

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22.01.2016
Pronounced on : 05-02-2016

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Original Petition No. 24695, 24904, 24905 and 25119 of
2015

Crl.OP No. 24695 of 2015

State represented by
The Inspector of Police
Central Crime Branch, Team-IV, EDF-II
Vepery, Chennai - 7 .. Petitioner

Versus

Muthunarayanan .. Respondent/Accused (A1)

Crl.OP No. 24904 of 2015

State represented by
The Inspector of Police
Central Crime Branch, Team-IV, EDF-II
Vepery, Chennai - 7 .. Petitioner

Versus

Kamalesh Kumar Seth .. Respondent/Accused (A3)

Crl.OP No. 24905 of 2015

M/s. K.R.V. Properties Private Limited
represented by its Authorised Representative
Mr. H. Viswanathan
Son of Hariharan Venkataraman
No.1, First Floor
Bhagarathiammal Street
T. Nagar, Chennai - 600 017 .. Petitioner

Versus

1. State represented by
The Inspector of Police
Central Crime Branch, Team-IV, EDF-II
Vepery, Chennai - 7

2. D. Muthunarayanan
Crl.OP No. 25119 of 2015

.. Respondents

State represented by
The Inspector of Police
Central Crime Branch, Team-IV, EDF-II
Vepery, Chennai - 7

.. Petitioner

Versus

Muthunarayanan

.. Respondent

Crl.OP No. 24695 of 2015:- Criminal Original Petition filed under Section 439 (2) of Criminal Procedure Code praying to cancel the bail granted to the respondent/ Accused No.1 passed by the XI Metropolitan Magistrate Court, Saidapet, Chennai - 600 015 in Crl.MP No. 3955 of 2015 (common order passed in Crl.MP Nos. 3955 & 4019 of 2015) dated 28.09.2015

Crl.OP No. 24904 of 2015:- Criminal Original Petition filed under Section 439 (2) of Criminal Procedure Code praying to cancel the bail granted to the respondent/ Accused No.3 passed by the XI Metropolitan Magistrate Court, Saidapet, Chennai - 600 015 in Crl.MP No. 4019 of 2015 (common order passed in Crl.MP Nos. 3955 & 4019 of 2015) dated 28.09.2015

Crl.OP No. 24905 of 2015:- Criminal Original Petition filed under Section 439 (2) of Criminal Procedure Code praying to set aside and cancel the bail granted to the respondent No.2 by the learned XI Metropolitan Magistrate, Saidapet, Chennai in Crl.MP No. 3927 of 2015 dated 30.09.2015.

Crl.OP No. 25119 of 2015:- Criminal Original Petition filed under Section 439 (2) of Criminal Procedure Code praying to cancel the bail granted to the respondent/ accused No.1 by the XI Metropolitan Magistrate Court, Saidapet, Chennai vide Crl.MP No. 3927 of 2015 dated 30.09.2015.

For Petitioners

:Mr. Shanmuga Velayutham
Public Prosecutor
in Crl.OP Nos. 24695, 24904 & 25119 of 2015
for R1 in Crl.OP No. 24905 of 2015

Mr. A. Ramesh, Senior Counsel
for Mr. V.S. Senthil Kumar
in Crl.OP No. 24905 of 2015

For Respondent :Mr. B. Kumar, Senior Counsel
for Mr. A.D. Jagdish Chandra
for respondents in Crl.OP No. 24695, 24904
and 25119 of 2015
for R2 in Crl.OP No. 24905 of 2015

Mr. P.R. Raman for R3 in
Crl.OP No. 24904 of 2015
Government Advocate (Crl.side)

COMMON ORDER

Crl.OP Nos. 24904, 24695 and 25119 of 2015 have been filed by the prosecution seeking to cancel the bail granted by the learned XI Metropolitan Magistrate, Saidapet, Chennai in favour of the respective accused on 28.09.2015.

2. Crl.OP No. 24905 of 2015 has been filed by the defacto complainant seeking to cancel the bail granted to the first accused/second respondent herein on 30.09.2015.

3. Earlier, finding that a Court slip issued by this Court was misused by the counsel for the defacto complainant in this case, this Court directed that case to be posted before some other Judge. Since the very same counsel is appearing for the defacto complainant in this case also, before taking up the above Criminal Original Petitions, this Court ascertained from the counsel on either side as to whether they have any reservation to make their submissions in these cases before this Court. Counsel on either side have stated that they have no objection whatsoever and it was also recorded by this Court in the order dated 22.01.2016.

4. The prosecution has registered two cases which are the subject matter of these Criminal Original Petitions and they are (i) Crime No. 351 of 2015 on the file of Central Crime Branch, Chennai for the offences under Sections 406, 420, 506 (i) read with Section 120 (B) of IPC registered on 12.09.2015 and (ii) Crime No. 304 of 2015 for the offences punishable under Sections 406, 408, 420, 506 (i) read with 120 (b) of IPC. The complaint in Crime No. 351 of 2015 was given by Mr. Kiran Verghese Thomas and the other complaint in Crime No. 304 of 2015 was given by Mr. Dilip Vellodi representing M/s. K.R.V. Properties, petitioner in Crl.OP No. 24905 of 2015. Upon registration of the case, the accused were arrested and they have filed petitions seeking bail. The learned XI Metropolitan Magistrate, Saidapet, Chennai has granted bail to the accused in these two cases. Seeking to cancel the bail granted in favour of the accused, the present Criminal Original Petitions have been filed.

5. The learned Public Prosecutor appearing for the prosecution would mainly contend that first accused in Crime No.351 of 2015 viz., Muthunarayanan is the Director of a company called Sutherland Development Company, Chennai and he is holding the share of the company. A-2 in Crime No. 351 of 2015 is Venkataraman. A-3 in the case is Kamalesh Kumar Seth. According to the prosecution, the accused have colluded together and clandestinely entered into an agreement to purchase the land situated in Perumbakkam Village, Kancheepuram District measuring about 25 acres. With such common intention, Venkataraman/A-2 has entered into an agreement dated 21.05.2009 to purchase such land. Even though amount belonged to the company was transferred for the purpose of purchase of the land, the amount was transferred by A-1 to the account of A-2 even without purchasing the land. According to the prosecution, by such clandestine transaction, the company has sustained loss to the tune of Rs.32.45 Crores. Based on a complaint given by Mr. Kiran Verghese Thomas, the case in Crime No. 351 of 2015 came to be registered. On registration of the case, A-1 and A-3 were arrested and remanded to judicial custody and the court below has also granted police custody of A-1 for 3 days and A-3 for 2 days. During the course of such police custody, the confession statement of A-1 and A-3 were recorded by the investigation officer. The learned Public Prosecutor would contend that when the investigation was in crucial stage, the court below granted bail in favour of A-1 and A-3 without any valid reasons. According to the Public Prosecutor, the investigation officer has to examine several witness and to record their statement. The bank accounts are also required to be verified in this case and they are in various level. Furthermore, A-2 in this case is absconding and he has to be apprehended. The learned Public Prosecutor also would contend that there is every possibility of the accused 1 and 3 tampering the records or threatening the witnesses as they are highly influential persons. It is further contended by the learned Public Prosecutor that the accused 1 and 3 may not cooperate with the investigation agency and therefore, the bail granted in their favour has to be cancelled.

6. The State has filed an application in CrI.O.P.No.25119 of 2015 for cancellation of bail in respect of the bail granted in Crime No.304 of 2015 under Sections 406, 408, 420 and 506 (i) r/w. 120(b) IPC which was registered on 01.08.2015 at 14.15 hours. According to the prosecution, one K.S.Kumar who is the authorised signatory of M/s.K.R.V.Properties Pvt. Ltd., lodged a complaint against the accused Muthunarayanan, Gopinath, Venkataraman and Kamaleshkumar Seth alleging that A1 is one of the Directors of the said company and A2 have been entrusted with the task of purchasing 20 acres of land for the company. A1 along with A2 have identified 19.575 acres of land situated at Perumbakkam Village including a piece of land to an extent of 2.15 acres which is now in issue. In the year 2007, the

respondent/accused A1 and A2 purchased the said 2.15 acres through A3 and A4 viz., Venkatramanan and Kamaleshkumar Seth for an amount of Rs.3,48,34,200/- and the same was registered in favour of M/s.K.R.V. Properties Pvt., Ltd. Later, they have all colluded with each other and sold the said 2.15 acres of land to one M/s.Varun Manian Co., without the knowledge of M/s.K.R.V. Properties Pvt., Ltd., for a meagre sale consideration of Rs.2,57,00,000/-. Apart from this, A1 and A2 have received a sum of Rs.1,77,00,000/- from M/s. Varun Maninan Co., as commission for the sale and retained the same with them. Besides, they diverted a sum of Rs.2,54,40,000/- from the sale consideration to Venkatramanan (A3) through three cheques for procuring alternative lands in the name of the company, but till date, the accused A3 and A4 have neither procured the land nor returned the said amount to the company. Thereby all the accused persons caused wrongful loss to the complainant's company to the tune of Rs.5,23,00,000/-. Based on the complaint, a case in Crime No.304 of 2015 was registered in which bail has been granted. The State has filed the present Criminal Original Petition on the ground that some of the witnesses have to be examined; that some more relevant documents have to be collected from various levels including from the banks concerned and that the remaining absconding accused (A3) has to be apprehended and the amount has to be recovered.

7. The learned Senior counsel appearing for the petitioner in CrI.OP No. 24905 of 2015, who is the defacto complainant in Crime No.351 of 2015, would mainly contend that the learned Metropolitan Magistrate, Saidapet has granted bail to the first accused in Crime No. 351 of 2015 i.e., Muthunarayanan without properly appreciating the materials placed on record. According to the learned Senior counsel for the petitioner, the learned Metropolitan Magistrate was carried away by misplaced sympathy on the sole ground that the first accused is an Auditor by profession. The learned senior counsel would mainly contend that the prosecution has produced a compact disc (CD) to substantiate the allegations against the accused, however, the learned XI Metropolitan Magistrate, Saidapet, Chennai has recorded as though the prosecution has not produced any material records. This, according to the learned senior counsel, would clearly indicate that the learned XI Metropolitan Magistrate, Chennai has, without application of mind and without properly appreciating the material records placed, has granted bail to the accused. In this context, the learned senior counsel appearing for the petitioner in CrI.OP No. 24905 of 2015 relied on the decision of the Honourable Supreme Court reported in the case of (Central Bureau of Investigation vs. V. Vijay Sai Reddy) 2013 (7) Supreme Court Cases 452 and (Central Bureau of Investigation, Hyderabad vs. Subramani Gopalakrishnan and another) 2011 (5) SCC 296 to contend that when bail is granted

by the court below without taking into account relevant factors or by taking into account irrelevant materials, bail granted in favour of the accused is liable to be cancelled.

8. Mr. B. Kumar, learned Senior counsel appearing for A-1 in both the cases namely Muthunarayanan would contend the registration of the criminal cases against the first accused is nothing short of abuse of process of law. A civil dispute was given a criminal colour by the defacto complainant to wreck personal vendatta against the accused. The learned senior counsel for the first accused would specifically bring to the notice of this Court that the first accused is a chartered accountant of M/s. Lalah Spices which was originally owned by Late. Dowlatram Seth, father of Kamalesh Kumar Seth (A-3) and the father of defacto complainant Dilip R. Vellodi. Further, A-3 has married the daughter of Mr. Dowlatram. Thus, the family of the defacto complainant and accused have enjoyed good relationship. It is further submitted that A-3 Kamalesh Kumar Seth along with A-2 Venkataraman has started a company in the name of M/s. K.R.V. Properties Private Limited and they have purchased 19.2 acres of land in Perumbakkam during 2006-2012 in the name of their personal company called M/s. K.R.V. Properties Limited in which the defacto complainant Dilip R. Vellodi was one of the Directors. According to the learned senior counsel for the first accused, since the lands purchased was not contiguous, A-3 decided to sell the same and to get the land adjoining or contiguous so that it can be jointly developed. According to the learned senior counsel, the firm was founded for the purpose of purchasing the lands. Even the purchase of the lands were shown in the balance sheet of the company for the years 2011-2012, 2012-2013 and 2013-2014. In the balance sheet, the defacto complainant himself has signed and all the payments have been made through cheques directly to the company of A-3. In the other case, 11 acres of land was purchased by the company called Sutherland Development Company Pvt Ltd., on the instructions given by Dilip R. Vellodi (defacto complainant) and Venkataraman, one of the accused and this is also reflected in the balance sheet of Sutherland Company. In the year 2013, A-1 resigned from the company and a customary resolution was also passed in the board meeting. The defacto complainant Vellodi was also given a share in the American company. While so, the first accused has filed a case in Case: 6:15-cv-06165 before the United States Western District Court, New York against the defacto complainant. After filing the said case before the American Court, in order to give pressure to the first accused to withdraw the case, the present frivolous complaint has been lodged. It is further stated that the prosecution has collected all the required material documents, recorded the confession of the accused when they were given police custody. The first accused was also given permission by the trial Court to go to America to prosecute the suit filed before the American Court.

The first accused is also complying with the conditions imposed on him while granting bail in his favour. Further, the investigating agency has also filed the charge sheet in the criminal case. Merely due to personal vendatta, the defacto complainant has given the instant complaint. In fact, on the basis of the first complaint, the first accused herein was arrested. In order to ensure that the first accused should not come out on bail, the defacto complainant has prepared the second complaint undated and he has obtained certified copy of the said complaint. In any event, there is no grounds made out to cancel the bail granted in favour of the first accused.

9. In support of his contention, the learned senior counsel for first accused relied on the decision in (Shiv Kumar vs. Hukam Chand and another) (1999) 7 Supreme Court Cases 467 to contend that the duty of the Public Prosecutor is to act fairly and not merely to obtain conviction by any means fair or foul. If the accused is entitled to any legitimate benefit, the Public Prosecutor should make it available to him or inform the Court even if the defence counsel overlooked it. In that case, the Honourable Supreme Court held in para No.18 as follows:-

"18. Equally forceful is the observation of Bhimasankaran, J for the Division Bench in Medichetty Ramakishtaiah, which is worthy of quotation here:-

"Unless, therefore, the control of the Public Prosecutor is there, the prosecution by a pleader for a private party may degenerate into a legalised means for wrecking private vengeance. The prosecution, instead of being a fair and dispassionate presentation of the facts of the case for the determination of the Court, would be transformed into a battle between two parties in which one was trying to get better of the other, by whatever means available. It is true that in every case, there is the overall control of the court in regard to the conduct of the case by either party. But it cannot extend to the point of ensuring that in all matters one party is fair to the other."

10. By relying on this decision, the learned Senior counsel for the first accused would contend that in the present case, the prosecution has filed the petition seeking for cancellation of the bail granted knowing fully that there is no legal grounds made available for such cancellation. This is more so that even according to the prosecution, the first accused has not violated any of the conditions imposed by the trial Court while granting bail.

11. The learned senior counsel for A-1 also brought to the notice of this Court the counter filed by the accused and contend that the first accused is a respectable person in the locality. The company also placed on record the valuable services rendered by him. Since the first accused has filed a suit before the American Court against the defacto complaint, a false complaint has been made and a story has been web as if the defacto complainant is not aware of any of the affairs that taken place in the company. The complaint is bald and generic and there is no specific overtact attributed against the first accused. The legal principles and parameters laid down by the Honourable Supreme Court as well as this Court have not been made out by the prosecution warranting cancellation of the bail granted in favour of the first accused.

12. Mr. P.R. Raman, learned counsel appearing for Kamalesh Kumar Seth, one of the accused, would contend that he was granded statutory bail by the trial Court in one case. According to the learned counsel, Kamalesh Kumar Seth was arrested on 04.08.2015 in Crime No. 304 of 2015. The second complaint in Crime No. 351 of 2015 was registered only on 12.09.2015 and he was remanded on 15.09.2015 in that case. The prosecution was also given police custody of the accused between 22.09.2015 and 25.09.2015 and on 30.09.2015. Later, he was granted bail after suffering incarceration for a period of 57 days. As far as the case of the prosecution is concerned, Sutherland Company is a company registered in India and it is not having any foreign contribution. There is no public money involved in the company. The accused and the defacto complainant are related to each other. However, due to personal vendatta, the instant complaints have been foisted. There is no reasons assigned by the defacto complainant or the prosecution to cancel the bail granted to the accused and he prayed for dismissal of the Criminal Original Petitions. The learned counsel also placed reliance on the decision reported in (Narendra K. Amin (Dr) vs. State of Gujarat and another) (2008) 13 SCC 584 to contend that court dealing with application for cancellation has to take into account whether irrelevant material of substantial nature was taken into account or relevant material omitted from consideration, while granting bail. In the present case, the trial court has passed a reasoned order while granting bail. Further, there are arbitration proceedings initiated between the parties. While so, the present complaint has been given only to settle personal score. The allegations raised by the prosecution that there is a threat to the witnesses is merely raised without any substance. The accused has not violated any one of the conditions imposed on him while granting bail. Therefore, he prayed for dismissing the applications.

13. I heard the counsel on either side and perused the materials placed on record. On careful perusal of the petitions filed for cancellation of the bail, counter affidavits filed by the accused and the order passed by the court below, it is clear that the parties to the dispute are close relatives. Unfortunately, this has not been stated at all in the petition seeking cancellation of bail. Further, I find force in the submission of the learned Senior counsel appearing for the A-1 that after A-1 filed the complaint before the American Court, in order to put pressure on him, the present two complaints have been registered. I also find force in his submission that soon after the arrest of the accused, in order to ensure that the accused are not let out on bail, a second complaint was prepared and kept ready without any date. Further, as pointed out by the learned counsel Mr. V.P. Raman, arbitration proceedings have been initiated and they are pending. Therefore, I find that the complaints have been given only to wreck personal vengeance against each other. Similar is the petition filed for cancellation of bail granted to the accused. There are no grounds made out for cancelling the bail granted to the accused. It is an admitted fact that the accused complied with the conditions imposed on them while granting bail in their favour.

14. Mr. Ramesh, learned senior counsel appearing for the defacto complainant brought to the notice of this Court that the trial court failed to take note of the materials placed on record and it resulted in miscarriage of justice. I had gone through the order passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai. I find that the learned Magistrate, while granting bail in favour of the accused, has taken note of all the attendant circumstances. I also find that the learned Magistrate has not omitted to consider relevant materials or considered irrelevant materials while granting bail. The learned Magistrate has exercised his discretion to grant bail properly, especially when the accused were given police custody and they were also in jail for a considerable length of time. As regards the compact disc (CD) produced on behalf of the prosecution, I am of the view that the learned Magistrate is not required to consider the same at the time of granting bail in favour of the accused and it can be considered only at the time of trial. The learned Magistrate has satisfied as to the existence of a prima facie case for grant of bail in favour of the accused and accordingly granted bail in their favour. Such order granting bail in favour of the accused cannot be termed as perverse. The court below has passed a detailed order while granting bail in favour of the accused. Therefore, the learned Magistrate is justified in granting bail in favour of the accused and it needs no interference by this Court.

15. The averments raised by the prosecution that the accused may flee away and securing their presence will be difficult is made without any substance. Similarly, the prosecution has contended that the investigation officer is required to collect lot of documents to strengthen their case is unfounded. As rightly pointed out by Mr. B. Kumar, learned senior counsel for first accused, all the payments have been made in the present case only through cheques and therefore the question of the accused tampering those records will not arise.

16. Even in the decision reported in (Central Bureau of Investigation, Hyderabad vs. Subramani Gopalakrishnan and another) 2011 (5) SCC 296 relied on by the learned Senior counsel for the petitioner in Crl.OP No. 24905 of 2015, it was categorically held by the Honourable Supreme Court that bail granted to an accused can be cancelled if he or she interfered 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 concessions granted by the Court in any manner. Ultimately, it was held in the very same decision that a bail granted in favour of an accused 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 concessions of bail during trial. In the present case, there is no supervening circumstances made out warranting this Court to cancel the bail granted in favour of the accused.

17. It is well settled that the object underlying the cancellation of bail is to ensure fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence. It hardly requires to be stated that once a person is released on bail, it shall be cancelled only if there are materials to conclude that the accused in order to get away from the clutches of law, had indulged in various activities like tampering with the prosecution witnesses, threatening the family members of the defacto complainant and also create problems of law and order situation. In the present case, there is no such situation exists. Even according to the prosecution, the accused subject themselves to interrogation as and when required and they have not indulged in any other criminal activities. Further, the accused have not violated any one of the conditions granted by the trial court while releasing them on bail. The various principles enunciated by the Honourable Supreme Court as well as this Court for cancelling the bail granted in favour of an accused has not been made out by the prosecution or by the defacto complainant in this case. In such circumstances, I see no no reason to interfere with the order passed by the court below.

18. Accordingly, the order passed by the court below granting bail in favour of the accused are affirmed. All the Criminal Original Petitions are dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The XI Metropolitan Magistrate,
Saidapet, Chennai - 600 015.
 - 2.-Do- thro the Chief Metropolitan Magistrate,
Chennai.
 - 3.The Inspector of Police,
Central Crime Branch, Team IV EDF-11,
Veppery, Chennai-7.
 - 4.The Public Prosecutor,
High Court, Madras.
- + 3 ccs to Mr.A.D.Jagdish Chandra, Advocate Sr 1767, 1766, 1768
18/4/16)

Crl.OP No. 24695, 24904, 24905
and 25119 of 2015

rsy(CO)
srg(14/03/2016)

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