applicable to the particular facts proved or assumed to be true. Since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it.

9. In fact the term BAIL has not been defined either in the old or in the new Cr.P.C. but for relying on the dictionary meaning in several decisions saying to give or delivery to mean to accept security for a prisoners or arrestees appearance for delivering [releasing] him to his liberty from custody on arrest. The concept of pre-arrest bail is to say earlier unknown. Thus, bail is the transference of substitution of custody for the conditions of sufficiency and suitably of the security and for attendance wherever just for releasing from custody, if in custody and otherwise on taking to custody from appearance, production or brought before the Court - depending on the contingency and need less to say with in the judicial discretion and with in the parameters of law on its own merits, by balancing the propensity of the crime and its impact on larger interest of society vis-a-vis personnel liberty.

10. As per the Apex Courts Judgment in Sunil F.Shaw Vs.- Union of India the meaning of bail even as per Cr.P.C. is to release the accused from internment though Court, would still retain constructive control over him through the sureties through the conditions of the bond given by the accused and sureties.

11. As per Halsburys Laws of England, the effect of granting bail is not to set the accused at liberty but to release him from the custody of the law and to entrust him to the custody of his sureties who are bound to produce him in the Court of Law for his appearance during enquiry and trial at specific times and places. The sureties may seize their principal at any time by handing him over to Custody of law to discharge them. Even in case accused was released on his own bond, such constructive control could still be exercised though the conditions of the bond secured from him.

12. In Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, it was held that

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty. Just as the Liberty is precious to an individual,

so is the society's interest in maintenance of peace, law and order. Both are equally important.

103. It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the public prosecutor or the complainant on finding new material or circumstances at any point of time.

104. The intention of the legislature is quite clear that the power of grant or refusal of bail is entirely discretionary. The Constitution Bench in Sibbia's case (supra) has clearly stated that grant and refusal is discretionary and it should depend on the facts and circumstances of each case. The Constitution Bench in the said case has aptly observed that we must respect the wisdom of the Legislature entrusting this power to the superior courts namely, the High Court and the Court of Session.

105. The court which grants the bail has the right to cancel the bail according to the provisions of the General Clauses Act but ordinarily after hearing the public prosecutor when the bail order is confirmed then the benefit of the grant of the bail should continue till the end of the trial of that case.

13. In Kukkadapu Bala Krishna V. State of A.P this Court held by relying upon the earlier expressions of the Apex Court in Subhendu Mishra V. Subrat Kaur Mishra and Dolat Ram V. State of Haryana that cancellation of bail can be justified only when there are supervening circumstances holding that generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. The Supreme Court has laid down that the principles, which are relevant in granting bail, are altogether different from the considerations which should weigh for cancelling bail already granted to an accused. It has been emphasised that cancellation of bail can be justified only when there are supervening circumstances after the grant of bail, which could justify cancellation of bail.

14. In Rizwan Akbar Hussain Sayyed V. mehmood Hussain it was held that when no condition imposed in order of bail and when no specific observation in impugned order as to tampering with evidence, bail should not be cancelled in a routine manner and where it appears to the superior court that the Court granting bail acted on irrelevant materials or there was non-application of mind or where Court does not take note of any statutory bar to grant of bail, order for

cancellation of bail can be made. These circumstances are illustrative and not exhaustive and the Court while considering the application for cancellation of bail has to take note of all relevant aspects.

15. From the above propositions, abscondence is also one of the main grounds for cancellation of bail besides interference with witnesses non-cooperating with investigation and out of availability to face trial and committing of any similar crime etc., being the intervening circumstances after grant of bail.

16. It is contextually necessary to mention with reference to the propositions supra that this respondent/A-33 of this crime No.36/2014 moved initially an application for regular bail having been in judicial custody since 05.04.2014 before the learned Judicial Magistrate of the First Class, Dhone on 07.04.2013 u/s 437 Cr.P.C stating that he is no way connected with the alleged offence that is foisted against him and he is having movable and immovable properties and assure to appear before the Court for every adjournment and ready to produce suitable sureties to grant bail. The same was ended in dismissal by order of the learned Magistrate dated 21.04.2014 in CrI.M.P.No.1690 of 2014 which speak prima facie accusation against the petitioner/A-33 also among the 35 accused and the investigation not completed and he again moved another bail application before the selfsame Court in CrI.M.P.No.1891 of 2014 dated 23.04.2014 to say within two days after dismissal of the earlier bail application stating that even he was given to police custody for one day by the learned Magistrates order, his brother is contesting as M.L.A of Rajampet and his presence is necessary for the allegations and investigation is completed though it was observed as pending in dismissal of the bail application two days before. A perusal of the said application show no worth changes for his filing the second bail application and the same was also ended in dismissal saying the property worth Rs.1.00 crore of red sandal seized and he is the prime accused of the arrest crime and from the propensity and gravity of the crime against him is not entitled to the concession of bail. It is subsequently he moved the application for regular bail before this High Court in CrI.p.No.5492 of 2014 saying he is in judicial custody since 27.03.2014 in this crime No.36/2014 and this Court (another bench) vide order dated 15.05.2014 (referred supra) observed that the main contention of the petitioner-accused is that the basis of his implication is the confession allegedly made by him and there is no evidence on record directly pointing out his guilt for the above said offence and prayed to enlarge on bail that was even opposed by the public prosecutor of possibility of committing further crimes by accused, from perusal of material there is no connection of the petitioner with the crime, already A-5 to A-7, A-4, A-10 to A-13, A-3 and A-14 and also A-17 by respective orders from January, 2014 to March, 2014 enlarged on bail by the orders of learned Magistrate and having found no prima facie material directly connecting the petitioner-accused to the offences since others already enlarged on bail applying the principle of parity as laid down by one of the Apex Courts expression in *Izharul Haq Abdul Hamid Shaikh V. State of Gujarat* he can be enlarged on bail by allowed the application for his executing personal bond of

Rs.20,000/- with two sureties for likesum each to the satisfaction of the Judicial Magistrate of the First Class, Dhane as laid down in the above referred expressions of the Apex Court, the Court must necessarily impose conditions and the conditions include as held by the Apex Court in Siddharam Satlingappa Mhetre (supra). In fact the Apex Court in the expression in Amarmani Tripathy (supra) categorically laid down that the confession of co-accused can also be a basis for consideration in bail application for holding prima facie accusation against the accused for negating bail in rejecting the contention contra.

17. It is apart from the concession of bail allowed in favour of the respondent/A-33 herein, leave about another crime pending against him, the contention of the prosecution is he jumped the bail by leaving the country without even permission of the Court. In fact in this regard as per Section 6(2)(f) of the Indian Passports Act, the accused of a criminal case for the crime pending can be refused the passport for leaving the country during its pendency before the Criminal Court in India. Even the Central Government to facilitate such accused issued notification by Ministry of External Affairs dated 25.08.1993 in GSR 570E as per the powers u/s 22 of the Passport Act and in super session of earlier notification dated 14.04.1976 in the public interest to exempt citizens of India against whom proceedings in respect of an offence alleged to have been committed pending before a Criminal Court in India, who produce orders from the Court concern permitting them to depart from India from the operation of the provisions of clause (f) of Subsection (2) of Section 6 of the Indian Passports Act subject to the conditions. It is important to note that the record of the learned Magistrate called for by this Court for purpose of perusal reflected the two bail orders dismissed and the charge sheet filed and as per the order of this Court (another bench) which granted bail, solvency when submitted, the bonds accepted and enlarged on bail and there is nothing on record showing the respondent/A-33 applied as per Section 6(2)(f) of the Passport Act for any permission to leave the country as required by the notification supra that is mandatory. In the absence of which it is a clear indication of his guilty mind in getting the passport by suppressing the factum of the criminal case or otherwise get over the legal bar by some means for which there is nothing more to discuss for no more material for he abused the concession of bail and jumped the bail by leaving the country irrespective of there is no condition not to leave the country for the bar to leave the country which he sprouted. As per the contention of the learned Public Prosecutor, out of the three crimes including this pending against the above accused supra, the Crime No.254/2013 is u/s 12(1)(b) of the Passport Act for giving false information to the passport authority by playing fraud in obtaining passport to flee away from the country and he has given different date of births one for the pan card and other for the passport to facilitate his fleeing away and it further discloses that so far Rs.14.00 crores of red sandal was smuggled by this A-33 and 113 lorries were used for the purpose of illegal transport of red sandal as per the investigation.

18. Taking consideration of all these facts and in particular from what is

discussed supra of the accused intentionally abused the concession of bail is not entitled to continue on the said concession thereby larger interests of the society requires cancellation of bail though it tantamounts taking away of the personal liberty conferred.

19. In the result, the petition is allowed by cancelling the bail granted to the respondent/accused No.33 by order dated 15.05.2014 in Crl.P.No.5492 of 2014 on the file of this Court.