

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22-12-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.23533 of 2015

G.K. Theppeswaran

.. Petitioner

Vs.

1. Naseema Banu

2. Inspector of Police,
District Branch,
Coimbatore District.

... Respondents

Prayer: Criminal Original Petition filed under Section 439(2) of Code of Criminal Procedure with a prayer to cancel the anticipatory bail granted by this Court on 20.11.2014 in Crl.O.P.No.27442 of 2014 in Crime No.40 of 2014 on the file of the second respondent and direct the second respondent to arrest the first respondent, commit her to their custody.

For Petitioner : Mr.A.V.Raja

For 1st Respondent : Mrs.Babitha Sunil

For 2nd Respondent : Mr.K.Prabakaran,
Government Advocate (Crl.Side)

Reserved on	Pronounced on
18-12-2015	22-12-2015

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O R D E R

This petition has been filed by G.K.Theppeswaran, who is the elected Chairman of the Mopperipalayam Town Panchayat for cancellation of anticipatory bail, that was granted by this Court to Naseem Banu (first respondent herein) by order in Crl.O.P.No.27442 of 2013 dated 20.10.2014.

2. Before advertng to the grounds raised in this petition, it is essential to narrate the accusations and allegations against Naseem Banu (first respondent/A-1). It

appears that on the complaint lodged by G.K.Theppeswaran (petitioner herein) that there is embezzlement of the Panchayat Union funds, the District Collector ordered to conduct inspection and the District Inspection Committee conducted inspection and submitted a report dated 14.7.2014, which shows that a sum of Rs.2,15,73,768/- has been misappropriated by Naseem Banu (first respondent) systematically a short period of time, i.e, between September, 2013 and June, 2014. Naseem Banu assumed office as the Executive Officer of the Panchayat on 27.7.2014 and had the authority to make payments to various persons under different heads. The Municipality has six accounts, three in Indian Overseas Bank and three in the Indian Bank, for the purpose of handling various incomes and expenditures like water tax, house tax, electricity account, employees salary, purchases, laying of roads, etc. From the said six accounts, Naseem Banu had issued cheques to one Jahangir, her own brother to the tune of Rs.77,02,015/- on various dates. Similarly she has made unauthorised payments as follows:

To Devaraj ..	Rs.17,37,130/-
To Rajamanickam ..	Rs.62,92,703/-
To Adiappan ..	Rs.13,42,542/-
To Sri Karpagam Agencies ..	Rs. 8,15,284/-
To herself (Naseem Banu) ..	Rs.24,93,041/-

Apart from that, she has collected cash from various persons to the tune of Rs.11,91,053/- which has not been brought into the accounts of the Panchayat. All these have been done by adopting ingenious methods.

3. Based on the report submitted by the District Inspection Committee and on the complaint lodged by the Assistant Director of Town Panchayat, the District Crime Branch, Coimbatore registered a case in Cr.No.40 of 2014 on 15.7.2014 for the offences under Sections 120B, 409, 468, 471 r/w 420 IPC.

4. Apprehending imminent arrest, Naseem Banu filed Crl.O.P.No.27442 of 2014 on 28.9.2014 seeking anticipatory bail before this Court. In paragraph 11 of her petition she had stated that, it has been alleged by the Prosecution that she had misappropriated Rs.10 lakhs.

5. When the matter came up for hearing before this Court on 20.10.2014, this Court passed the following orders granting interim anticipatory bail:

"2. Heard both sides.

3. The complainant in this case is the Deputy Director of Panchayats. When the Deputy Director went for inspection to Moreipalayam Town Panchayat, he found that the accused herein, who is working as an Executive

Officer there had siphoned off around Rs.17,00,000/- from the Panchayat account and had given the money to her brother through A2. Her brother has been arrayed as A3.

4. In such circumstances, this Court was not inclined to grant anticipatory bail.

5. Learned counsel for the petitioner submits that the petitioner would refund 50% of time of four weeks' is granted. His submission is recorded.

6. Accordingly, I am inclined to grant interim anticipatory bail to the petitioner and the petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.II, Coimbatore on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a likesum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a) within a period of four weeks from today the petitioner shall refund a sum of Rs.8,50,000/- (Rupees eight lakhs and fifty thousand only) to the Panchayat and report to this Court.

(b) the petitioner shall report before the respondent police daily at 10.30 a.m. for a period of four weeks and thereafter as and when required for interrogation.

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(d) the petitioner shall not abscond either during investigation or trial.

(e) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala (2005 AIR SCW 5560)."

6. The interim anticipatory bail granted on 20.10.2014 was made absolute on 20.11.2014 when it was reported to the Court that a sum of Rs.8,50,000/-, as ordered was refunded by Naseem Banu to the Panchayat.

7. In the present petition filed for cancellation of anticipatory bail, it is submitted that the gargantuan embezzlement that has been committed by Naseem Banu systematically was not brought to the notice of this Court either by the State or by the accused, and that, this Court had gone on the premise that the embezzlement was only Rs.17 lakhs, whereas the FIR discloses that a sum of Rs.2,15,73,768/- has been misappropriated by Naseem Banu and her gang. It is also submitted that all the other accused have been arrested, except Naseem Banu.

8. Mrs.Babitha Sunil, learned Counsel appearing for Naseem Banu submitted that there has not been any suppression of fact by the accused and the accused believed that the FIR is only for a sum of Rs.10 lakhs, and that, on the representation of the State that the amount is only Rs.17 lakhs, this Court was persuaded to grant anticipatory bail on condition that a sum of Rs.8,50,000/- be refunded to the Panchayat, which condition has been duly complied with by the accused, and hence there is no good ground for cancelling the anticipatory bail. She has also submitted that G.K.Teppeswaran, the petitioner has no locus standi to file this petition and it is only the State, which could have approached the Court.

9. This Court gave its anxious consideration to the rival submissions. G.K.Teppeswaran, petitioner herein is the elected Chairman of the Mopperipalayam Town Panchayat and it was he who set the ball in motion by complaining to the District Collector that Panchayat's funds are being diverted by the Executive Officer, which prompted the District Collector to order inspection by S.R.Sekar, District Inspection Officer, Coimbatore, who went into the accounts of the Panchayat and submitted a damning report dated 14.7.2014 about which I have already discussed, based on which a complaint was lodged by J.Tirugnanam, Assistant Director of Town Panchayat, pursuant to which FIR in Cr.No.40 of 2014 has been registered. Therefore, it cannot be stated that G.K.Teppeswaran is totally a stranger to the whole episode. As elected Chairman of the Panchayat, it is his duty to ensure that the funds of the Panchayat are safeguarded.

10. Coming to the representation made on behalf of the State, Mr.K.Prabhakar, learned Government Advocate (Crl.Side) conceded that a mistake had crept in at the time of giving instructions to the Court when Crl.O.P.No.27442 of 2014 came up for hearing on 20.10.2014. He submitted that, at around that time, when Naseem Banu's anticipatory bail petition was pending, the co-accused in the case Devaraj had filed Crl.O.P.No.22979 of 2014 seeking bail, and instructions were received by the Office of the Public Prosecutor in which it was stated that a sum of Rs.17,37,130/- has been illegally paid by Naseem Banu to Devaraj. This instruction was inadvertently submitted to the Court when Crl.O.P.No.27442 of 2014 seeking anticipatory bail filed by Naseem Banu came up for hearing.

11. On perusal of the back files in Crl.O.P.No.27442 of 2014 this Court finds that a copy of the FIR was not submitted to the Court and therefore this Court did not know the real magnitude of the case. This Court proceeded on the representation made by the parties that the allegation revolved around a sum of Rs.17 lakhs, allegedly misappropriated by four persons and in those circumstance, this Court felt that it will be in fitness of things that anticipatory bail be granted to Naseem Banu on condition that if she refunds 50% of Rs.17 lakhs, which is Rs.8.50 lakhs. Only now the length, breadth and depth of the fraud committed by Naseem Banu has been placed before this Court.

12. When there has been an impropriety in the very grant of anticipatory bail, it is open to this Court to cancel the same, irrespective of the fact whether the accused had co-operated with the enquiry or not. It is common knowledge that Panchayats, which form the bulwark of grass root democracy, are already cash starved, and they are not able to carry out even minimum welfare activities like laying and electrification of roads for the benefit of villagers, and in such circumstances the act of the Executive Officer siphoning Rs.2 crores from the Panchayat accounts and distributing it to her brother and others, cannot be viewed leniently. It is seen that the FIR itself has been registered only after thorough enquiry by the District Inspection Officer. Therefore, this is not a fit case in which Naseem Banu can be permitted to remain under the protective umbrella of the order of anticipatory bail, for, that will carry a wrong message in the Society and will further embolden prospective delinquents.

13. In the result, this petition is allowed. The anticipatory bail granted to Naseem Banu (first respondent herein) in Crl.O.P.No.27442 of 2014 by order dated 20.10.2014

and 20.11.2014 are hereby cancelled and CrI.O.P.No.27442 of 2014 stands dismissed. The Police are at liberty to proceed in accordance with law against Naseem Banu (first respondent herein).

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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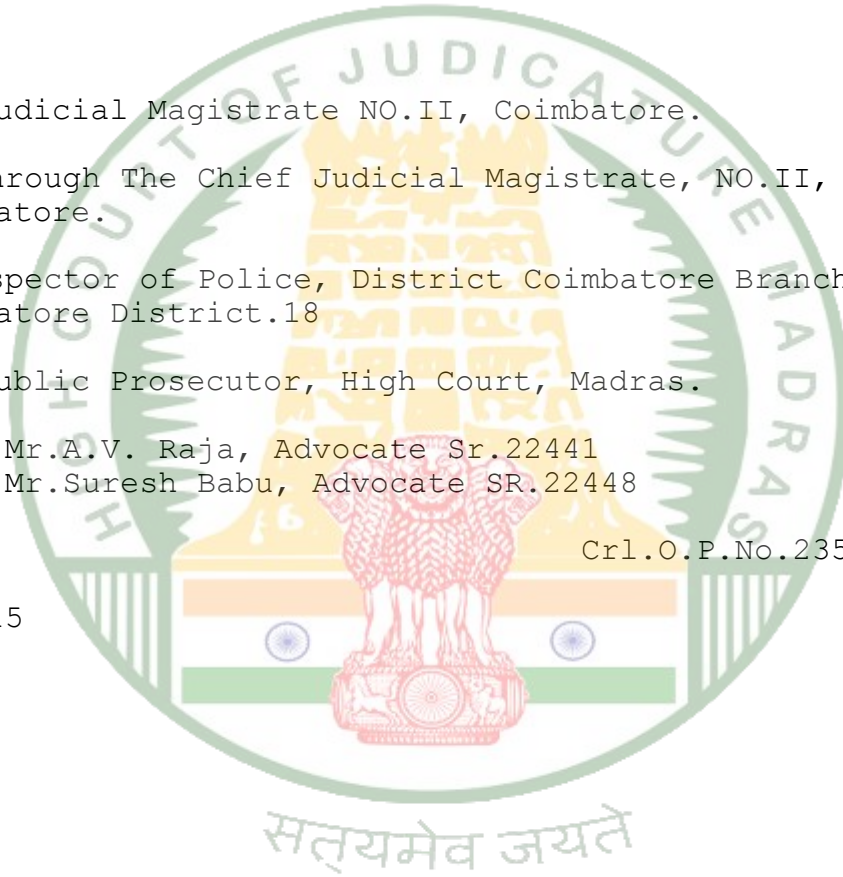
To

1. The Judicial Magistrate NO.II, Coimbatore.
2. -do- Through The Chief Judicial Magistrate, NO.II, Coimbatore.
3. The Inspector of Police, District Coimbatore Branch, Coimbatore District.18
4. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.A.V. Raja, Advocate Sr.22441
+ 1 cc to Mr.Suresh Babu, Advocate SR.22448

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CTK(CO)
EU 30.12.15



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