

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.1771 of 2015

Mrs.S.Mythili

... Petitioner

Vs

1. Balaji @ Subramanian

2. State rep.by
Inspector of Police,
T-14, Mangadu Police Station,
Mangadu, Chennai-600 122. ... Respondents

Criminal Original Petition filed under Section 439(b) Cr.P.C. to cancel the anticipatory bail granted in Crl.M.P.No.1210 of 2014 dated 09.12.2014 by the learned Sessions Judge, Mahila Court, Chengalpattu.

For Petitioner :Mr.P.D.Selvaraj

For Respondents :Mr.M.K.Nagarajan
for M/s.MaJestic Law Firm (For R1)

Mr.M.Mohamed Riyaz, Govt. Advocate
(Crl.Side) (For R2)

ORDER

The present criminal original petition has been filed seeking to cancel the bail granted to the 1st respondent/accused in Crl.M.P.No.1210 of 2014 dated 09.12.2014 by the learned Sessions Judge, Mahila Court, Chengalpattu.

2.The petitioner / defacto-complainant is the mother of the victim girl Nandhini. It is averred by the defacto-complainant in the affidavit filed in support of the petition that on 07.10.2014, the petitioner's elder daughter Nandhini, who is aged 14 years and studying in a private school in Karampakkam, had gone to school as usual; but she did not return back to home in time from school. The petitioner made diligent search in the School, her friends' houses and neighbours' houses and enquired about her daughter and thereafter, she came to know that the 1st respondent herein/accused viz., P.Balaji @ Subramanian had kidnapped her daughter.

Immediately, the husband of the petitioner had contacted the 1st respondent/accused through his cell-phone number and enquired about his missing daughter; the 1st respondent herein/accused had admitted that he had kidnapped the petitioner's daughter Nandhini and threatened that if he gives police complaint or if he searches his daughter, he would kill her. The petitioner had preferred a complaint with the 2nd respondent-Police on 07.10.2014 and the 2nd respondent-Police had initially registered a case on 08.10.2014 in Crime No.1145 of 2014 under Sections 366(A) and 506(i) IPC. Since the 2nd respondent-Police was lethargic in conducting the enquiry and they had not secured the petitioner's daughter, the petitioner had filed H.C.P.No.2762 of 2014 before this Court and the 2nd respondent-Police had filed a counter before this Court stating that they had secured the petitioner's daughter along with the accused and they had admitted the petitioner's daughter in a home at Kelly's and they had admitted the accused in Vellore Hospital since he had consumed poison and they had also altered the Sections to 366(A), 376, 506(i) IPC read with Section 4 of the Protection of Children from the Sexual Offences Act, 2012. According to the petitioner, the 1st respondent-accused has committed heinous offence against her minor school going daughter and has spoiled her entire future.

3.It is further stated by the petitioner that the 1st respondent/accused had filed a bail application in Crl.M.P.No.1516 of 2014 before the learned Sessions Judge, Mahila Court, Chengalpattu, and the petitioner herein had filed a detailed intervening petition, stating that the accused had committed grave offence against her minor daughter under Sections 366(A), 376, 506(i) IPC read with Section 4 of the Protection of Children from the Sexual Offences Act, 2012; the investigation was not completed and medical tests were also not completed; that the accused would tamper the witnesses and hamper the evidences; that the accused having wife and two daughter had not treated the victim girl as his own daughter and he spoiled the morality of the minor girl. The 2nd respondent/Police had also raised serious objection for granting bail to the accused. But, the Court below without taking into consideration the said facts has granted bail to the 1st respondent/accused on 09.12.2014.

4.It is also averred by the petitioner that after the release of the 1st respondent-accused from the prison on bail, on 13.12.2014 while the petitioner and her husband & children were eating their dinner around 8.00 p.m., two unknown persons, who could be identified by the petitioner and her husband, had come to the house of the petitioner and called her husband Sathya by name and they abused the petitioner and her husband in filthy language and threatened them not to pursue the complaint and if the petitioner and her husband do so, they would kill them. Hence, the petitioner's husband had given a complaint to the 2nd respondent-Police on 14.12.2014 in CSR.No.1947/2014. Hence, the petitioner has filed the present petition seeking to cancel the bail granted to the 1st respondent/accused.

5.The 1st respondent has filed a detailed counter stating that the 1st respondent has been released on bail only after a period of 56 days incarceration; that he is an innocent person and false case has been foisted against him; that he had been regularly appearing before the 2nd respondent for 30 days as ordered by the Court below; that he has complied with all the conditions imposed by the Court below; that only for the purpose of filing the cancellation of bail petition, the petitioner's husband has given the second false complaint against the 1st respondent. Thus, he sought for dismissal of the present petition.

6.Now, it is the submission of the learned counsel for the petitioner that the 1st respondent-accused is an influenced person and he is trying to tamper the evidence and he is threatening the petitioner and her husband not to pursue the complaint. Thus, the learned counsel for the petitioner sought for cancellation of the bail granted to the 1st respondent herein.

7.The learned counsel for the 1st respondent submitted the 1st respondent is an innocent person and false complaint has been lodged by the petitioner herein and he is not trying to tamper the evidence.

8. The learned Government Advocate (Crl.Side) submitted that on completion of investigation, final report has already been filed by the 2nd respondent-Police and the same has been taken on file as S.C.No.22 of 2015 on the file of the Mahila Court, Chengalpattu.

9.From the perusal of the materials available on record, I find that the Court below has granted bail to the 1st respondent only after 56 days incarceration. It is well settled legal principle that once bail is granted by the Court below, it could be cancelled only if the respondent 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."

10. 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."

11. 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 anticipatory bail. In the instant case, except making bald allegation that the petitioner and her husband were threatened by the accused persons, no valid ground has been made out by the petitioner for cancellation of the bail granted to the 1st respondent. Hence, I am not inclined to cancel the bail granted to the 1st respondent. The present petition is liable to be dismissed.

In fine, the criminal original petition is dismissed. However, the Mahila Court, Chengalpattu is directed to expedite the trial in S.C.No.22 of 2015 and complete the same as early as possible, preferably within a period of three months from the date of receipt of a copy of this order.

ssv

s/d-
Deputy Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Sessions Judge, Mahila Court,
Chengalpattu.

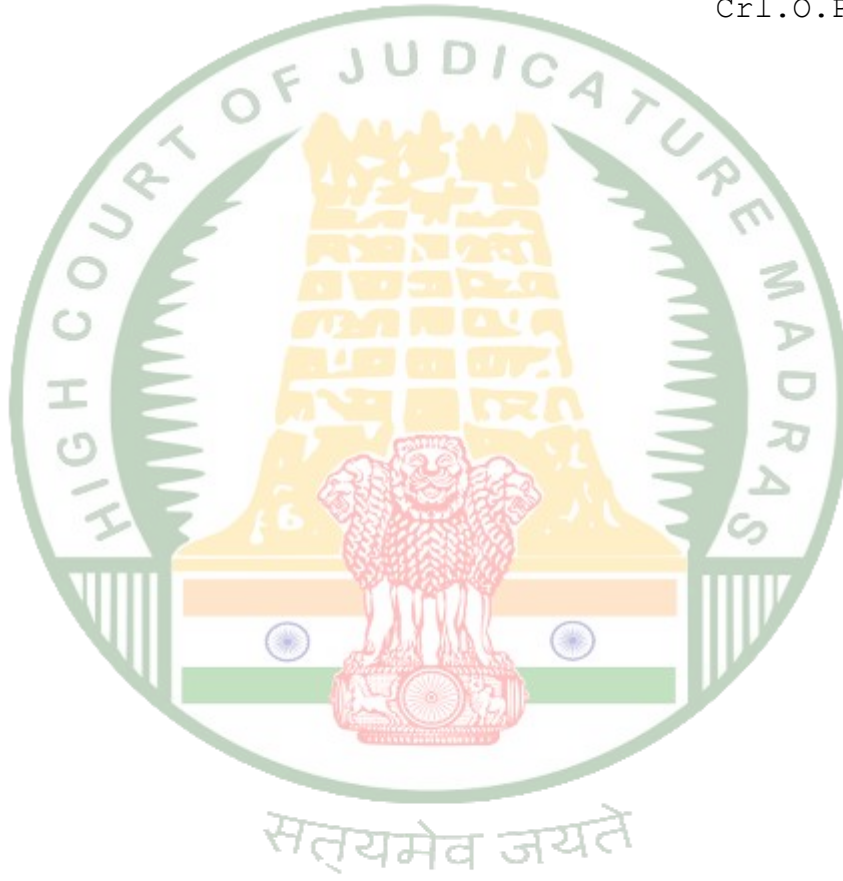
2. The Government Advocate (Crl.Side),
High Court, Madras.

3. The Inspector of Police,
T-14 Mangadu Police Station,
Mangadu, Chennai 122.

+ 1 cc to Mr.Majestic Law Firm, Advocate SR 11816

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