

Kamireddy Shyam Naidu Shyam K Naidu vs The State Of Telangana And Another on 9 November, 2020

Author: K. Lakshman

Bench: K. Lakshman

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.2822 OF 2020

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. to quash the order dated 29.06.2020 in Crl.M.P.No.1015 of 2020 in Crl.M.P.No.291 of 2020 in Crime No.397 of 2020 passed by the Special Sessions Judge for Fast Track Court to Atrocities Against Women-II-cum-XI Additional Metropolitan Sessions Judge, Hyderabad (for short, Court below).

2. The petitioner herein is sole accused in Crime No.397 of 2020 on the file of Police Station, S.R.Nagar, Hyderabad. The offences levelled against the petitioner are under Sections 376 (2) (n), 493, 417, 427 and 323 of IPC. The second respondent/de facto complainant has lodged a complaint on 17.06.2020 against the petitioner herein with Police, S.R.Nagar, who in turn, registered a case in Crime No.397 of 2020 for the aforesaid offences.

3. The second respondent alleged in the complaint that she is a divorcee and has a son. She is an actress, working in Telugu films since 2011. While so, she got acquaintance with the petitioner through face book messenger in the year 2012. The petitioner has informed the second respondent that he got married and has two children. He is having disputes with his wife and he is intending to take divorce from his wife.

2 KL,J Crl.P.No.2822_2020 Thus, the petitioner made the second respondent to believe that he is going to grant divorce to his wife and promised to marry her. With the said promise, the petitioner has exploited the second respondent sexually. Thereafter, the petitioner refused to marry the second respondent and failed to keep up his promise. On the said grounds, the second respondent has lodged the said complaint.

4. The petitioner has filed an application under Section 439 of the Cr.P.C. vide Crl.M.P.No.291 of 2020 before the Court below seeking regular bail. The Court below, vide order dated 02.06.2020, allowed the said application and enlarged the petitioner on bail subject to execution of a personal bond for Rs.30,000/- with one surety for like sum to the satisfaction of III Additional Chief Metropolitan Magistrate, Hyderabad. The petitioner was directed to attend before Police Station, S.R.Nagar on every Sunday in between 10.00 AM to 12.00 PM till filing of charge sheet. It is relevant to note that while granting the bail, the Court below has considered the fact that the petitioner was in judicial custody from 28.05.2020. The Court below has also considered the Affidavit-cum-Compromise Deed dated 30.05.2020 filed by the petitioner executed by respondent

No.2, wherein the second respondent has stated that herself and the petitioner are working in film industry and she knows the petitioner from 2012. They became family friends and they used to 3 KL,J CrI.P.No.2822_2020 meet frequently. They have developed friendship with each other. The second respondent is a divorcee and she used to share her problems and the petitioner used to give solutions and moral support to the second respondent. From last three months, they are not in good terms and the petitioner is not taking the call of the second respondent, which made her to feel like she has been ignored intentionally. It is further mentioned in the said Affidavit-cum-Compromise Deed dated 30.05.2020 that for the said reason, with emotional stress, she has filed the complaint against the petitioner. Now with the intervention of elders and well wishers, the second respondent has realized her mistake and wanted to withdraw the case which she has filed against the petitioner. It is also further stated that she is giving the said affidavit with her full consent, freely, willingly without any pressure from anyone. There are two witnesses to the said Affidavit-cum-Compromise Deed. The Court below has also referred in its order dated 02.06.2020 that the learned Public Prosecutor also did not oppose the veracity and correctness of the said Affidavit-cum-Compromise Deed. By referring the same and also relying upon the contents of the said Affidavit-cum-Compromise Deed dated 30.05.2020, the Court below has enlarged the petitioner on bail by imposing the above said conditions.

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5. Subsequently, the second respondent has filed an application under Section 439(2) of the Cr.P.C. before the Court below vide CrI.M.P.No.1015 of 2020 in CrI.M.P.No.291 of 2020 in Crime No.397 of 2020 seeking to cancel the bail granted to the petitioner by the Court below vide order dated 02.06.2020. In the said application, the second respondent has sought to cancel the bail on the following grounds.

- (i) The petitioner has played fraud on the Court below by producing the Affidavit-cum-Compromise Deed dated 30.05.2020.
- (ii) The second respondent has not signed the said Affidavit-cum-Compromise Deed dated

30.05.2020 and her signature was forged.

(iii) The petitioner has violated the conditions imposed by the Court below while granting regular bail to the petitioner.

- (iv) Neither the Police nor the Public Prosecutor sought clarification from the second

respondent with regard to execution of the said Affidavit-cum-Compromise Deed dated 30.05.2020.

(v) The learned Public Prosecutor has not opposed the bail without taking consent from the second respondent.

(vi) On release, the petitioner and his brother started harassing the second respondent to compromise and withdraw the case, for which, she has already made a complaint before the Commissioner of Police on 05.06.2020.

6. The petitioner herein has opposed the said application stating that the second respondent has signed the said Affidavit-cum-Compromise Deed dated 30.05.2020 with her free will and consent and there is no coercion at all and that now she has changed her mind and filed the present 5 KL,J CrI.P.No.2822_2020 application only to harass him and to extract money. The said Affidavit-cum-Compromise Deed dated 30.05.2020 was executed in the presence of elders viz., N.Srinivas Reddy and B.Achyuta Rao, who handed over the said document to the counsel for the petitioner, since the petitioner was in jail. It was also contended by the petitioner that the application filed by the second respondent for cancellation of bail is not maintainable. It is also stated that the signatures of the second respondent are available on record and the same can be compared by the Court below or sent to FSL for comparison. With the said contentions, the petitioner sought to dismiss the said application.

7. Vide order dated 29.06.2020, the Court below has allowed the said application and cancelled the regular bail granted to the petitioner herein vide order dated 02.06.2020. The Court below has cancelled the bail on the ground that the petitioner herein has played fraud on the Court, he has obtained the bail by producing the affidavit signed by the second respondent. It is also specifically mentioned in the order that the petitioner herein has previously obtained bail on the alleged affidavit filed by the second respondent alleged to have been executed by her. The Court below has further mentioned in the order dated 29.06.2020 that from the contents already discussed, since the Court is already of the opinion that fraud appears to have been played by the 6 KL,J CrI.P.No.2822_2020 petitioner for obtaining the bail by creating a forged document and filing the same before it without the knowledge of the second respondent, it is satisfied that it is a fit case wherein appropriate grounds are there for canceling the bail granted to the petitioner/accused. By recording the said reasons, the Court below, vide order dated 29.06.2020, has cancelled the regular bail granted to the petitioner.

8. Sri Vinod Kumar Deshpande, learned Senior Counsel representing Ms.D.Radha Rani, learned counsel for the petitioner, would submit that the Court below failed to appreciate the contentions of the petitioner that the application filed under Section 439(2) of Cr.P.C. for cancellation of bail by the second respondent is not maintainable. There is no complaint of whatsoever against the petitioner that he has violated the conditions imposed by the Court below while granting regular bail. He would further submit that in the counter filed by the petitioner in CrI.M.P.No.1015 of 2020, he has specifically prayed that the signatures of the second respondent available on record may be either compared or sent to FSL. But, there is no finding in that regard by the Court below in its order dated 29.06.2020 while canceling the regular bail. The learned Senior Counsel would further submit that the second respondent did not even initiate any proceedings under Section 340 of Cr.P.C. alleging that the petitioner has filed a fabricated and forged 7 KL,J CrI.P.No.2822_2020 document before

the Court below and obtained regular bail by playing fraud on the Court. The second respondent simply stated that she has lodged a complaint with the Commissioner of Police about the alleged threat of the brother of the petitioner to compromise and withdraw the complaint. Without considering the same, the Court below has cancelled the bail granted to the petitioner and the said order is in violation of the procedure laid down under the provisions of the Cr.P.C and also principle laid down by the Apex Court in catena of judgments. He has placed reliance on the principle laid by the Apex Court and other High Courts in support of his contentions.

9. On the other hand, Sri P.Shashi Kiran, learned counsel appearing for the second respondent, would submit that the Court below has rightly cancelled the bail by holding that the petitioner has obtained the bail by playing fraud on the Court. There are violations of conditions of bail imposed by the Court below by the petitioner. He would further submit that on release, the petitioner and his brother have started harassing the second respondent and threatened her to compromise the matter and withdraw the complaint. Thus, the second respondent has lodged the complaint with the Commissioner of Police. In view of the same, the learned counsel for the second respondent would submit that the impugned order is a reasoned one and there is no irregularity or illegality in it.

8 KL,J Crl.P.No.2822_2020 With the said contentions, the learned counsel for the second respondent sought to dismiss the present Criminal Petition.

10. The learned Public Prosecutor has relied upon the principle laid down by the Apex Court in Dr. Narendra K. Amin v. State of Gujarat¹ and would submit that the Apex Court laid guidelines for cancellation of bail. He would further submit that the bail can be cancelled only on the complaint that the accused has violated the conditions imposed by the Court while granting the bail. The bail once granted cannot be cancelled on flimsy grounds and the Court has to specifically mention the reasons for cancellation of bail.

11. The Apex Court in Abdul Basit Vs. Mohd. Abdul Kadir Chaudhary² had an occasion to deal with Section 439 (2) of Cr.P.C. and also the powers of the High Courts and Sessions Courts for cancellation of bail and held that since there is no express provision for review of order granting bail exists under the Cr.P.C., the High Court becomes functus officio and Section 362 of Cr.P.C. applies herein barring the review of the judgment and order of the Court granting bail to the accused. Even though the cancellation of bail rides on the satisfaction and discretion of the Court under Section 439(2) of Cr.P.C., it does not vest the power of review in the Court which granted bail. Even in the light of fact of misrepresentation by the accused during the grant of bail, the 2009 (3) SCC (Crl.) 813 (2014) 10 SCC 754 9 KL,J Crl.P.No.2822_2020 High Court could not have entertained the informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition. With the said findings, the Apex Court has set aside the order of cancellation passed by the High Court.

12. In Dolat Ram Vs. State of Haryana³, the Apex Court held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. 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. (1995) 1 SCC 349 10 KL,J CrI.P.No.2822_2020

13. In Janapala Krishna Vs. State of A.P.⁴, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh held that the remedy challenging the order of cancellation of bail is to move an application under Section 482 of Cr.P.C. By referring the same, the learned Senior Counsel would submit that the present application filed by the petitioner under Section 482 of Cr.P.C., challenging the order dated 29.06.2020 passed by the Court below canceling the bail, is maintainable.

14. In V.Chinna Reddy Vs. N.Vidyasagar Reddy⁵, the High Court of A.P., had an occasion to deal with the scope and ambit of Section 439(2) of Cr.P.C., and held that the Sessions Court or High Court has no jurisdiction to pass an order of cancellation under Section 439(2) of Cr.P.C. at its whims and fancy. It can cancel only on specific grounds that the accused has committed misconduct or misuse of the terms of the bail or that the accused is trying to abscond after the charge-sheet is filed or threatening or influencing or tampering with the evidence or interfering with the investigation or obstructing the judicial process or otherwise misusing or abusing the bail. The fact that the Magistrate is committing the accused to Sessions Court for trial does not from a valid ground for the Sessions Judge of the High Court to remand the accused to custody, as it does not constitute a ground for cancellation of (2015) 1 ALD (CrI) 409 1982 CrI.LJ 2183 11 KL,J CrI.P.No.2822_2020 bail which was already granted. The cancellation of bail can only be on the ground known to law.

15. In Neeru Yadav Vs. State of U.P.⁶, the Apex Court held as follows:

"It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge. The decision in Rajballav Prasad emphasises that while the liberty of the subject is an important consideration, the public interest in the proper administration of criminal justice is equally important:

"...undoubtedly the courts have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while

undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is this need for larger public interest to ensure that criminal justice delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations."

16. In *Kanwar Singh Vs. State of Rajasthan*⁷, the Apex Court had an occasion to deal with the powers of the Court of Sessions and also High Court under Section 439 of the Cr.P.C., and held as follows:

"Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding AIR 2015 SC 3703 2012 (12) SCC 180 12 KL,J Crl.P.No.2822_2020 bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court."

17. In *Dolatram Vs. State of Haryana*⁸, the Apex Court held as follows:

"Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted."

18. In *Central Bureau of Investigation, Hyderabad Vs. Subramani Gopalakrishnan*⁹, the Apex Court held as follows:

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail 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 concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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."

(2018) 3 SCC 22 (2011) 5 SCC 296 13 KL,J CrI.P.No.2822_2020

19. The Apex Court, in *Ms.X Vs. The State of Telangana*¹⁰, after referring the principles held by it in *Neeru Yadav's case* (supra), *Kanwar Singh's case* (supra), *Dolatram's case* (supra) and *Subramani Gopalakrishnan's case* (supra) and also the facts of the said case, held that the parties there had consensual relationship between them and the same was mentioned in the charge-sheet thereon. By referring the same, the Apex Court held that the Court must bear in mind that it is a settled principle of law that bail once granted should not be cancelled unless a cogent case, based on a supervening event has been made out.

20. In view of the above said authoritative pronouncement of law, coming to the facts of the case on hand, the second respondent has filed the application under Section 439(2) of Cr.P.C. vide CrI.M.P.No.1015 of 2020 seeking cancellation of bail on the ground that the petitioner has obtained the bail by playing fraud on the Court as he has filed the fabricated Affidavit-cum-Compromise Deed dated 30.05.2020 by forging her signature. On release, the petitioner and his brother started harassing her and also threatening her to compromise and withdraw the case, for which, she has lodged a complaint with the Commissioner of Police. The second respondent has also filed a counter in the present case with the above said contentions.

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21. In view of the above stated facts, it is trite to note that according to the second respondent, she has not signed the said Affidavit-cum-Compromise Deed dated 30.05.2020 and her signature was forged. On perusal of the said Affidavit- cum-Compromise Deed dated 30.05.2020 would reveal that it bears the signatures of the second respondent and two witnesses i.e., N. Srinivas Reddy and B.Achyuta Rao. Their phone numbers were also specifically mentioned therein. Except alleging that her signature was forged, the second respondent has not initiated any further proceedings including filing an application under Section 340 of Cr.P.C. before the Court below complaining that the petitioner has obtained the bail by playing fraud by producing fake documents and by forging her signature. No such application was filed by the second respondent for the reasons known to her. She has not even filed any complaint with Police concerned complaining about the forgery of her signature. She has not made any effort, much less serious effort, with regard to her allegation that the petitioner has produced the said Affidavit-cum-Compromise Deed dated 30.05.2020 by forging her signature.

22. It is also trite to note that in the present case, the petitioner has filed a receipt dated 30.05.2020, wherein it is mentioned that the second respondent has received an amount of Rs.10 lakhs from the petitioner. Learned counsel 15 KL,J CrI.P.No.2822_2020 for the second respondent would contend that the signature of the second respondent has forged even on the receipt dated 30.05.2020. Learned Senior Counsel appearing for the petitioner would contend that the petitioner has paid an amount of Rs.40 lakhs to the second respondent. He has filed copies of DDs bearing Nos.000227

dated 30.06.2020 and 000228 dated 29.05.2020. On both the DDs, the signatures of the second respondent are there in proof of receipt of the same. There is no action, much less legal action, taken by the second respondent disputing the said signatures and receipt of the above said amounts under receipt dated 30.05.2020 and DDs dated 30.06.2020 and 29.05.2020.

23. As discussed supra, the second respondent except making a vague allegation that her signature was forged by the petitioner on the Affidavit-cum-Compromise Deed dated 30.05.2020 and also receipt dated 30.05.2020, did not take any action, much less legal action, against the petitioner. Thus, the allegation of the second respondent that her signature was forged by the petitioner prima facie cannot be believed.

24. It is also trite to note that the petitioner has filed counter in the above said application filed by the second respondent vide CrI.M.P.No.1015 of 2020 requesting the Court below either to compare the signatures of the second respondent with naked eye or send it to FSL, but the Court 16 KL,J CrI.P.No.2822_2020 below did not give any finding on the same. Without considering the request made by the petitioner, the Court below in its order dated 29.06.2020, held that the Court is of the opinion that fraud appears to have been played by the petitioner for obtaining bail by creating forged documents and filing the same before it without the knowledge of the complainant, as such, the Court is satisfied that it is a fit case wherein appropriate grounds are there for cancelling the bail granted to the petitioner. Thus, the finding of the Court below is erroneous and not sustainable.

25. It is the further allegation of the second respondent that on release, the petitioner and his brother started harassing her and threatened her to withdraw the complaint and compromise the matter. She has mentioned in the counter that she has lodged a complaint with Commissioner of Police on 05.06.2020, but unfortunately she has not filed copy of the said complaint. She has not stated anything with regard to the legal steps taken by her against the petitioner and his brother for threatening her to compromise the matter and withdraw the case. She has not even filed any complaint under Section 200 of Cr.P.C. and did not even file any Writ Petition before this Court. As stated above, except stating that she has lodged a complaint before the Commissioner of Police, she has not filed the same and has not taken any legal 17 KL,J CrI.P.No.2822_2020 steps. Therefore, according to this Court, the said allegation appears to be baseless and factually not correct.

26. It is trite to note that there is no complaint against the petitioner that he has violated the conditions imposed by the Court below while granting bail to him. There is no complaint against the petitioner that he is trying to interfere with the investigation. Learned Public Prosecutor did not file any such instructions received from the Police. Therefore, the Court below erred in canceling the bail granted to the petitioner.

27. As held by the Apex Court in the judgments stated supra, bail once granted cannot be cancelled unless a cogent case based on supervening event has been made out. In the present case, no supervening circumstance has been made out by the second respondent warranting cancellation of bail. The Court below, without proper exercise of its powers under Section 439(2) of Cr.P.C., also without following the due procedure laid down under law and also principle laid down by the Apex Court, cancelled the bail granted to the petitioner only on the ground that it appears that the

petitioner has played fraud on it by creating forged document and filing the same before it without the knowledge of the second respondent.

28. As discussed supra, there is no basis for the said finding. In view of the same, according to this Court, the 18 KL,J Crl.P.No.2822_2020 impugned order dated 29.06.2020 passed by the Court below in Crl.M.P.No.1015 of 2020 in Crl.M.P.No.291 of 2020 in Crime No.397 of 2020, is not sustainable either on facts or on law and hence, the same is liable to be quashed.

29. As stated supra, the second respondent came into contact with the petitioner through facebook messenger in the year 2012. They became close to each other. On perusal of the entire contents of the complaint would reveal that there is no resistance from the second respondent and it appears that there is consensual sex between them. However, the matter has to be decided by the Investigating Officer during investigation and thereafter, by the trial Court, if necessary.

30. Accordingly, the Criminal Petition is allowed and the order dated 29.06.2020 passed by the Special Sessions Judge for Fast Track Court to Atrocities Against Women-II-cum-XI Additional Metropolitan Sessions Judge, Hyderabad in Crl.M.P.No.1015 of 2020 in Crl.M.P.No.291 of 2020 in Crime No.397 of 2020 is quashed. Miscellaneous petitions pending, if any, shall stand closed.

_____ K. LAKSHMAN, J Date: 9.11.2020 TJMR