

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.8480 of 2015

E.Dhana Ganapathy

...Petitioner

Vs

1. Pannerselvam
2. The State represented by
The Inspector of Police,
Manavalan Nagar Police Station,
Thiruvallur District.

...Respondents

Criminal Original Petition filed under Section 439(2) Cr.P.C. to cancel the anticipatory bail granted to the first respondent / accused in Crl.O.P.No.3932 of 2014 vide order passed on 28.2.2014.

For Petitioner : Mr.G.Prabhakaran

For Respondents : Mr.V.V.Sairam, for R.1

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

ORDER

The present criminal original petition has been filed to cancel the anticipatory bail granted to the first respondent / accused No.3 in Crl.O.P.No.3932 of 2014 vide order passed on 28.2.2014.

2. The petitioner is the de facto complainant and the first respondent is A.3 in Crime No.12 of 2014 on the file of the second respondent police.

3. The case of the petitioner, in brief, is as follows:-

The petitioner is an agriculturist owning a small extent of agricultural field at Valuthigaimeedu Village. In order to carry out agricultural operations in effective manner, he purchased a Swaraj Tractor by availing loan from Mahindra Finance Limited, Manavalan Nagar Branch, Thiruvallur to the tune of Rs.3.5 lakhs. The said loan amount along with interest is repayable by 11 instalments, each valuing for a sum of Rs.43,100/-. Upto December, 2013, the petitioner has paid eight instalments. When he tendered the ninth instalment, A.1 to A.3, who were the employees of M/s.Mahindra Finance Limited, have asserted as if the petitioner has paid only six instalments and has to clear the arrears of two instalments. The petitioner informed them that he has promptly paid all the eight instalments and also produced the receipt for the same. In the course of conversation, it came to light that the first respondent herein along with A.1 and A.2, with evil motive of misappropriating the amount paid by the petitioner, has deliberately falsified the accounts and wantonly omitted to credit the amount collected from the petitioner for two instalments and engulfed the amounts paid for those two instalments. By doing so, the first respondent along with other accused, has deliberately committed misappropriation to the tune of Rs.86,200/- and illegally demanded the petitioner to pay the same. The first respondent along with other accused has illegally omitted to give credit to the instalments paid by the petitioner on 15.10.2012 and 10.5.2013, on which dates the first respondent omitted to hand over the payment receipts then and there on the pretext that the Teller Machine was out of order. Hence, the petitioner has lodged a complaint before the second respondent police and the same was registered in Crime No.12 of 2014 for the offence punishable under Sections 403, 406 and 420 I.P.C. Thereafter, apprehending arrest at the hands of the second respondent police, the first respondent filed a petition in CrI.O.P.No.3932 of 2014 before this Court seeking anticipatory bail. The petitioner herein has also filed a petition in M.P.No.1 of 2014 to permit him to intervene in the said petition and the same was allowed by this Court. Further, when the petition for anticipatory bail came up before this Court on 24.2.2014, learned counsel appearing for the first respondent voluntarily represented that the first respondent was willing to deposit the money misappropriated by him and sought time to file an undertaking affidavit to deposit a sum of Rs.43,100/- on behalf of the petitioner herein. Accordingly, the first respondent filed an affidavit before this Court on 28.2.2014 and para 4 of the affidavit, he has given the following undertaking:-

" 4. I state that herein I undertakes to deposit the

sum of Rs.43,100/- the full amount to Mahindra Finance on behalf of de facto complainant or appropriated person on the direction of this Hon'ble High Court."

Based on the said undertaking, this Court has passed the following order:-

"10. Accordingly, both the criminal original petitions are allowed and the petitioners are ordered to be released on bail in the event of arrest or on their appearance before the investigating officer or before the concerned court, on their executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the investigating officer or to the officer who intends to arrest or to the satisfaction of the learned Judicial Magistrate No.II, Tiruvallur and on further condition that N.Murali, the second petitioner in Crl.O.P.No.3875 of 2014 and Panneerselvam, the sole petitioner in Crl.O.P.No.3932 of 2014 shall deposit a sum of Rs.43,100/- (Rupees forty three thousand and one hundred only) each to M/s.Mahendra Finance Company within a period of two weeks from today and on further condition that the petitioners in Crl.O.P.No.3875 of 2014 and the petitioner in Crl.O.P.No.3932 of 2014 shall appear before the respondent police as and when required for the purpose of interrogation. If the amount is not deposited as undertaken within the time stipulated above, the anticipatory bail granted to them shall stand automatically cancelled and the petitions in respect of them shall stand automatically dismissed. "

Subsequently, the first respondent has failed to comply with the said condition and he has not deposited a sum of Rs.43,100/- as per his undertaking. When the petitioner informed the second respondent that the first respondent has failed to comply with the bail condition, it was replied by the second respondent that the first respondent has contacted them over phone and informed them that he has met with an accident, resulting in multiple fractures and he was bed ridden and immediately after his recovery, he would deposit the amount as per the undertaking given before this Court. Even after a lapse of several months, the first respondent did not come forward to deposit the said amount. Hence, the present petition.

4. The first respondent has filed a counter stating that on 12.2.2014, he was involved in a road accident and in that accident, he suffered from grievous fractures on both his legs. Therefore, he

was admitted in MIOT International Hospital and he was discharged on 19.2.2014 and he was not aware that what happened to his petition for anticipatory bail and he was bed-ridden when the order was passed on 28.2.2014 and he did not receive any information with regard to the order passed by this Court. Further, he has stated that he has not instructed his counsel that he would deposit a sum of Rs.43,100/-. Thus, he sought for dismissal of the petition.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record and I find that this Court has granted anticipatory bail to the first respondent only based on the undertaking given by him. Had the undertaking not been given by the first respondent, this Court might not have granted anticipatory bail to the first respondent. Now, after granting anticipatory bail, the first respondent is going back from his undertaking. Hence, the anticipatory bail already granted is liable to be cancelled.

6. Therefore, I am of the opinion, the anticipatory bail already granted by this Court to the first respondent in CrI.O.P.No.3932 of 2014 dated 28.2.2014 is liable to be cancelled and accordingly, cancelled and the criminal original petition is allowed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sbi

To

1. The Judicial Magistrate II,
Thiruvallur.
2. -Do- Through The Chief Judicial Magistrate,
Thiruvallur.
3. The Superintendent of Police,
Thiruvallur.

4. The Inspector of Police,
Manavalan Nagar Police Station,
Thiruvallur District.

5. The Public Prosecutor,
High Court, Chennai.

1 CC to Mr.G.Prabhakaran, Advocate SR.No. 12841

CrI.O.P.No.8480 of 2015

KU (CO)
PSI (22.07.2015)



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