

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

CrI.O.P.No.28041 of 2015

Reserved on 15.12.2015

S.Venkataramanan ... Petitioner

Vs

1. State, rep. By
Inspector of Police,
Central Crime Branch,
Chennai

2. D.Pradeepkumar ... Respondents

Prayer: This Petition is filed under Section 438 Cr.P.C., praying to enlarge the petitioner on bail in the event of his arrest in connection with Crime No.298 of 2015 on the file of the respondent police.

For Petitioner : Mr.R.Shanmugha Sundaram, SC
for Mr.L.Baskaran

For Respondents : Mr.C.Emalias,
Addl.Public Prosecutor for R1
Mr.AR.L.Sundaresan, SC for
Mr.P.Gnana Sekaran for R2

ORDER

Apprehending arrest at the hands of the first respondent police in connection with Crime No.298 of 2015, for the alleged offences punishable under Sections 107, 109, 120(A), 120(B), 405, 415, 420, 294 (B), 323 and 506(ii) IPC, the petitioner has come forward with the present petition, seeking anticipatory bail.

2. This is the second bail petition moved by the petitioner. There are three accused involved in this case. The petitioner is A1. The case of the prosecution is that the defacto complainant D.Pradeep Kumar was in possession of 1.80

crores. A2 introduced the petitioner as a real estate broker, who in turn, advised the defacto complainant to invest money for purchasing the landed property to get good returns by developing the plots therein and both of the accused assured him that they would procure 35 acres of land. Believing their words, the defacto complainant entrusted a sum of Rs.1.70 crores with the petitioner and A2 on 18.1.2010. The petitioner promised him to buy about 50 acres of land in Karunilam village, Chengalpattu District in his name. But the petitioner has purchased only 1.87 acres of land for a sum of Rs.9.35 lakhs and for the balance amount, he purchased the land in his name. Thereafter, the petitioner plotted out the said property and sold out the same and took the money for himself and thus, the accused cheated the defacto complainant.

3. The learned senior counsel appearing for the petitioner would submit that the transaction between the petitioner and the defacto complainant is purely civil in nature, but by giving criminal colour, the present case was registered. According to the learned senior counsel, the real fact is that the defacto complainant purchased 1.87 acres in S.No.152 of Karunilam village, Chengalpattu District out of total extent of 3.25 acres on 18.1.2010 from the vendors, viz., Mr.Erusan and others and the balance 1.38 acres was left out with the land owners and subsequently, the entire extent of Ac.3.25 cents was made into a layout with 39 plots, of which, the defacto complainant was entitled to only 24 plots corresponding to 1.87 acres purchased by him. The learned senior counsel would further submit that the petitioner has not received any amount muchless Rs.1.70 crores and in fact, the defacto complainant has executed GPA in favour of the petitioner vide Document No.36/2010 for dealing with the above said land. Apart from that, there were other transactions between the defacto complainant and the petitioner. Based on the said GPA, the petitioner also invested huge amount for developing and marketing and a layout was made with 39 plots, of which, 33 plots were sold and remaining 6 plots are yet to be sold and the proceeds from the sale of plots pertaining to 1.87 acres has to be distributed between the petitioner and the defacto complainant at the ratio of 60:40, but the petitioner had realized 183.75 lakhs and requested the defacto complainant for final settlement after deducting incidental charges. Instead of settling the accounts, the defacto complainant was evading and demanding the entire amount and went to the extent of harassing and threatening the petitioner, which prompted the petitioner to file a civil suit against the defacto complainant before the City Civil Court. While so, the defacto complainant lodged a complaint with false allegations. The learned senior counsel also submitted that the petitioner issued a legal notice to the defacto complainant on 18.9.2014 expressing his readiness to produce statement of accounts and to share the profit at the ratio 60:40 as per

agreed terms, but the defacto complainant issued reply notice on 28.09.2014, wherein, there were absolutely no allegations to the effect that as if he advanced Rs.1.70 crores to the petitioner, out of which, the petitioner purchased only to an extent of 1.87 cents, etc. It is submitted by the learned senior counsel that at the time of earlier bail application, these facts, viz., pendency of civil suit, exchange of notices between the parties and no averment of the above said allegations against the petitioner in reply notice, etc., were not brought before this Court and therefore, if these facts were brought to the notice of this Court, the earlier bail application would not have been dismissed by this Court. With these submissions, the learned senior counsel sought for grant of bail.

4. On the other hand, the learned counsel appearing for the defacto complainant/intervenor, while opposing the petition, would submit that even at the time of earlier bail petition, all the relevant factors were brought to the notice of this Court by way of advancing detailed arguments and on consideration of the facts that the petitioner received a sum of Rs.1.70 crores from the defacto complainant, purchased only 1.87 acres of land for Rs.9.35 lakhs in the name of the defacto complainant and for the balance amount, he purchased land in his name, etc., this Court has rightly rejected the bail. Therefore, the present bail petition cannot be entertained.

5. At this juncture, the learned senior counsel would submit that since State is prosecuting the case, the defacto complainant being third party, is not entitled to intervene or oppose the bail petition as it would give rise to confusion and chaos. In support of his submission, the learned senior counsel relied upon a decision of this Court reported in "1986 SCC OnLine Mad 51=1986 Criminal Law Journal 1540 (P.S.Saravanabhavanandam and another versus S.Murugaiyyan and another)".

6. The learned counsel for the intervenor would submit that Section 301 Cr.P.C. is not a bar for entertaining an application filed by the intervenor to intervene in an application filed under Section 437 or 438 Cr.P.C. and hence, being intervenor, the defacto complainant is entitled to intervene and oppose the bail application filed by the accused. He relied upon a decision of this Court reported in "(2010) 3 MLJ (Cr1.) 369 (Sathyavani Ponrani versus Samuel Raj and another)".

7. The learned Additional Public Prosecutor, by filing a detailed counter, has stoutly objected the bail petition, stating that the petitioner is an habitual offender and already, he was involved in two similar cases which were registered in Crime No.298 of 2015 and 351 of 2015 on the file of Central Crime Branch, Chennai. He would submit that the investigation reveals that under the guise of cheating the persons, the

petitioner used to assure falsely that a large extent of lands would be procured for them and after making them to believe and after extracting the money, he used to cheat them. It is also submitted that earnest efforts were taken to arrest the petitioner and for the purpose of investigation, custodial interrogation is very much required. Hence, the learned Additional Public Prosecutor sought for dismissal of the petition.

8. Heard the learned senior counsel for the petitioner and the learned counsel for the intervenor and learned Additional Public Prosecutor for the State and perused the entire materials available on record.

9. At the outset, it is to be noted that the consideration of the bail application is the discretion of the Court concerned and such discretion is a judicial discretion and when exercising such discretion, the Court has to consider the materials before it, which can be produced by the prosecution, accused as well as the victim/defacto complainant. There is no straight jacket formula to deny the opportunity to the intervenor to place the relevant material facts before the Court for its consideration and whether to entertain the intervenor or not is purely dependent on the discretion of the Court based on facts of each case. As far as the present case is concerned, it is to be noted that the defacto complainant was already permitted to intervene by this Court while dealing with the earlier bail petition since there was no objection on behalf of the petitioner/accused. Therefore, now I do not find any reasonable ground to deny the opportunity to the intervenor.

10. As regards the merit of the petition is concerned, the petitioner has filed this second bail petition on the ground that there is change in circumstances since the relevant facts, viz., about the pendency of the civil suit, exchange of notices between the parties and no averment of allegations in reply notice, dated 28.9.2014 against the petitioner to the effect that he advanced Rs.1.70 crores to the petitioner, out of which, the petitioner purchased only to the extent of 1.87, etc., were not brought to the notice of this Court at the time of earlier bail petition. Therefore, according to the petitioner, by considering the factual aspects of the case which were omitted to be brought to the notice of this Court on earlier occasion, the present petition has to be considered. But, I am not inclined to appreciate this submission. In my considered opinion, such submissions cannot serve as a ground for grant of bail since there is absolutely no change in circumstances. The actual test for entertaining the second anticipatory bail application is that whether there is any change in factual situation or in law which requires the earlier view being interfered with. It is not the test to be applied that had certain facts which were already available at the time of hearing the earlier bail application been brought to the

knowledge of this Court, the bail could have been granted on the earlier occasion itself. Therefore, in my considered opinion, if a fact, which was not in existence at the time of dismissing the earlier application subsequently comes into existence, then such a fact can alone be considered as "change in circumstance". In the present case, the facts, viz., the pendency of the civil suit, exchange of notices between the parties and no averment of allegations in reply notice, dated 28.9.2014 against the petitioner to the effect that he advanced Rs.1.70 crores to the petitioner, out of which, the petitioner purchased only to the extent of 1.87, etc. were in fact, already existing even at the time of dismissing the earlier bail petition and therefore, such facts cannot be considered as 'change in circumstances' so as to entertain the present petition. In this regard, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in "Kalyan Chandra Sarkar, etc. versus Rajesh Ranjan @ Pappu Yadav and another" (2005) 1 CTC 783" wherein, it has been held as under in para 18 to 20.

"18. In that process a person whose application for enlargement on bail once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the Court can do so.

"19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceedings, still the Courts are bound by the doctrine of judicial discipline having regarding to the hierarchical system prevailing in our country. The findings of a higher Court or a coordinate Bench must receive serious consideration at the hands of the Court entertaining a bail application at a large stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

"20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have

been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by Courts earlier including the Apex Court of the country".

The principle laid down in the said judgment is squarely applicable to the facts of the case on hand. Having regard to the facts and circumstances of the case, I am of the view, as there is no change in circumstances, the petition is liable to be dismissed and accordingly, dismissed. However, the petitioner is at liberty to surrender himself before the learned Judicial Magistrate concerned and file a petition for grant of regular bail. In such event, the concerned Judicial Magistrate is directed to entertain the said petition and dispose of the same on merits.

-s/d-

Assistant Registrar(co)

True Copy

Sub-Assistant Registrar

To,

1.The Metropolitan Magistrate No.XI
Saidapet Chennai

2.Thro The Chief Metropolitan Magistrate
Chennai

3.The Inspector of Police
Central Crime Prosecutor Chennai

4.The Public Prosecutor, High Court
Madras

+1 cc to Mr.A.Gopinath Advocate sr.764

+3 ccs to Mr.P.Gnanasekaran Advocate sr.2943

Cr1OP No.28041 of 2015

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