

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-03-2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.O.P.No.5984 of 2015

Savani Carrying Pvt. Ltd.

Rep. By its General Manager (South)

S.Surendran,

No.106, Coral Merchant Street,

Chennai 600 001.

... Petitioner/Defacto
complainant

Vs.

1. State rep. By Inspector of Police,
District Crime branch,
Vellore,
Vellore District

2. State rep. By the Inspector of Police,
Ranipet Police Station,
Ranipet, Vellore District. ... Respondents/Respondents

3. M.Mageswaran
S/o Manivannan
No.6, Ganapathy Nagar, Tajpura,
Arcot, Vellore District. ... Respondent/Petitioner

This Criminal Original petition is filed under Section 439(2) of Cr.P.C., to cancel the anticipatory bail granted to the third respondent in Crl.O.P.No.19088 of 2014 on 20.8.2014, on the file of this Hon'ble Court.

For Petitioner : Mr.Sai Bharath & Ilan

For Respondent No.3 : Mr.A.R.L.Sundaresan
Senior counsel for
Mr.N.Umapathi

O R D E R

The defacto complainant in Cr.No.29 of 2014 seeks cancellation of anticipatory bail granted by this Court to the third respondent in Crl.O.P.No.19088 of 2014 on 20.8.2014.

2. In pursuance of the order passed by this Court stated supra, the third respondent/accused had executed bail bond. Now, the defacto complainant approached this Court for cancellation of the same on the ground of deception alleged to have been practised by the third respondent in obtaining anticipatory bail.

3. Petitioner contends that in the second anticipatory bail petition the third respondent has furnished incorrect Crl.O.P. No of his previous anticipatory bail petition. Thus, the petitioner, who had appeared as intervenor in the said petition could not file his intervening petition in the second anticipatory bail petition.

4. On the other hand, the learned counsel for the accused drawn our attention to the phrase "This is the 2nd anticipatory bail petition filed by the petitioner" in the second anticipatory bail petition. He do admit that mistake had crept in in mentioning the no. of the previous Crl.O.P. Instead of Crl.O.P.No.14451 of 2014, it was mistakenly mentioned as Crl.O.P.No.1445 of 2014. However, the petitioner magnifies this mole a big mountain.

5. I have anxiously considered the rival submissions and perused the materials on record.

6. Cancellation of bail/anticipatory bail must be upon establishing a valid ground. There must be acceptable supporting materials also. Bail/anticipatory bail orders are to be tested on the anvil of Article 21 of the Constitution of India. By granting bail/anticipatory bail, liberty of a person is secured.

7. Actually, there is no word 'cancellation' in Code of Criminal Procedure. The word employed is a direction for arrest. Therefore, the Court must also keep in mind the principles governing Section 41 of Cr.P.C. and also the newly added Section 41-A of Cr.P.C.

8. Arrest is always opposed to Civil liberty. Nobody like to be arrested. There is no pride in being arrested. So much attachment is given to the concept of liberty of the

individual. So, so much seriousness is required in taking away the precious personal liberty of a person.

9. Now, in this case, there is no allegation that the third respondent/accused has interfered with the work of the investigation agency nor he indulged in committing similar offence nor is any allegation that he will flee away from justice or country. But the stand of the petitioner is fraud stated to have been practised by the accused while obtaining anticipatory bail.

10. Earlier, the anticipatory bail petition in Crl.O.P.No.14451 of 2014 filed by the accused was dismissed by this Court on 24.6.2014. However, in the second anticipatory bail petition in Crl.O.P.No.19088 of 2014 the Crl.O.P. No. of the previous anticipatory bail petition has been wrongly mentioned as Crl.O.P.No.1445 of 2014. It is submitted by the learned counsel for the petitioner that it is a typographical error. It may be true or it may not be true. Let us not search a black cat in a dark room.

11. The Court must be very serious and meticulous in recalling bail/anticipatory bail orders. Practising fraud in Criminal Courts more particularly in getting bail/anticipatory bail orders is a very serious matter as it will go to shake the very integrity of the lawyer and it will also bring a bad name for him.

12. The second anticipatory bail petition has been signed by the counsel for the accused. The question is on the mistake in mentioning the Crl.O.P.no. whether the Court can recall the anticipatory bail order granted in favour of the accused. Recalling of the bail/anticipatory bail order will have disastrous consequences. It will enable the police to arrest the accused. We cannot straightaway make the accused responsible for the said mistake.

13. The submission of the learned counsel for the defacto complainant that by not furnishing the correct number of the earlier anticipatory bail petition he was prevented from intervening in the second anticipatory bail petition is farfetched.

14. No valid ground has been established to cancel the anticipatory bail granted to the accused.

15. Thus, this petition is dismissed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

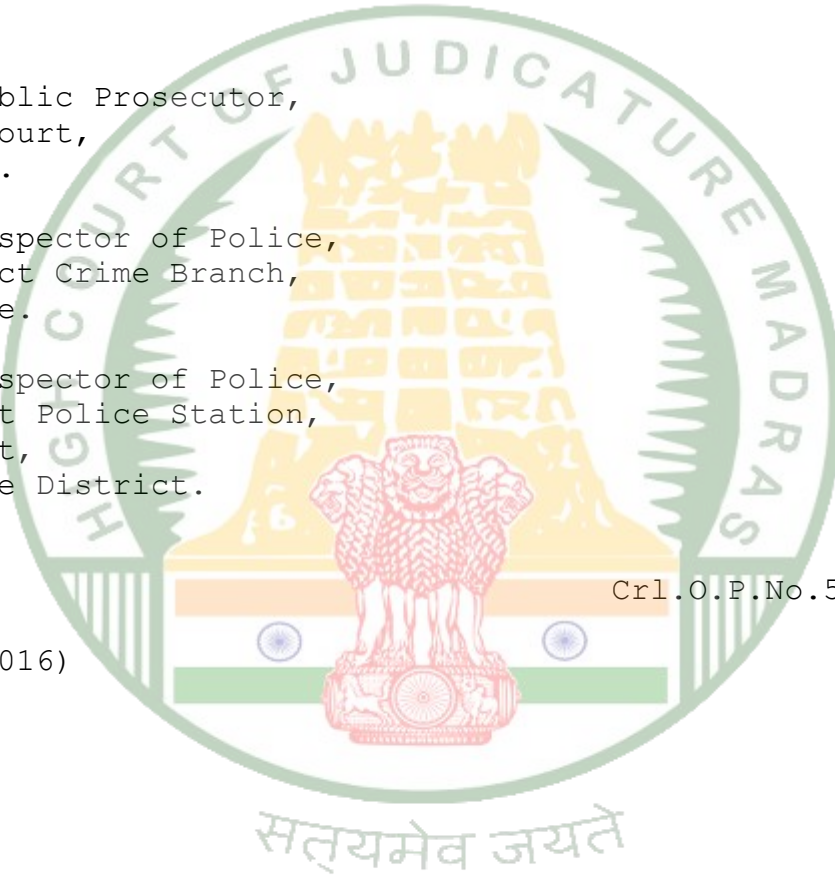
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To

1. The Public Prosecutor,
High Court,
Madras.
2. The Inspector of Police,
District Crime Branch,
Vellore.
3. The Inspector of Police,
Ranipet Police Station,
Ranipet,
Vellore District.

SCD(CO)
CA(23/03/2016)

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