

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2015

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THE HONOURABLE MR.JUSTICE **P.DEVADASS**

**Crl.O.P.No.9557 of 2015**

State represented by  
The Inspector of Police,  
C-1 Sunguvarchatram Police Station,  
Kanchipuram District  
(Cr.No.112 of 2015)

... Petitioner/Complainant

.. Vs ..

Kutty @ Venkatesan

... Respondent/Accused-1

**PRAYER:** This petition filed under Section 439(2) of Criminal Procedure code seeking cancellation of anticipatory bail granted to the respondent/Accused-1 by this Court in Crl.O.P.No.7289 of 2015, dated 30.03.2015.

For Petitioner : Mr.S.Shanmugavelayutham  
Public Prosecutor  
Assisted by  
Mr.P.Govindarajan  
Addl. Public Prosecutor

For Respondent : Mr.N.R.Elango  
Senior counsel for  
Mr.R.Vivekananthan,  
Advocate

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**ORDER**

This petition has been filed under section 439(2) of Cr.P.C. by the de jure complainant viz., the Inspector of Police, C-1 Sunguvarchatram Police Station, Kanchipuram District to cancel the anticipatory bail granted to A-1/Kutti @ Venkatesan by this Court in CrI.O.P.No.7289 of 2015 on 30.3.2015

2 A-1 is the Chairman of Sriperumbudur Town Panchayat in Kanchipuram District. He is alleged to have committed offences under sections 294(b), 384 and 506(i) of I.P.C. on 17.3.2015.

3 The complaint has been lodged by one Vilvarani Murugan, Dy. General Manager, Samsung India Electronics Ltd. This case in Cr.No.112 of 2015 has been registered by the Inspector of Police, C-1 Sunguvarchatram Police Station, Kanchipuram District. In this case A-1 filed CrI.O.P.No.7289 of 2015 under section 438 Cr.P.C. seeking anticipatory bail.

4 On 30.3.2015 he was granted anticipatory bail by this Court. Paragraph Nos.8 to 11 of the said order runs as under:

*"8. Samsung Industry is a Multi National*

*Company in Sriperumpudur, an industrial hub. The factory lies within the jurisdiction of the Panchayat Union under the control of Kutty @ Venkatesan. He and the few Ward Councilors were alleged to have demanded certain sum of money, because their company had not obtained permission to put up certain buildings and they were also alleged to have demanded one Colour T.V. from the said company.*

*9. None injured. At the time of occurrence, they were not possessing any weapons. It is seen that it has cast them heavily. Statement of the company officials and other witnesses have been recorded.*

*10. In the circumstances, I am inclined to grant them anticipatory bail on the following terms and conditions;*

*11. Ordered as under:*

*(i) Anticipatory bail granted to petitioner in 7289 of 2015 and petitioners in Crl.O.P.No.7347 of 2015;*

*(ii) Petitioners shall surrender before the learned District Munsif cum Judicial Magistrate, Sriperumbudur, Kancheepuram District, within 15 days of receipt of a copy of the order;*

*(iii) Petitioner in Crl.O.P.No.7289 of 2015 shall execute a bond for Rs.15,000/- (Rupees fifteen thousand only) with two sureties each for a like sum to the satisfaction of the said*

*Magistrate;*

*(iv) Petitioners in Crl.O.P.No.7347 of 2015 shall execute a bond for Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the said Magistrate;*

*(iv) Petitioners shall stay in Vadalur in Cuddalore District and report before the Inspector of Police, Vadalur daily at 10.30 am until further orders."*

5 The learned Public Prosecutor submitted that A-1 has criminal background, he is an accused in Kumaran murder case registered by Sriperumbudur Police in Cr.No.904 of 2012 for offences under Sections 147, 148, 448, 325, 302 I.P.C. r/w Sec.3 and 5 of Explosive Substances Act, he is an history sheeter and an habitual offender.

6 The learned Public Prosecutor submitted that on 30.3.2015 when Crl.O.P.No.7289 of 2015 was heard, the said antecedents of A-1 has not been brought to the notice of this Court. It is a relevant aspect which ought to have been placed before this Court, had it been placed, it would have had a reflection on the Court in taking a decision in his anticipatory bail petition.

7 The learned Public Prosecutor would cite ***Dinesh M.N.(S.P.) vs. State of Gujarat (2008(5) SCC 66***), refer its paragraph No.27 and submit that in the said case where irrelevant materials were taken into account by the learned Additional Sessions Judge in granting bail to the accused, the Hon'ble Apex Court considered the bail order as vulnerable and held that the High Court has rightly interfered with such a bail order. In the facts and circumstances according to the learned Public Prosecutor, A-1 does not deserve the indulgence of the Court and he could not be allowed to remain at large. Thus, it becomes necessary to cancel the anticipatory bail granted to him.

8 On the otherhand, the learned Senior counsel for the respondent/A-1 would submit that taking into account the nature of the allegations made against the petitioner and other relevant factors, this Court took the view that he deserved to be granted anticipatory bail and has rightly granted him such a relief that too with several conditions, inter alia, he was asked to stay in Vadalur in Cuddalore District. He has complied with the conditions. Only after a considerable lapse of time, this Court modified the condition and directed him to appear daily at 10.30 a.m., before the Investigation Officer until further orders and he is regularly complying the said modified condition.

9 The learned Senior counsel for A-1 further submits that this Court granted him anticipatory bail considering the fact that he has not been involved in any criminal activities, no criminal case has been registered as against him, nor he came under the adverse notice of law enforcing authorities. He is democratically elected to a localbody. Even now, he is holding a public office. Nothing adverse as against him as to his post-conduct after the grant of anticipatory bail was brought to the notice of this Court.

10 According to the learned Senior counsel for the petitioner, liberty so granted to him cannot be so lightly interfered with because in this country, 'life and liberty' have been constitutionally guaranteed and only after a due procedure established by law one can be deprived of it. (see Article 21, Constitution of India).

11 The learned Senior counsel for the respondent would submit that the decision of a Court no doubt is a precedent, but it is not equivalent to a Statute nor a provision in a Statute. It may not have universal application to all the cases. It will apply to similar fact situation.

12 The learned Senior counsel would submit that the factual matrix in **Dinesh** (supra) is completely different from the present

case. On facts **Dinesh** (supra) is not in *Pari-materia* with the case at our hand.

13 I have anxiously considered the rival submissions, perused the averments in the affidavit filed by the Investigating officer, averments in the counter filed by the respondent, referred to the materials on record and the decisions cited at the bar.

14 The question before me is whether in the facts and circumstances, the anticipatory bail granted to the petitioner by this Court on 30.3.2015 in CrI.O.P.No.7289 of 2015 is to be cancelled ?

15 Bail and jail are not benchmates. They are always antonyms with respect to bail always it will be a tussle between the defence and the prosecution. Bail orders are liberty orders. They cannot be withdrawn for mere asking nor lightly they cannot be interfered with or cancelled. Bail orders and orders cancelling them must also confirm to the Constitutional mandate ingrained in our Charter of Liberty, Article 21 in Part III of our Constitution. Thus an order cancelling bail or anticipatory bail order must also satisfy the tests propounded in *Maneka Gandhi vs. Union of India* {AIR 1978 SC 597}.

16 Provisions for bail including issuance of a direction for release in the event of arrest are codified in Chapter XXXIII of the Criminal Procedure Code, 1973. So far as bail or anticipatory bail during investigation and upto trial is concerned, the said Chapter XXXIII is a self-contained Code. But the principles governing grant of refusal of, cancellation of bail or anticipatory bail have not been specifically mentioned in the said Chapter. But grant of bail or anticipatory bail is based on judicious exercise of judicial discretion conferred upon the criminal Courts by considering the various relevant factors such as nature of the offence/accusation, tendency of the accused to flee away from justice, his past conduct, his audacious nature and his traits posing a danger to the law enforcing authorities, etc. [see *Prahlad Singh Bhatt vs. NCT of Delhi and Another* {2001 (4) SCC 280}, *Puran vs. Rambilas and Another* {2001 (6) SCC 338} and *Kalyan Chandra Sarkar vs. Rajesh Ranjan* {2004 (7) SCC 528}.

17 As regards the factual matrix of the case, we have succinctly stated them in our order, dated 30.3.2015 which we have also extracted in para No.4, supra. Let us not duplicate it.

18 The reason which has motivated the prosecution to move this Court to cancel the anticipatory bail granted to the petitioner is found in paragraph No.5 of the affidavit filed by the Investigating

Officer. The prosecution submits that the petitioner has already involved in a murder case, he is an habitual offender, his past is not good. Admittedly, this aspect was not placed before this Court when his anticipatory bail plea was considered by this Court on 30.3.2015. The prosecution would say that the said factor is a relevant factor and it would have had an adverse effect on the anticipatory bail plea of the accused.

19 As rightly submitted by the learned Senior counsel a decision of this Court or the Hon'ble Apex Court could be taken as a binding authority in a subsequent case considering the factual matrix and the principles laid down. [see Article 141, Constitution of India]. They become binding precedent in subsequent cases when the factual matrix are analogous, akin and similar. This is the basis of principle of 'stare desis'. It is Judge made Law'. The whole body of Common Law is a product of this branch of law. Actually it intends to reinforce consistency in the decisions of the decision-making bodies.

20 **Dinesh** (supra) concerned with grant of bail to a co-accused/Police officer involved in the notorious Sorabuddin fake encounter case wherein the learned Additional Sessions Judge instead of enquiring the antecedents of the petitioner was very much concerned with the antecedents of deceased Sorabuddin, taken into

account 25 F.I.Rs. registered against the deceased. The learned Additional Sessions Judge was more concerned with the deceased than the accused and granted bail to the accused. It was set at naught by the Gujarat High Court holding that the learned Additional Sessions Judge taken into account irrelevant factors and his order suffers from perversity and when the matter was taken to the Hon'ble Supreme Court, the Hon'ble Supreme Court while upholding the order of the High Court, held that consideration of such irrelevant materials in passing bail order made the impugned bail order vulnerable.

21 Now, in the case before us, the respondent sought for anticipatory bail for offences under section 294(b), 384 and 506(i) of I.P.C. It is not the case of the prosecution that while granting anticipatory bail on 30.3.2015 this Court had taken into account factors which are quite irrelevant as in the *Shorrabudin* fake encounter case. Therefore, let us not press into service the **Dinesh** (supra) to the present case.

22 Let us see had Kumaran murder case was brought to the notice of this Court on 30.3.2015 whether it would have tilt the mind of the Court, turn the table against the petitioner.

23 The respondent/A-1 having demanded money and a Samsung colour television is alleged to have taken place on 17.3.2015. Already, we have mentioned about the nature of the allegations, using of obscene and intimidating words. In the complaint, it was not stated that the petitioner was then not holding any lethal weapon much less any weapon. Kumaran murder case was registered on 1.10.2012 in Crime No.904 of 2012. Petitioner was subsequently made to concern in the said case during investigation. In the said murder case, this Court granted him bail. He complied with the bail conditions. He was on bail. Thus there is no proximity as between the said murder case registered by Sriperumbudur Police and the present case in Crime No.112 of 2015 registered by Sunguvarchatram police. Both the cases differ in their content, nature, time and there is considerable lapse of time between both the cases.

24 In such circumstances, presenting the said details in the said murder case in the present case in Crime No.112 of 2015 at this distant time would not disturb our mind to disturb the anticipatory bail order of this Court passed on 30.3.2015.

25 Thus, no valid ground has been demonstrated by the prosecution to withdraw the anticipatory bail order passed by this Court on 30.3.2015.

26 In the result, this Criminal original petition fails and it is dismissed.

**18.06.2015**

Index : Yes  
Internet: Yes  
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**Note:-The Registry is directed to send a copy of this order to the Director, Tamil Nadu State Legal Judicial Academy, Chennai, for enlightening the Judicial Officers.**

**P.DEVADASS, J.**

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**Crl.OP.No.9557 of 2015**

Dated: 18.06.2015