

# State Of Karnatrkaa vs Inayath @ Immu on 15 December, 2017

**Author: R.B Budihal**

**Bench: Budihal.R.B**

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2017

BEFORE

THE HON'BLE MR.JUSTICE BUDIHAL.R.B

CRIMINAL PETITION No.7610 OF 2017

BETWEEN:

State of Karnataka  
By Rural Police Station,  
Chikmagalur.

...Petitioner

(By Sri Namitha Mahesh B G, Advocate)

AND:

Inayath @ Immu,  
S/o Khaleel Ahmed,  
Aged about 37 years,  
R/at Behind Masjid Road,  
Pension Mohalla,  
Hassan City-573 201.

...Respondent

(By Sri Pratheep K C, Advocate)

This Criminal Petition is filed under Section 439(2) of Cr.P.C. praying to cancel the bail granted to respondent/accused in CrI.P.No.4068/2014 by order dated 21.07.2014 in Cr.No.239/2012 of the Chikkamagalur Rural Circle, Chikkamagaluru for the offences P/U/S 302, 201 of IPC and be pleased to direct the respondent/accused be arrested and committed to custody.

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This Criminal Petition coming on for Orders this Day, the Court made the following:

ORDER

This petition is filed by the State under Section 439(2) of the Cr.P.C. seeking for cancellation of bail order dated 21.07.2014 granted by this Court in CrI.P.No.4068/2014.

2. Brief facts of the case pleaded by the petitioner-State in this petition are that the case was registered in Crime No.239/2012 at Rural Police Station, Chickmagalur against the accused for the offences punishable under Section 302, 201 of IPC. After completion of investigation charge sheet is filed. It is the case of the prosecution that respondent-accused had illicit relationship with one Manjula, deceased for the last two years. It is further case that on 24.07.2012, the respondent-accused came in Maruthi 800 car and reached Belur at about 7 PM. Deceased also came to Belur and both of them went in car. Thereafter, the respondent has taken deceased to eucalyptus plantation situated on the road side of Kalasapura at 8.30 pm. When the deceased forced accused-respondent to marry her and respondent stabbed her with knife and committed the murder of the deceased.

3. Respondent-accused after his arrest, filed a criminal petition under Section 439 of Cr.P.C seeking to enlarge him on bail. The learned First Additional Districts and Sessions Judge, Chikkamagaluru dismissed the petition filed by the respondent-accused.

4. The respondent-accused filed Criminal Petition No.4068/2014 before this Court under Section 439 of Cr.P.C for enlarging him on bail. This Court by order dated 21.07.2014, after hearing both sides was pleased to enlarge the respondent-accused on bail subject to the conditions imposed as under:

i) Petitioner has to execute a personal bond for Rs.1,00,000/- and has to furnish one solvent surety for the likesum to the satisfaction of the concerned Court;

ii) Petitioner shall not tamper with any of the prosecution witness, directly or indirectly.

iii) Petitioner has to appear before the concerned Court regularly.

5. It is further pleaded in this petition that in respect of an earlier incident, wherein the present respondent committed offence under Section 307 of IPC against the same victim. He has been convicted for the offence punishable under Section 307 of IPC in SC.No.38/2014 passed by the Second Additional District and Sessions Judge, Hassan by which he was sentenced to undergo imprisonment for life and pay fine also.

6. Aggrieved by the said judgment and order of conviction, accused-respondent has preferred Criminal Appeal No.104/2017 under Section 374(2) of Cr.P.C before this Court and also filed an application under Section 389(1) of Cr.P.C seeking suspension of sentence and to enlarge him on bail. Said matter is still pending.

7. Heard the learned HCGP appearing for State- petitioner and also learned counsel for the respondent- accused. Respondent accused is also present before the Court brought by prison authority.

8. Learned HCGP for the petitioner-State made submission that while the bail application was moved before this Court in respect of offence punishable under Section 302 of IPC pertaining to Crime No.239/2012, the respondent-accused suppressed the material facts that he was already having case against him in Crime No.123/2009 for the offence punishable under Section 307 of IPC. The respondent accused herein suppressed the material facts which also amount to committing fraud on the Court. Hence, learned HCGP submits that as the material facts were suppressed and were not brought to the notice of this Court, Court was misled and hence, she made submission that bail order granted by this Court is liable to be cancelled. She further submits that while granting the bail in the earlier case pertaining to Crime No.123/2009 for the offence punishable under Section 307 of IPC, it was subject to the conditions No. 2 and 5 in the said order and she submits that there is violation of the conditions of the bail order granted. Hence, she submits to allow the petition and cancel the bail order granted by this Court dated 21.07.2014 passed in CrI.P.No.4068/2014.

9. Per contra learned counsel for the respondent-accused made submission that the petition itself is not maintainable which is filed under Section 439(2) of Cr.P.C seeking for cancellation of bail. Learned counsel made submission that even if it is contended by other side that there is a violation of the conditions of the bail order pertaining to offence under Section 307 of IPC but the petitioner is not seeking this Court for cancellation of earlier bail order. It is seeking cancellation of the subsequent bail order pertaining to offence punishable under Section 302 of IPC.

10. Learned counsel submits that so far as the contention of the other side that there is a suppression of material facts with regard to the respondent-accused that he has committed earlier offence in Crime No.123/2009 for the offence punishable under Section 307 of IPC is concerned he made submission that there is no such suppression of material facts. In this connection, he draws the attention of this Court to the order passed by learned Sessions Judge at paragraph- 10 of the said bail order and made submission that the learned Sessions Judge Chickmagalur has considered the factual aspects with regard to the earlier case pertaining to Crime No.123/2009. Therefore, learned counsel submitted that when the matter has been considered by the learned Sessions Judge for the involvement of respondent-accused herein for the offence punishable under Section 307 pertaining to the earlier case, there is no question of suppression of material facts. Hence, it is submitted that false grounds have been made out in this petition seeking for cancellation of bail.

11. Learned counsel also made the submission that the bail order in the subsequent case was obtained at the hands of this Court after completion of investigation and filing of the charge sheet. Even in the charge sheet also statement of one Soubhagya, clearly goes to show that there is material

so far as commission of the earlier case under Section 307 of IPC is concerned. On these grounds learned counsel submits that there is no suppression of material facts and the Court was not misled while considering the bail petition for the offence punishable under Section 302 of IPC.

12. Learned counsel also made submission that there is no allegation made by the petitioner-State that the respondent-accused has violated any of the conditions of the bail order granted by this Court pertaining to the offence punishable under Sections 302 of IPC. Hence, he submits when conditions are not violated, the question of cancellation of bail does not arise at all. Even if there is an allegation that conditions in respect of earlier bail order pertaining to Section 307 of IPC is violated, this petition is not seeking cancellation of the earlier bail order. Hence, he submitted that there is no merit in this petition and same is to be rejected.

13. In support of his contentions, learned counsel for the respondent-accused also relied upon the following four decisions produced along with the memo dated 15.12.2017. The said decisions are as under;

1) Abdul Basit and others V/s Mohd.Abuld Kadir Chaudhary and another reported in 2014 10 SCC 754;

2) Puran V/s. Rambilas and another reported in 2001 6 SCC 338;

3) Kanwar Singh Meena V/s State of Rajasthan and another reported in 2012 12 SCC 180;

4) Dolat Ram and others V/s State of Haryana reported in 1995 1 SCC 349;

14. I have perused the grounds urged in the petition, the bail order granted by this Court dated 21.07.2014 and also considered the submission by learned HCGP for the petitioner-State as well as the counsel for respondent-accused made at the bar. I have also considered the decisions and principles envisaged in the said decisions relied upon by the learned counsel for the respondent-accused.

15. So far as the suppression of material facts is concerned, looking to the order of learned Sessions Judge and more particularly at paragraph-10 of the bail order dated 04.12.2013 passed in SC.No.73/2013 by the First Additional Sessions Judge, Chickmagalur, those facts were already considered by the learned Sessions Judge and has submitted even in the charge sheet in respect of earlier offence under Section 307 of IPC, it was mentioned in the charge sheet as well as in the statement of one Soubhagya. When the bail petition was moved before this Court it was also after completion of investigation and filing of charge sheet.

16. Looking into these aspects of the matter this Court has already considered even the earlier offence under Section 307 of IPC before granting bail order. Therefore, learned counsel for the respondent-accused is justified in making the submission that there is no question of suppression of any material facts, misrepresentation or fraud etc and material goes to show that after considering the entire material on facts, learned Sessions Judge has granted the bail order. Apart from that,

looking to the legal aspects in the decision of the Hon'ble Apex Court rendered in the case of Abdul Basit @ Raju and others V/s. Mohd.Abdul Kadir Chaudhary and another reported in 2014 10 SCC 754 at paragraph- 20, 21 and 26 reads as under;

"20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.

26. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the petitioner-accused. Even though the cancellation of bail rides on the satisfaction and discretion of the court under Section 439(2) of the Code, it does not vest the power of review in the court which granted bail. Even in the light of fact of misrepresentation by the petitioner-accused during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition."

I have perused the other decisions/judgments in this regard. When factually there is no suppression of material facts as discussed above and so far as the subsequent bail order granted by this Court pertaining to offence punishable under Section 302 of IPC, it is not a case of the prosecution that any of the conditions of the bail order are violated. The question of allowing the petition and canceling the bail which has been granted by this Court does not arise at all.

There is no merit in this petition filed by the State seeking for cancellation of bail order. Therefore, in view of the facts as well as legal aspects involved in the matter, petition is devoid of merits and accordingly, the same is rejected.

Sd/-

JUDGE SB