

Supreme Court Of India

L. Nageswara Rao, J ; Hemant Gupta, J

MYAKALA DHARMARAJAM v. STATE OF TELANGANA

Criminal Appeal Nos. 1974, 1975 Of 2019

07.01.2020

Bail - Cancellation - Reasonings - Scope of the power to be exercised in the matter of cancellation of bails - It is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice - What is of essence is that the record of the case ought to have been perused by the court granting bail - The facts of the said case are that a complaint was lodged against fifteen persons for offences under Sections 148, 120B, 302 read with Section 149 of the Indian Penal Code, 1860 - The accused moved an application seeking bail before the Principal Sessions Judge, who, after perusal of the case diary, statements of witnesses and other connected records, released the accused on bail through an order which did not elaborately discuss the material on record - The High Court cancelled the bail bond on the ground that the Principal Sessions Judge had not discussed the material on record in the order granting bail - In an appeal preferred by the accused before this Court, the order granting bail was restored and the following observations were made as to the duty of the court to record reasons and discuss the material on record before granting bail

Held,

No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant-Respondent No.2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence.

10. The petition filed for cancellation of bail is both on the grounds of illegality of the order passed by the Sessions Court and the conduct of the Appellants subsequent to their release after bail was granted. The complaint filed by one Bojja Ravinder to the Commissioner of Police, Karimnagar is placed on record by Respondent No.2. It is stated in the complaint that the Appellants were roaming freely in the village and threatening witnesses. We have perused the complaint and found that the allegations made therein are vague. There is no mention about which accused out of the 15 indulged in acts of holding out threats to the witnesses or made an attempt to tamper with the evidence.

11. After considering the submissions made on behalf of the parties and examining the material on record, we are of the opinion that the High Court was not right in cancelling the bail of the Appellants. The orders passed by the Sessions Judge granting bail cannot be termed as perverse. The complaint alleging that the Appellants were influencing witnesses is vague and is without any details regarding the involvement of the Appellants in threatening the witnesses. Therefore, the Appeals are allowed and the judgment of the High Court is set aside.

Advocate : Sumanth Nookala, Siddhant Buxy, Siddhant Krishna Dave, Pankaj Bhagat, Abhijit Sengupta, S.Udaya Kumar Sagar, Bina Madhavan, Swati Bhardwaj, Sanchar Anand

Judgement

L. Nageswara Rao, J

1. Respondent No.2 in the above Appeals lodged a complaint which was registered under Sections 148, 120B, 302 read with Section 149 of the Indian Penal Code, 1860 (IPC) at Karimnagar Rural Police Station vide FIR No.155 dated 19.04.2019. It was alleged in the complaint that the husband of Respondent No.2, Bojja Thirupathi was the Chairman of the Fishermen Co-operative Society of Chamanapalli village, Karimnagar District. Members of the Society alone were permitted to carry out fishing activities in the tanks in Rajasamudram and Appanapalli villages. The membership of the Appellants in the Fishermen Co-operative Society was cancelled due to which they were not permitted to carry out fishing activities. Three years before the complaint the husband of Respondent No.2 was attacked by the Appellants at the village Panchayat office and a criminal case was registered against the Appellants, which was pending. On 19.04.2019, the husband of Respondent No.2 went to Chamanapalli village to inspect the tank. At about 5.00 pm, the Appellants attacked the husband of Respondent No.2 with stones and he succumbed to the injuries.

2. The Appellants moved applications for bail before the Principal Sessions Judge, Karimnagar who summoned the case diary, statements of the witnesses and other connected records. The Principal Sessions Judge released the Appellants on bail by imposing conditions that the Appellants shall appear before the Karimnagar Rural Police Station on every alternative day between 10.00 am to 05.00 pm and shall not leave the territorial jurisdiction of the First Additional Judicial Magistrate, First Class, Karimnagar. Another condition was imposed that the Appellants shall not influence or tamper with the evidence.

3. Respondent No.2 filed a petition for cancellation of bail under Section 439(2) Cr. P.C. before the High Court for the State of Telangana. On 10.07.2019, a charge sheet was filed against the Appellants. According to the charge sheet, all the accused gathered and planned to kill Bojja Thirupathi on 19.04.2019. They formed into two groups. The first group, consisting of A5, A7 to A11 and A15, attacked the deceased and remaining persons were standing guard near the tank. Even according to the charge sheet, there is no overt act alleged against any of the accused, except A6 who is alleged to have strangled the

deceased with a towel.

4. We are informed at the bar that the case has been committed for trial. The High Court allowed the applications filed for cancellation of bail on the ground that the Principal Sessions Judge did not consider the material available on record before granting bail to the Appellants. The High Court further held that the criminal antecedents of the Appellants were not taken into account by the trial Court. That apart, the High Court accepted the submissions on behalf of Respondent No.2 that the Appellants indulged in threatening the witnesses after being released on bail.

5. The Appellants contended that no specific overt act was attributed to any of the accused, except for omnibus allegations made against them. It is argued that the complaint that was made by Respondent No.2 is on the basis of vague allegations regarding tampering with the evidence. The Appellants urged that the order passed by the High Court is liable to be set aside as there were no compelling reasons for interfering with the order of the Sessions Court by which they were released on bail.

6. The factors to be considered while granting bail have been held by this Court to be 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 evidence and witnesses, and obstructing the course of justice etc. 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. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same. [Kanwar Singh Meena vs State of Rajasthan & Anr. (2012) 12 SCC 180]

7. In *Raghubir Singh v. State of Bihar* (1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

8. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail [Kanwar Singh Meena vs State of Rajasthan & Anr. (supra).].

9. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant-Respondent No.2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence.

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Equivalent : AIR 2020 SC 317: (2020) 2 SCC 743: (2020) 1 ALT(Cri) 299: (2020) CriLJ 1457: (2020) 1 RCR(Criminal) 540: (2020) 110 AllCriC 623: (2020) 206 AllIndCas 7: (2020) 1 CriCC 646: (2020) 1 Crimes 106: (2020) CrLR 90: (2020) 2 JT 56: (2020) 1 Scale 487: (2020) 1 Supreme 44