

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CrI.R.C.No.252 of 2015

Senthil @ Dhandapani

.. Petitioner / 2nd Accused

Vs

State Rep. by
The Inspector of Police,
Yethappur Police Station,
Athur Taluk, Salem District.

.. Respondent/ Complainant

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to call for the records of the cancellation of Bail order dated 17.10.2014 passed in CMP No.4772 of 2014 by the Judicial Magistrate No.I, Athur, Salem District and set aside the same by allowing revision petition.

For Petitioner : Mr.P.Rathanavel

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

O R D E R

Being aggrieved by the order dated 17.10.2014 passed in CMP No.4772 of 2014 by the Judicial Magistrate No.I, Athur, Salem District, the present criminal revision case, is filed.

2. Material on record discloses that a case in Cr.No.171 of 2014 has been registered against the petitioner and two others under Section 454 and 380 Indian Penal Code on the file of the Inspector of Police, Yethappur Police Station. In the said case, by order dated 30.06.2014 in CMP No.2101 of 2014, the learned Judicial Magistrate No.1, Athur, has enlarged the accused including the petitioner on bail, subject to the condition that the petitioner and two others should appear before the Judicial Magistrate No.1, Athur, daily excluding Saturdays and Sundays. But the petitioner has failed to comply with the abovesaid condition and therefore Inspector of Police, Yethapur Police Station, Salem District has filed an application under Section 437 (5)(2) Cr.P.C., for cancellation of the bail ordered in CMP No.2101 of 2014 dated 30.06.2014.

3. Material on record further discloses that on receipt of an application, for cancellation of bail, the learned Judicial Magistrate No.1, Athur has issued a notice to the petitioner and Raj Kamal the accused in Cr.No.171 of 2014 on the file of Yethappur Police Station, Athur Taluk, Salem District, to show cause as to why the bail order, should not be cancelled, for non compliance of the conditions.

4. Impugned order shows that both Senthil, the petitioner herein and Raj Kamal, another accused have acknowledged the show cause notice on 18.09.2014. They have neither chosen to appear in the Court below nor submitted any explanation as to the non compliance of the conditions imposed, when they were enlarged on bail. In the abovesaid circumstances, after one month, from the date of acknowledgment of the notice, the learned Judicial Magistrate No.1, Athur, vide order dated 17.10.2014, has cancelled the bail, as hereunder

"This show cause notice served to accused on 18.09.2014. But the accused never mind about this Notice and they never mind about the condition imposed on them in OMP No.2101/2014 dated 30.06.2014. Once the accused have not complied the condition imposed on the accused they are not entitled any relief from this Court. Further sub Section 5 of Section 437 of Cr.P.C. says that this Court may cancel the Bail at any time which is already granted to the Accused. Hence the accused have not followed/complied the condition. Hence the bail already granted to the accused on 30.06.2014 is cancelled today. The Bonds executed by the sureties on 22.07.2014 is also cancelled today. Hence NBW is ordered to issue against the accused to produce them before this Court. The show cause ordered accordingly."

5. Though, Mr.P.Rathanavel, learned counsel for the petitioner has assailed the correctness of the order dated 17.10.2014, on the grounds inter alia that the Court below has failed to follow the procedure as contained under Section 446-A of the Cr.P.C., this Court is not inclined to accept the said contention.

6. Section 437 of the Code of Criminal Procedure, deals with when bail may be taken in case of non bailable, are extracted hereunder:

437. When bail may be taken in case of non bailable offence:- (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought

before a Court other than the High Court or Court of session, he may be released on bail, subject to imposition of any condition which the Court considers necessary.

7. Sub Section 5 of Section 437 Cr.P.C., states that the Court which has released a person on bail under Sub Section (1) or Sub Section (2) of Section 437, may, if it considers necessary so to do, direct such person be arrested and commit him to custody.

8. Sections 446 and 446-A of the Code deals with procedure when bond has been forfeited and cancellation of bond and bail bond and the said Sections are extracted hereunder:

"446. Procedure when bond has been forfeited:- (1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

Explanation:- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as Surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, as its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under Section 448, a certified copy of the judgement of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

446A. Cancellation of bond and bail bond: Without prejudice to the provisions of Section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition,-

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is, satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provisions of this code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient."

9. Sub Section 5 of Section 437 Cr.P.C., has conferred power upon the Court other than the High Court or the Sessions Court, which has released a person on bail under sub Section (1) or sub section (2) of Section 437 Cr.P.C., if it considers necessary so to do direct that such person be arrested and commit him to custody. The expression "Court other than the High Court or Court of Session", includes a Magistrate before whom any person accused of or suspected of the commission of any non-bailable offence appears or is brought under arrest. Therefore, under sub-sec.(5)

of Section 437, Cr.P.C., the Magistrate has power to direct such person whom he himself released on bail to be arrested and commit him to custody, if good ground exists for cancellation of bail and arrest.

10. While considering an application for cancellation of bail, Court may make use of any material to satisfy itself about the ingredients for cancellation of bail. Court can also consider such applications on the basis of affidavits and counter affidavits filed by the parties along with the material documents. Reference can be made to a decision made in *Madhukar Purshottam v. Talab Haji Hussain* reported in AIR 1958 Bom 406.

11. In *Ram Murti and another v. State* reported in 1975 AWC 479, the Allahabad High Court had observed that once bail has been granted by the Court, it can be cancelled only for valid reasons. The normal grounds for cancellation of bail are:

- (i) chance of jumping the bail;
- (ii) threatening or influencing the witnesses;
- (iii) interfering with the investigation or prosecution;
- (iv) obstructing the judicial process;
- (v) otherwise misusing or abusing the bail.

12. In *Mahendra Prasad Vs. State of Bihar*, reported in 1977 Cr.LJ 1025, the Court held that where the bail bond for appearance was executed by the accused with fixed date of appearance before the transferee Court and the accused is absent on the said date fixed by the transferee Court, the transferee Court can cancel the bail and issue non-bailable warrant of arrest.

13. Probability of the accused misusing the liberty granted by the order of bail can always be one of the reasons for cancellation of bail. Reference can be made to the decision in *Rankanidhi Panda Vs. State*, reported in 1997 Cr.LJ 4217 (Ori.).

14. The same view is reiterated in *Bhagirath v. State* reported in 1997 Cr.LJ 4488 (Ori.), where the Court said when there are chances of the accused jumping bail, threatening or influencing the witnesses, interfering with the investigation or prosecution, obstructing the judicial process or otherwise misusing or abusing the bail.

15. A combined reading of Sections 437 (1) (2) (5), 446 and 446-A of the Code of Criminal Procedure, makes it clear that the Court which grants bail to a person, imposing a condition for the appearance of such person, can forfeit the bail bond, for breach of the condition, and that the bail bond executed by him, as well as the bail bond executed, by one or more of his sureties can also be cancelled. Once the bail bond is cancelled, the learned Magistrate, if he considers necessary, direct such person to be arrested and commit to custody.

16. In the light of the decisions, statutory provisions, and having regard to the failure on the part of the petitioner/accused to comply with the conditions of bail, failure to show cause by either appearing in person or explaining in writing the reasons as to why he did not comply with the conditions imposed, this Court is of the view that there is no manifest illegality in the impugned order warranting intervention. Hence, the Criminal Revision Case is dismissed.

Sd/-

Asst.Registrar (Lok adalat)

/true copy/

Sub Asst. Registrar

Ars

To

1. The Judicial Magistrate No.I,
Athur.
2. The Inspector of Police,
Yethappur Police Station,
Athur Taluk, Salem District.
3. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.252 of 2015

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