

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2015

Date of verdict : 22.7.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.30631 of 2014

G.Navaneetha Krishnan ... Petitioner

Vs

1. Vijendraraja
2. The State of Tamil Nadu,
represented by
The Inspector of Police,
Mangadu Police Station,
Chennai-56. ... Respondents

Criminal Original Petition has been filed to cancel the order of anticipatory bail granted to the first respondent on 22.8.2014 by the Sessions Court in C.M.P.No.1224 of 2014.

For Petitioner : Mr.Nithyaesh Natraj

For Respondents : Mr.K.M.Subramanian,
for R.1

Mr.Mohamed Riyaz,
Govt. Advocate (Crl. Side)
for R.2.

ORDER

The present criminal original petition has been filed by the petitioner to cancel the bail granted to the first respondent on 22.8.2014 by the Sessions Court No.II, Kancheepuram in C.M.P.No.1224 of 2014.

2. The petitioner is the de facto complainant and the first respondent is the accused in Crime No.806 of 2014 for the offence under Sections 406, 420, 336, 323 and 294(b) I.P.C. on the file of the second respondent police.

3. In the affidavit filed in support of the petition, it has been stated that on 3.9.2013, the first respondent entered into an agreement with the wife of the petitioner, wherein he had acknowledged the fact that he had borrowed a sum of Rs.53,00,000/- from the petitioner's wife. Since the first respondent was not in a position to repay the said amount, he agreed to sell his house property situated at No.1/169, Ranga Nagar, Moulivakkam, Porur, Chennai-116. Accordingly, on 1.4.2013, the property was sold to the petitioner's wife vide document No.4553/13 and from the date of purchase, the said property has been solely in the name of the petitioner's wife. While so, in November 2013, the petitioner came to know that the first respondent let out the said property on lease to one Jabarullah without the permission of the petitioner's wife. Despite the fact that the property stands in the name of petitioner's wife, the first respondent has illegally allowed the said Jabarullah to set up a business in the said premises. Hence, the petitioner made many representations to the first respondent stating that he has no right to let out the property to third person. But, the first respondent abused him and threatened him with dire consequences. Hence, he has preferred a complaint before the second respondent police and based on the said complaint, a case was registered in Crime No.806 of 2014 for the offence under Sections 406, 420, 336, 323 and 294(b) I.P.C. Thereafter, the first respondent was arrested on 11.8.2014 and he moved a bail petition before the learned Sessions Judge No.II, Kancheepuram in C.M.P.No.1224 of 2014 and he was granted bail by order dated 22.8.2014. Now, the present petition has been filed by the petitioner for cancellation of the bail granted by the learned Sessions Judge No.II, Kancheepuram to the first respondent.

4. Learned counsel appearing for the petitioner submitted that even though the petitioner's wife purchased the property from the first respondent for a sale consideration of Rs.53,00,000/-, the first respondent let out the property to one Jabarullah without the permission of the petitioner's wife. When it was questioned by the petitioner, the first respondent replied that he is prepared to return the entire sale consideration and asked the petitioner to re-convey the property. Though the petitioner's wife is prepared to re-convey the property, the first respondent has not repaid the sale consideration. On the other hand, he has let out the property to one Jabarullah. Suppressing all these facts, the first respondent moved the Sessions Court No.II, Kancheepuram and obtained bail. Hence, the petitioner has filed the present petition seeking cancellation of the bail granted to the first respondent.

5. However, I am of the opinion, the said submission made by the learned counsel appearing for the petitioner will not serve as a ground for cancellation of bail granted to the first respondent. Once bail is granted by the Court below, it could be cancelled only if the accused abuses the said concession. In this regard, a reference could be placed in the judgment reported in (1995) 1

Supreme Court Cases 349 - Dolat Ram and others v. State of Haryana, wherein it has been held as follows:-

" 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 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."

6. In the decision reported in (2009) 10 Supreme Court Cases 652 - Hazari Lal Das v. State of West Bengal and another, the Hon'ble Supreme Court by relying upon the above said decision in the case of Dolat Ram and others v. State of Haryana reported in (1995) 1 Supreme Court Cases 349, has held as follows:-

" 7. There is nothing on record that there has been interference or attempt to interfere with the due course of administration of justice by the appellant. It also does not appear from the record that the concession granted to him has been abused in any manner. No supervening circumstances have surfaced nor shown justifying cancellation of anticipatory bail. The judicial discretion exercised by the Sessions Judge in granting the anticipatory bail has been interfered with by the High Court in the absence of cogent and convincing circumstances. We are, thus, satisfied that the impugned order cannot be sustained."

7. The dictum laid down in the above cases would clearly show that once bail is granted, the same cannot be cancelled in a mechanical manner. Only if there is any abuse of concession granted to the accused, then only the Court can cancel the bail. In the instant case, even according to the learned counsel appearing for the petitioner, it is not the case of the petitioner that the first respondent is abusing the concession granted to him. On the other hand, it is the case of the petitioner that though the petitioner's wife is prepared to re-convey the property, the first respondent has

not repaid the money. On the other hand, he has let out the property to one Jabarullah. However, the said submission will not serve as a ground for cancellation of bail granted to the first respondent.

8. For the reasons stated above, I am of the opinion, the petitioner has not made out any case to cancel the bail granted to the first respondent dated 22.8.2014 by the learned Sessions Judge-II, Kancheepuram in C.M.P.No.1224 of 2014.

9. In fine, the criminal original petition is dismissed.

sbi

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The District and Sessions Judge-II,
Kancheepuram.
2. The Inspector of Police,
Mangadu Police Station,
Chennai-56.
3. The Public Prosecutor,
High Court, Madras.
4. The District Munsif cum Judicial Magistrate,
Sriperumpudur.

+ 1 cc to M/s.Nithyaesh and Vaibhav, Advocate SR 37788

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Cr1.O.P.No.30631 of 2014

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