

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.4751 of 2014

S.Bhuvaneshwari

...Petitioner/defacto Complainant

Vs

1.The Inspector of Police,
J.7, Police station,
Velacherry, Chennai-79.

2.R.Thamaraiselvi

...Respondents/Complainant Accused

Criminal Original Petition filed under Section 439(2) Cr.P.C. to cancel the bail granted to the second respondent herein by the Principal Sessions Judge at Madras in Crl.M.P.No.1229 of 2014 dated 27.1.2014 in Crime No.41 of 2014 on the file of the Inspector of Police, J.7 Police Station, Velacherry, Chennai.

For Petitioner : Mr.Joel

For Respondents : Mr.M.Mohamed Riyaz,
Govt. Advocate (Crl. Side),
for R.1

No appearance for R.2

ORDER

The present criminal original petition has been filed by the petitioner to cancel the anticipatory bail granted to the second respondent by the learned Principal Sessions Judge at Madras in Crl.M.P.No.1229 of 2014 dated 27.1.2014 in Crime No.41 of 2014 on the file of the Inspector of Police, J.7 Police Station, Velacherry, Chennai.

2. The petitioner is the de facto complainant and the second respondent is the accused in Crime No.41 of 2014 on the file of the first respondent police.

3. The case of the petitioner is that the second respondent started a monthly saving scheme in the name of Sudarshan Diwali Fund Scheme. The scheme was started by monthly payment of Rs.400/- for 12 months from November 2012 to October 2013 and the same was

acknowledged in a scheme card. After completing the payment of 12 months, sweets, provisions and crackers would be given. Hence, after completing the payment for the period of 12 months, on 1.11.2013 all the scheme card holders have gone to the second respondent's home to collect the things. But, to their shock and surprise, the second respondent's home was kept locked. When they enquired the persons living adjacent to the house of the second respondent about her whereabouts, they informed them that the second respondent and her husband were not there for the past three days. Immediately, the petitioner contacted the second respondent through cell phone and she informed that the money would be returned to her by two days after she came to Chennai. But, till date, no amount was paid. Hence, she has lodged a complaint before the first respondent police and based on the said complaint, a case was registered in Crime No.41 of 2014 for the offence under Section 420 I.P.C. Subsequently, the second respondent filed a petition for anticipatory bail in CrI.M.P.No.1229 of 2014 before the learned Principal Sessions Judge, Chennai and the learned Judge granted anticipatory bail to the petitioner by order dated 27.1.2014 on the following conditions viz.,

- (i) Anticipatory bail is granted;
- (ii) In the event of arrest or on her surrender before the learned V Metropolitan Magistrate, Chennai on or before 11.2.2014 failing which the order shall stand cancelled; the petitioner is ordered to be released on bail on her executing a bond for Rs.5,000/- with two sureties each for the likesum to the satisfaction of the said Magistrate;
- (iii) The petitioner shall also deposit a sum of Rs.25,000/- into the said Court to the credit of Cr.No.41 of 2014 and final order in respect of the amount will be passed by the trial Court.
- (iv) The petitioner shall report before the respondent police daily at 10.30 a.m. for one week.

Now, the present petition has been filed by the petitioner for cancellation of the anticipatory bail granted by the learned Principal Sessions Judge, Chennai.

4. The main submission of the learned counsel appearing for the petitioner is that the second respondent has misappropriated the amount collected from the petitioner and others under the scheme of Sudarshan Diwali Fund and till date, the amount has not been paid to them. Hence, in the interest of justice, it is just and necessary to cancel the anticipatory bail granted to the second respondent and unless this Court cancels the anticipatory bail, the petitioner would be put to irreparable loss and mental agony. Hence, the anticipatory bail already granted to the second respondent is liable to be cancelled.

5. However, in my considered opinion, the said submission made by the learned counsel appearing for the petitioner will not serve as a ground for cancellation of anticipatory bail granted to the second respondent. Once anticipatory bail is granted by the Court below, it could be cancelled only if the second respondent abuses the said concession. In this regard, a reference could be placed in the judgment of the Hon'ble Supreme Court 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 yet another 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 anticipatory 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, it is the case of the petitioner that till date, the second respondent has not repaid the amount collected from her. However, the said submission cannot serve as a ground for cancelling the anticipatory bail granted to the second respondent and on that ground alone, the anticipatory bail already granted to the second respondent cannot be cancelled.

8. For the reasons stated above, I am of the opinion, the petitioner has not made out any case to cancel the anticipatory bail granted to the second respondent by the learned Principal Sessions Judge at Madras in CrI.M.P.No.1229 of 2014 dated 27.1.2014

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbi

To

1.The Principal District and Sessions Judge,
Chennai.

2.The Inspector of Police,
J.7, Police station,
Velacherry, Chennai-79.

3.The Public Prosecutor,
High Court, Chennai.

CrI.O.P.No.4751 of 2014

TEJ(CO)
Eu 28.07.15

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