

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2015

CORAM:

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

CrI.O.P. No.13574 of 2013

The State, rep. by
The Inspector of Police,
R-7, K.K. Nagar Police Station,
Chennai.

.. Petitioner

Vs.

Ravi @ Kadhu Kuthu Ravi

.. Respondent

Criminal Original Petition filed under Section 439(2) of Cr.P.C., to cancel the bail granted to respondent/A1 Ravi @ Kadhu Kuthu Ravi in C.M.P.No.5819 of 2013 dated 15.5.2013 passed by the learned Sessions Judge, Chennai.

For Petitioner : Mr.S. Shanmuga Velayudham
Public Prosecutor

For Respondent : Mr.Prabakaran
for Mr. M. Baskar

O R D E R

This petition has been filed to cancel the bail granted to the respondent/A1 by the learned Sessions Judge, Chennai in C.M.P.No.5819 of 2013 dated 15.5.2013.

2. Heard the learned Public Prosecutor appearing for State and learned counsel appearing for respondent.

3. The facts of the case are as follows;

(i) The complaint was lodged by one Prabhakaran alleging that on 21.3.2013, while he along with his brother Kathiravan and driver Karthik were proceeding in a car, at about 7.45 a.m., the accused persons intercepted them in two cars and they caught hold of Kathiravan and murdered him with deadly weapons. It was further alleged that one Madurai sundar of deceased Chinna's gang might have murdered Kathirvan due to previous enmity in respect of real estate business.

(ii) On the complaint of Prabhakaran, who is brother of deceased Kathiravan, a case in Crime No.573 of 2013 has been registered for the offences punishable under Sections 341, 147, 148, 427 and 302 of IPC. Subsequently A1 to A8 were arrested and remanded to judicial custody. During interrogation, they gave confession statements disclosing about the involvement of Ravi @ Kadhukuthu Ravi, the respondent herein in the above said crime.

(iii) On 31.3.2013, the respondent herein surrendered before the petitioner and his confession statement was recorded and after producing him before concerned Magistrate Court, he was remanded to judicial custody. During interrogation of the respondent, he gave a further statement about the modus operandi and the vehicles and weapons used for murdering the deceased Kathiravan.

(iv) The respondent herein, by moving bail application before the learned Sessions Court, Chennai and obtained bail in C.M.P.No.5819 of 2013 on 15.5.2013 on condition that he should report before the petitioner daily at 10.30 a.m., for a period of one month.

4. Against the order passed in C.M.P.No.5819 of 2013 by the learned Sessions Judge, Chennai, this petition for cancellation of bail has been preferred on behalf of the prosecution.

5. Learned Public Prosecutor, Mr. S. Shanmugavelayudham appearing for the State submitted that the order passed by the learned Sessions Judge is perverse and he has not taken into the gravity of the offence alleged to have been committed by the respondent. The respondent is involved in many other cases and there is prima facie materials as against the accused. In the order passed by the learned Sessions Judge, in paragraph 4, it was stated that totally there are 24 accused involved and out of 24 accused 7 accused were already released on bail and the petitioner was implicated on the basis of confession given by co-accused and he is no way connected with the offence and he is a close friend of the deceased and some amount was recovered from the mother of the deceased for not disclosing the name of this accused is not disclosed in the complaint and the respondent/accused was a handicapped and he cannot took any arms to attack the deceased. He further submitted that the above said statement is not correct.

6. He further contended that the accused paid money to the mother of the deceased for not disclosing the offence. The occurrence has taken place at the instance of the accused persons. The main overt act attributed against the accused is that he paid money to the mother of the deceased to conceal the fact of murder. He is also involved in 20 previous cases, out of which 19 cases were ended in acquittal, thus it is seen that this accused is such an influential and powerful person and no case can be proved against him as the witnesses were tampered and hence they will not support the

case of prosecution. The only one case which is pending against the accused is before the learned Judicial Magistrate, Alandur in P.R.C.No.13 of 2012 for the offence under Sections 302, 147, 148, 341, 120(b) r/w.149, 201 and 213 of IPC and in that case, now charge sheet has been filed and the case is ripe for trial. He further submitted that in the present case, charge has been filed and the case is now at committal stage in P.R.C.No.161 of 2014 and more witnesses are yet to be examined and some of the accused are still absconding. Hence, at this stage, if the accused is allowed to go on bail, he will not only tamper the evidence and witnesses, but may abscond which would result in hampering of investigation process and further there is possibility of retaliation against this accused by the rival group, as the murder took place on account of rivalry between two gangs. Without taking into account the material fact, the learned Sessions Judge ought not to have granted bail to the accused/respondent. He further submitted that the trial is going on and that if there is any perverse finding, the Court is empowered to set aside the said order and will send the accused to incarceration. Hence he prayed for cancellation of bail in order to keep the accused in judicial custody for some time.

7. Learned counsel Mr. Prabakaran, appearing for the petitioner would contend that the respondent/ accused is not an habitual offender. Each and every occasion, the police has registered number of cases against him in order to keep him in prison and number of trials have been conducted and all the cases were ended in acquittal, since the prosecution was not able to prove his guilt which shows that they are all put up cases falsely foisted against him by the police. In the present case, the entire family of the accused/respondent has been implicated on the ground that the petitioner has paid money to the mother of the deceased in order to not to disclose his name. In the order passed by the learned Sessions, the learned CPP stated that the petitioner was implicated in this case only on the ground of confession given by the co-accused. After the alleged occurrence, the accused surrendered before the Court and has been in judicial custody for 46 days and considering the same only, bail has been granted by the learned Sessions Judge.

8. He would further contend that though the impugned order states that there are 24 accused involved in the case, actually 30 accused are involved in this case and that the accused/respondent is a physically challenged person and that the allegation that he has given money to the mother of the deceased not to disclose the fact is incorrect and that he is an income tax assessee and he has already been in incarceration in 46 days. Hence after considering the entire material facts, the learned Sessions Judge has granted bail which cannot be said to be incorrect. That apart, he further contended that bail has been granted as early as on 15.5.2013 and that there is no iota of evidence or submission by the learned Public Prosecutor that the accused/respondent has got involved in

similar or any other incident for seeking cancelation of bail. Further he submitted that even though in the petition for cancellation of bail, it was mentioned that there are 20 previous cases were registered against the accused herein, at Serial No.10 and 19, there is a repetition of Crime number and that out of 19 cases, he has been acquitted in 18 cases. Further when the accused/respondent got acquitted in previous cases, the same could not be quoted as a bad antecedent to cancel the bail order dated 15.5.2015.

9. In support of his contention, he relied upon the judge of the Hon'ble Apex Court reported in (1995) 1 Supreme Court Cases 349 (Dolat Ram and others Vs. State of Haryana) and submitted that rejection of bail in non bailable offence and cancellation of bail already granted must be considered and dealt with on different basis and the 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. He further submitted that the alleged occurrence is said to have taken place in the year 2013 and bail application was made in 2013 and the same was granted on 15.5.2013. Now almost two years were over, during which time, the accused has not tried to tamper the witnesses and the police only defer to conduct investigation and filed charge sheet with a delay and now they are making allegations against the accused that he may tamper the witness and hamper the investigation.

11. He would further rely upon the decision of the Apex Court reported in (2014) 10 Supreme Court cases 754 (Abdul Basit Alias Raju and others Vs. Mohammed Abdul Kadir Chaudhary and another), wherein, it was held that the scope of power as to cancellation of bail and power of that court to review bail order and set aside the same on ground of it being illegal or contrary to law. It was further held that although the court granting bail can cancel the bail on ground of accused's misconduct or new adverse facts having surfaced after the grant of bail, however, in view of express bar contained in S.362 of Cr.P.C., it cannot review its order as to grant of bail on ground of it being unjustified, illegal or perverse and such challenge to bail order on ground of it being illegal or contrary to law can be determined only by the court superior to the Court which granted bail. In para 20 and 21 of the above decision, it was held as follows:

"20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged

the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect anyh situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court."

12. He would also rely upon the decision of the Apex Court reported in (2013) 7 Supreme Court cases, 452 (Central Bureau of Investigation Vs. V. Vijay Sai Reddy), wherein, in para 34, it is held as follows;

"34. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and the the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

By relying upon the above decision, he submitted that the accused has not mislead the court and after considering the facts and

circumstances of the case only, the learned Sessions Judge has granted bail to the accused.

13. In reply learned Public Prosecutor appearing for the State would submit that in 2013 the bail has been granted. The learned Sessions Judge has granted bail on two grounds viz, that the accused is a handicapped person and he is disability of handling a knife and in that stage he should not have committed murder and did not take in to account the allegation against this respondent/accused that he handed over money to the mother of the deceased for the purpose of concealing the fact. The learned Sessions Judge has not considered that one more previous case was pending against the accused and without considering the bad antecedents and nature of allegations of the accused the learned Sessions Judge has passed a perverse order granting him bail. Hence the finding rendered by the trial court is perverse.

14. He further submitted that if the accused is allowed to let out, he will absolve the evidence to be produced before the correct persons and wrong persons would be punished. Hence he seeks time frame to be fixed for completion of trial and prays for cancelation of bail.

15. Heard the rival submissions made on both sides and perused the materials available on record.

16. The facts narrated supra are not in dispute. Though I find the factual aspect that the petitioner was a handicapped and he was not capable of taking arms is incorrect statement and he has given money to the mother of the deceased, so that the incident may not be disclosed to any one, the incident has taken place as early as on 21.3.2013 and now nearly more than two years have gone up and at present the matter is pending before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and final report has been filed in PRC No.16 of 2014.

17. As rightly pointed out by the learned counsel for respondent, there is no evidence or allegation against the accused/respondent by the prosecution that the petitioner has attempted to tamper the evidence or witness or attempted to abscond and hamper the investigation process and that he has caused delay in the process of justice. When that being the case, even assuming for the sake of argument that there are one or two erroneous statement in the order which is passed on fact, might not going to affect the order and that the entire matter is going to be tried by the appropriate trial court.

18. Though I agree that the contention of learned counsel Mr. Prabakaran appearing for the accused that there is a express bar to cancel the bail order already granted unless it is specifically

established that it is illegal or contrary to law with reference of Section 362 of Cr.P.C.

19. Section 362 of Cr.P.C., is not a bar and it is only a bar only for the review of the order, but certainly, the aggrieved persons is entitled to file a petition to cancel the order granting bail. In the present case, more than two years have gone by and that in view of Section 439 of Cr.P.C, this Court has ample power to cancel the bail order granted by the court below. Section 439 of Cr.P.C reads as follows;

439. Special powers of High Court or Court of Session regarding bail.

(1) A High Court or Court of Session may direct—

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

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20. In view of Section 439(ii) of Cr.P.C., the Honourable Supreme Court held that the cancellation of bail involves the review of a decision made, but it should exercise sparingly by the Court of law, but nowhere it says the cancellation of bail petition cannot be filed. Since the accused/respondent has already in prison for 46 days and he was remanded for a period of 5 days for custodial interrogation, I find that there is no reason to cancel the order passed by the learned Sessions Judge as the matter is now pending in P.R.C.No.16 of 2014. Hence this petition is dismissed.

-s/d-

Assistant Registrar (CSIII)

dt:10/09/2015

True Copy

Sub-Assistant Registrar

msr

To,

1.The Inspector of Police,
R-7, K.K. Nagar Police Station,
Chennai.

2.The Public Prosecutor
High Court Madras

3.The Sessions Judge, Chennai

+1 cc to Mr.M.Baskar Advocate sr.48931/15

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