

HIGH COURT OF KARNATAKA**Bench: Justice S.Vishwajith Shetty****Date of Decision: 27 November 2023**

CRL.P.No. 4228/2023

MR MURALI V**...PETITIONER****Versus****STATE OF KARNATAKA and OthersRespondents****Legislation:**

Section 439 of the Code of Criminal Procedure (Cr.PC)
Sections 302,307, 504, 506, 34 of the Indian Penal Code (IPC)

Subject:

This judgment pertains to a criminal petition filed under Section 439(2) Cr.PC for the cancellation of a bail order. The case involves the consideration of successive bail applications, particularly in a scenario where previous applications were rejected and there is an alleged violation of bail conditions.

Headnotes:

Bail Cancellation – Criminal Petition for Canceling Bail Order – Petition to cancel bail order dated 10.04.2023 granted by XXVI Additional City Civil & Sessions Judge, Bengaluru in S.C.No.2246/2022 for offenses under IPC Sections 302, 504, 506 – Allegation of violation of bail conditions and no change in circumstances since earlier rejections of bail applications. [Paras 1, 4, 5, 7, 8, 9, 18]

Bail Principles – Successive Bail Applications – Consideration of successive bail applications in light of Supreme Court judgments – Necessity for specific reasons for granting bail after previous rejections, particularly in cases of serious offenses without any change in circumstances. [Paras 5, 10, 11, 12, 13, 14, 18]

Judicial Discretion – Granting Bail – Need for courts to provide cogent reasons while granting bail in cases involving heinous offenses – Importance of adhering to established legal principles and judicial discipline in bail matters. [Paras 9, 15, 16, 17, 19]

Decision – Cancellation of Bail – Order granting bail to respondent no.2 set aside due to violation of principles for consideration of successive bail applications and lack of change in circumstances – Petitioner allowed to file a fresh petition for regular bail. [Para 20]

Referred Cases:

Deepak Yadav vs State of Uttar Pradesh & Another - (2022) 8 SCC 559
Brijmani Devi vs Pappu Kumar & Another - (2021) 9 SCR 533
Kalyan Chandra Sarkar vs Rajesh Ranjan alias Pappu Yadav & Another -
(2004) 7 SCC 528
State of M.P. vs Kajad - (2001) 7 SCC 673
Lt. Col. Prasad Shrikant Purohit vs State of Maharashtra - (2018) 11 SCC 458
Kalyan Chandra Sarkar vs Rajesh Ranjan alias Pappu Yadav & Another -
(2005) 2 SCC 42
Virupakshappa Gouda & Another vs State of Karnataka & Another - (2017) 5
SCC 406
Manoj Kumar Khokhar vs State of Rajasthan & Another - (2022) 3 SCC 501

Representing Advocates:

For the Petitioner: Sri Renspre Prithesh D'Souza, Advocate
For Respondent 1: Sri Jairam Siddi, HCGP
For Respondent 2: Sri Veeranna G Tigadi, Advocate

ORDER

1. The defacto complainant has filed this criminal petition under Section 439(2) of Cr.PC with a prayer to cancel the bail order dated 10.04.2023 passed by the Court of XXVI Addl. City Civil & Sessions Judge, Bengaluru, in S.C.No.2246/2022, registered for the offences punishable under Sections 302, 504, 506 IPC, wherein regular bail was granted to respondent no.2.
2. Heard the learned Counsel for the parties.
3. Facts leading to filing of this petition narrated briefly are, FIR in Crime No.194/2022 was registered by Marathahalli Police Station, Bengaluru City, initially for the offences punishable under Sections 506, 504, 307, 34 IPC against respondent no.2 and another.
4. In the complaint, it is averred that the accused persons had assaulted complainant's father - Venkateshappa with a bat on his head and as a result of the said assault, injured Venkateshappa had sustained grievous injuries and he was admitted in the hospital and his condition was critical. Subsequently, injured Venkateshappa had died in the hospital on 21.08.2022 while undergoing treatment. Therefore, the offence under Section 302 IPC

was invoked against the accused persons. Petitioner was arrested in the said case on 22.08.2022 and produced before the court and remanded to judicial custody. He had filed Crl. Misc. No.25796/2022 before the jurisdictional Sessions Court and the same was dismissed on 26.09.2022. Subsequently, investigation in the case was completed and charge sheet was filed on 09.11.2022. Thereafter, petitioner had filed Crl. Misc. No.25976/2022 which was dismissed by the jurisdictional Sessions Court on 25.11.2022. The petitioner, thereafter, had approached this Court and filed Crl.P.No.1411/2023 and the same was subsequently dismissed as withdrawn on 04.03.2023. After withdrawing Crl.P.No.1411/2023, petitioner filed a fresh bail application before the Trial Court in S.C.No.2246/2022 which was allowed by the said court on 10.04.2023. Being aggrieved by the same, the defacto complainant is before this Court.

5. Learned Counsel for the petitioner submits that respondent no.2 has violated condition no.2 of the bail order. He has threatened the prosecution witnesses. The learned Sessions Judge has failed to appreciate that the earlier two bail applications of respondent no.2 was rejected. He submits that the second successive bail application of respondent no.2 has been entertained and allowed by the learned Sessions Judge in violation of the judgment of the Hon'ble Supreme Court which has laid down the principles for consideration of successive bail applications. He submits that though there is no change in circumstance, the learned Sessions Judge has allowed the third bail application. He submits that in paragraph 12 of the order, the learned Sessions Judge has stated that the bail application was filed for the first time before the court. In support of his argument, he has placed reliance on the judgments of the Hon'ble Supreme Court in the case of **DEEPAK YADAV VS STATE OF UTTAR PRADESH & ANOTHER - (2022)8 SCC 559**, and **BRIJMANI DEVI VS PAPPU KUMAR & ANOTHER - (2021)9 SCR 533**.

6. Per contra, learned Counsel appearing for respondent no.2 submits that the learned Sessions Judge has granted bail on medical grounds. Therefore, the same has to be considered as a change in circumstance. He submits that even otherwise, on merits, respondent no.2 is entitled for bail and submits that this Court may consider the entitlement of respondent no.2 for bail on the merits of the case. He submits that unless exceptional and supervening circumstances are made out, in normal circumstance, the bail granted to an accused should not be cancelled. He also submits that respondent no.2 has not violated any bail conditions, and accordingly, prays to dismiss the petition.

7. Undisputedly, the bail application which was allowed by the Trial Court is the second successive bail application filed by respondent no.2 in the present case. The first application in Crl. Misc. No.25796/2022 was dismissed by the Trial Court on 26.09.2022. Thereafter, charge sheet was filed on 09.11.2022. After filing of the charge sheet, respondent no.2 had filed Crl. Misc. No.25976/2022 which was dismissed by the Trial Court on 25.11.2022. While dismissing these two bail applications, the learned Sessions Judge had taken note of the fact that the entire incident was captured in a CCTV footage and accordingly had dismissed the bail application of respondent no.2. While rejecting the said bail application, the learned Sessions Judge had observed that the allegation against respondent no.2 are serious in nature and there was a unprovoked assault on an elderly man resulting in his death. It was also observed that there was sufficient prima facie material available on record in the form of CCTV footage, wherein the entire incident had been recorded. Thereafter, respondent no.2 had filed Crl.P.No.1411/2023 before this Court which was dismissed as withdrawn based on the memo filed by the Advocate for respondent no.2. The memo filed in Crl.P.No.1411/2023 reads as under:

"The undersigned advocate appearing on behalf of the petitioner herein prays that this Hon'ble Court be pleased to dismiss the above petition as withdrawn with a liberty to file fresh in the interest of justice and equity."

8. Though liberty was not reserved in the said petition to move the Sessions Court afresh after withdrawing Crl.P.No.1411/2023, respondent no.2 filed bail application under Section 439 Cr.PC before the Trial Court in S.C.No.2246/2022 and the learned Trial Judge had allowed the said application without even taking into consideration that it is a second successive bail application. No change in circumstance was pointed out before the Trial Court for the purpose of entertaining the second successive bail application.

9. Though the learned Counsel for respondent no.2 has submitted that the Trial Court has granted bail to respondent no.2 on medical grounds, a reading of the impugned order dated 10.04.2023 passed by the Trial Court in S.C.No.2246/2022 would go to show that the bail is not granted to respondent no.2 on medical grounds. The learned Sessions Judge, during the course of the order, has observed that the accused has produced medical certificate to show that he is suffering from Hemorrhoids and asthma, and except the same, there is no discussion about the health condition of the accused/respondent no.2. Even though there is no discussion about the medical condition of respondent no.2, the Trial Court has made a passing observation that he is suffering from illhealth. Except this passing remarks, the learned Sessions Judge has not made any observation with regard to the documents produced by respondent no.2 with regard to his health condition, nor has the Trial Court called for a report from the jail authorities with regard to the health condition of respondent no.2. Therefore, it is very clear that bail was not granted to respondent no.2 on medical grounds and from a reading of the order it is clear that bail was granted on the merits of the case.

10. The Hon'ble Supreme Court in the case of **KALYAN CHANDRA SARKAR VS RAJESH RANJAN ALIAS PAPPU YADAV & ANOTHER - (2004)7 SCC 528**, in paragraphs 12 & 20, has observed as under:

"12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.

(See Ram Govind Upadhyay.

20. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26-7-2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of the superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character."

11. In the case of **STATE OF M.P. VS KAJAD - (2001)7 SCC 673**, at paragraph 8 of the judgment, the Hon'ble Supreme Court has observed as under:

"8. It has further to be noted that the factum of the rejection of his earlier bail application bearing Miscellaneous Case No. 2052 of 2000 on 5-6-2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa and various other judgments."

12. In the case of **LT. COL. PRASAD SHRIKANT PUROHIT VS STATE OF MAHARASHTRA - (2018)11 SCC 458**, in paragraph 30, the Hon'ble Supreme Court has observed as under:

"30. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications."

13. In the case of **KALYAN CHANDRA SARKAR VS RAJESH RANJAN ALIAS PAPPU YADAV & ANOTHER - (2005)2 SCC 42**, in paragraphs 19 & 20, the Hon'ble Supreme Court has observed as under:

"19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the

same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country."

14. In the case of **VIRUPAKSHAPPA GOUDA & ANOTHER VS STATE OF KARNATAKA & ANOTHER - (2017)5 SCC 406**, the Hon'ble Supreme Court in paragraph 19 has observed as under:

"19. In the instant case, as is demonstrable, the learned trial Judge has not been guided by the established parameters for grant of bail. He has not kept himself alive to the fact that twice the bail applications had been rejected and the matter had travelled to this Court. Once this Court has declined to enlarge the appellants on bail, endeavours to project same factual score should not have been allowed. It is absolute impropriety and that impropriety calls for axing of the order."

15. From a perusal of the order passed by the learned Sessions Judge which is challenged in this petition, it is seen that the learned Sessions Judge has not referred to the earlier orders passed in the two bail applications which were rejected. No change in circumstance is mentioned in the order by the learned Sessions Judge for granting bail to the petitioner. On the other hand, the

learned Sessions Judge has proceeded to grant bail as if it is considering the bail application of respondent no.2 for the first time. The only change that is found in the case is change of the Presiding Officer and except the same, there was no change in circumstance before the Trial Court for entertaining the successive bail application of respondent no.2. Probably for the very same reason, the Hon'ble Supreme Court in the case of **KALYAN CHANDRA SARKAR VS RAJESH RANJAN ALIAS PAPPU YADAV & ANOTHER - (2005)2 SCC 42**, had observed that ordinarily the issues which had been canvassed earlier would not be permitted to re-agitated on the same grounds as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

16. It is trite that the courts are required to record reasons while granting bail in cases where heinous offences are involved. The law in this regard is laid down in the case of **MANOJ KUMAR KHOKHAR VS STATE OF RAJASTHAN & ANOTHER - (2022)3 SCC 501**, wherein in paragraphs 33 & 35, the Hon'ble Supreme Court has observed as under:

"33. The most recent judgment of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is Brijmani Devi v. Pappu Kumar [Brijmani Devi v. Pappu Kumar, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order of the High Court granting bail to the accused, observed as follows : (Brijmani Devi case, SCC para 35).

"35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime,

the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.”

35. *The Latin maxim cessante ratione legis cessat ipsa lex meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself”, is also apposite.”*

17. In the present case, no cogent reasons have been assigned by the Trial Court for granting bail to respondent no.2 who is involved in a heinous offence of committing the murder of a old man. The petition filed under Section 439 Cr.PC before this Court in Crl.P.No.1411/2023 was withdrawn by respondent no.2 with liberty to file fresh petition. It is seen that no medical documents were produced by respondent no.2 before this Court in the said petition and bail was not sought in the said petition on medical grounds. Since respondent no.2

had withdrawn his bail application which was filed before this Court, it is not open for him to now contend before this Court in a petition filed by the defacto complainant for cancellation of bail granted to him, that this Court is required to consider as to whether he is entitled for bail on merits or not.

18. In this petition filed under Section 439(2) Cr.PC, this Court is required to consider whether the learned Sessions Judge was justified in entertaining the second successive bail application filed by respondent no.2 and whether a change in circumstance was made out before the learned Sessions Judge by respondent no.2 for granting bail to him in his second successive bail application. Therefore, the prayer made by respondent no.2 to consider as to whether he is entitled for bail on merits or not, needs to be rejected.

19. From a perusal of the order passed by the learned Sessions Judge, it is seen that the said order has been passed in utter violation of the principles laid down by the Hon'ble Supreme Court for consideration of successive bail

application by the courts. The bail application filed by respondent no.2 before this Court was withdrawn with liberty to file a fresh petition. But no liberty was reserved to file a fresh application before the Trial Court. From a reading of the order passed by the Trial Court, it appears that filing of criminal petition before this Court and withdrawal of the same was suppressed by respondent no.2 before the Trial Court. Therefore, the learned Sessions Judge was not justified in entertaining the second successive bail petition filed by respondent no.2 in the absence of there being no change in circumstance. Under the circumstances, I am of the opinion that the order dated 10.04.2023 passed by the learned Sessions Judge in S.C.No.2246/2022 cannot be sustained. Accordingly, the following order:

20. The petition is allowed. The order 10.04.2023 passed by the XXVI Addl. City Civil & Sessions Judge, Bengaluru, in S.C.No.2246/2022, is set aside. However, it is made clear that this order will not come in the way of the petitioner filing a fresh petition before this Court seeking regular bail.

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