

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2014
DELIVERED ON : 27.02.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CRL.R.C.No.1268 of 2014
and
M.P.No.1 of 2014

MRF Limited,
represented by its
Deputy General Manager,
Mr.Joshy Joseph,
114 (Old 124), Greams Road,
Chennai.

... Petitioner/Petitioner/
De facto complainant

vs.

1. Ujjawal Sampath Chordia
W/o.Sampath Chordia

....1st Respondent/Accused

2. The State
represented by its
Inspector of Police,
Central Crime Branch,
Team I, EDF - 1 Wing, Vepery,
Chennai - 7.

....2nd Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C.
against the order of learned Chief Metropolitan Magistrate, Egmore,
passed in Crl.M.P.No.7573 of 2014 in X Crime No.317 of 2014, on
04.12.2014 and to cancel the bail granted to first respondent.

For Petitioner

:

Mr.Rupert Barnabas
for M/s.King and Patridge

For Respondents

:

Mr.V.Gopinath, senior counsel,
for Mr.K.V.Bashyam Chari [R1]
Mr.M.Mohamed Riyaz,
Government Advocate [Crl.side] [R2]

O R D E R

This revision challenges the order of learned Chief Metropolitan Magistrate, Egmore, Chennai, passed in Crl.M.P.No.7573 of 2014 in X Crime No.317 of 2014, on 04.12.2014.

2. The case in Crime No.317 of 2014 on the file of second respondent has been registered for offences u/s.406, 420 r/w 120-B IPC. Petitioner is the de facto complainant company. The accusation is that petitioner/complainant was induced to effect payment of a sum of Rs.1,98,50,592/- to the accused towards having delivery of a foreign Car on misrepresentation that the partnership firm of the accused was the dealer for such Car. The further allegation is that petitioner was induced to spend a sum of Rs.1,00,00,000/- towards customs duty and other expenses. Several others across the Country had been cheated by the accused in similar fashion. Pursuant to a Look Out Circular, first respondent/wife of accused in the case, has been apprehended by the Mumbai police on 31.10.2014 and on the direction of learned XXIV Chief Metropolitan Magistrate, Borivalli, Mumbai, surrendered before learned Chief Metropolitan Magistrate, Egmore, Chennai, on 03.11.2014. She has sought bail in Crl.M.P.No.7332 of 2014 on the same day and was granted relief. Petitioner/de facto complainant moved Crl.M.P.No.7573 of 2014 seeking cancellation of bail and the same was dismissed by learned Chief Metropolitan Magistrate, Egmore, on 04.12.2014. Against such dismissal, petitioner has preferred the present revision.

3. Heard Mr.Rupert Barnabas, learned counsel for petitioner, Mr.V.Gopinath, learned senior counsel for first respondent and Mr.M.Mohamed Riyaz, learned Government Advocate [Crl.side] for second respondent. Records called for and perused. So also, the status report of second respondent.

4. Learned counsel for petitioner submitted that in seeking cancellation of bail before Court below it had been pointed out that learned Chief Metropolitan Magistrate, Egmore, Chennai, in ordering bail had required the accused to execute a bond in a sum of Rs.10,000/- as also to produce two sureties in like sum. Of the two sureties produced, one of them, towards his identification, had furnished a copy of a sale deed which did not stand in his name but which stood in the name of one Mrs.Vanitha. It also was pointed out that the address informed by first respondent/accused in the petition for bail and in her passport were at variance. First respondent having been required to appear before the Investigating Officer daily at 10.00 a.m. until further orders under orders of bail in her favour, sought relaxation of conditions in Crl.M.P.No.7416 of 2014. Petitioner had intervened therein and such petition had been dismissed under orders dated 18.11.2014. The further ground raised in support of the petition seeking cancellation of bail was that while in the relaxation petition, first respondent had informed of staying alone in a Hotel, on the intervener's contention that she had not disclosed the name of the Hotel nor produced bills, bills were produced and they were found to be standing in the name of some other person. Therefore, fraud was imputed to the conduct of first respondent.

5. Learned Chief Metropolitan Magistrate, Egmore, Chennai, took into consideration that first respondent had been released on bail after duly satisfying himself with the identity of sureties through documents produced before him and by accepting their affidavits. Recording that first respondent had been enlarged on bail on due satisfaction with the conditions imposed, accepting the error regards the address as a typographical one and observing that the document which had been produced before it stood in the name of the wife of one of the sureties and as such no fraud stood committed, Court below dismissed the petition.

6. Besides the contentions raised before Court below, learned counsel for petitioner submitted that in the counter to CrI.M.P.No.7416 of 2014 seeking relaxation of bail conditions, second respondent had informed that first respondent was not co-operating with the investigation. Learned counsel submitted that in such circumstances, second respondent ought to have sought cancellation of bail. They having failed to do so, petitioner had moved therefor.

7. Learned counsel referred to judgment of the Apex Court in Salim Khan v. Sanjai Singh and another [2002 (9) SCC 670] to inform that similar attitude of the State had been deprecated.

8. Learned counsel makes a serious allegation that on the date of surrender of first respondent and the date of grant of bail viz., 03.11.2014 respondent police initially had, in writing, informed objections to grant of bail, but upon instructions of Court, the objections had been scored out and in its place, it had been stated that bail may be granted subject to conditions imposed by Court. Learned counsel contended that learned Additional Public Prosecutor had also been prevailed upon by Court to inform that bail may be granted subject to conditions.

9. Learned counsel relied on decision of the Apex Court in State of U.P. through CBI v. Amarmani Tripathi [2005 (8) SCC 21] to submit that the conduct subsequent to release on bail would have to be taken note of when considering an application for cancellation thereof and where respondent State had stated that first respondent/accused was not co-operating with the investigation, bail ought to have been cancelled.

10. Towards impressing the need for cancellation of bail, learned counsel added that the accused had handed over a Benz Car imported in the year 2011 to the Mumbai office of petitioner/de facto complainant stating that they had agreed to receive the same. Such Car had been programmed to run only for 100 kilometers for test purposes. The same was useless since a technician/mechanic from Italy would have to re-programme it.

11. Mr.V.Gopinath, learned senior counsel for first respondent, submitted that in the present revision it would not be open to petitioner to raise grounds other than those informed before Court below in seeking cancellation of bail. All such grounds had been considered by Court below and after due consideration a decision, against cancellation of bail had been arrived at. On the contention regards a false address having been furnished by first respondent, learned senior counsel pointed out that a mere perusal of the address informed in the passport and that informed in the bail petition would show the same to be no more than a typographical error. Regards the surety having produced a property document which did not stand in his name, learned senior counsel pointed out that document stood in the name of surety's wife who had sworn to an affidavit informing that she too was willing to stand surety for first respondent. Submitting as above, learned senior counsel prayed that the revision be dismissed.

12. In reply, learned counsel for petitioner submitted that he has filed additional grounds and in the face of abuse of process of Court, it would be open to him to canvass the same.

13. On considerations, this Court finds that cancellation of bail has been refused on proper considerations. The Apex Court in *Dolat Ram v. State of Haryana* [1995 (1) SCC 349] informed as follows:

"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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

14. For the aforesaid reason, this Criminal Revision shall stand dismissed. Consequently, connected miscellaneous petition is closed.

gm

-s/d-

Assistant Registrar(CO)

Dt:6/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Chief Metropolitan Magistrate Court,
Egmore, Chennai.

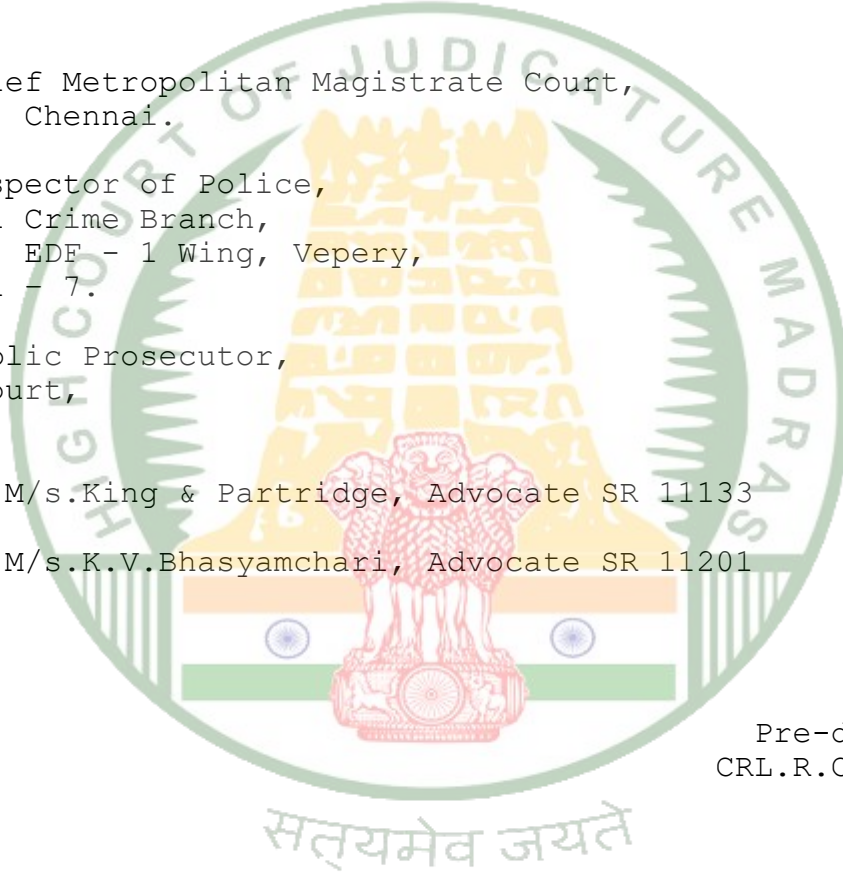
2. The Inspector of Police,
Central Crime Branch,
Team I, EDF - 1 Wing, Vepery,
Chennai - 7.

3. The Public Prosecutor,
High Court,
Madras.

+ 1 cc to M/s.King & Partridge, Advocate SR 11133

+ 1 cc to M/s.K.V.Bhasyamchari, Advocate SR 11201

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CRL.R.C.No.1268 of 2014

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