

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.09.2016

PRONOUNCED ON: 05.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.20157 of 2016 & Crl.M.P. No.9443 of 2016

Ravikumar

Petitioner/Respondent/Petitioner

vs.

The State
represented by
the Station House Officer
D'Nagar Police
Puducherry

Respondent/Respondent/Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order dated 29.08.2016 in Crl.M.P. No.1212 of 2016 in Crl.M.P. No.2309 of 2016 on the file of the Principal Sessions Judge at Puducherry.

For petitioner

Mr. V. Raghavachari

For respondent

Mr. M.R. Thangavel

Addl. Public Prosecutor - Puducherry

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 29.08.2016 passed in Crl.M.P. No.1212 of 2016 in Crl.M.P. No.2309 of 2016 on the file of the Principal Sessions Court at Puducherry.

2 A vignette of the facts leading to the filing of this Criminal Original Petition is as under:

2.1 Based on reliable information, the Sub Inspector of Police, D'Nagar Police Station and his team intercepted one Balagopalan and Senthilkumar around 17.30 hours on 07.07.2016 near Government General Hospital, Kadhirkamam, Pudhucherry and they were found in possession of lottery tickets of other States. They were arrested on the same day and the lottery

tickets in their possession were seized and thereafter, a case in Crime No.136 of 2016 was registered under Sections 186, 353 and 506(II) IPC read with Section 34 IPC and Section 7(iii) read with Section 5 of the Lotteries (Regulation) Act, 1998.

2.2 The allegation against them was that they were selling lottery tickets of other States in Pudhucherry in violation of the Lotteries (Regulation) Act, 1998 and when the police officers attempted to apprehend them, they deterred the police from discharging their duty and hence, the FIR.

2.3 During the course of investigation, startling facts came to light, i.e., the accused were selling forged lottery tickets of other States in Pudhucherry. In the light of this revelation, the FIR was altered to offences under Sections 186, 353, 506(II) IPC read with Section 34 and 109 IPC and Section 7 (iii) read with Section 5 of the Lotteries (Regulation) Act, 1998.

2.4 The police arrested Ravikumar (A3) at 22.30 hours on 07.07.2016 and other accused on the same day at different times and seized the following items via the facts discovered under Section 27 of the Evidence Act:

- Other State lottery tickets - 250 nos.
- Old white colour printer - 2 nos.
- Black colour NGX bill printer machine - 1 no.
- Result papers - 8 sheets
- Plain colour papers (green, yellow and pink) - 500 sheets and
- Cash - Rs.21,200/-

from Rasi Agencies, I Cross, No.6, Adhiparasakthi Nagar, Thengaithittu, Puducherry, which premises belongs to Ravikumar (A3). Likewise, from the premises of other accused, several incriminating materials, including laptops, printers, etc., were seized.

2.5 Ravikumar (A3) was produced before the Judicial Magistrate No.1, Puducherry and was remanded to custody on 08.07.2016. His two earlier bail applications were dismissed by the Judicial Magistrate No.1, Pudhucherry. He filed the third bail application in CrI.M.P. No.2309 of 2016 before the Judicial Magistrate No.1, Pudhucherry on 27.07.2016. On 29.07.2016, the respondent police filed their strong objection for the release of Ravikumar (A3) on the following grounds:

1. The case is under investigation.

2. Some more witnesses have to be examined.
3. On 13.07.2016, the bail petition filed by the petitioner/accused vide Cr.M.P. Nos.2145/16 and on 26.07.2016 the bail petition vide No.2187/2016 were dismissed by this Hon'ble Court.
4. The offence committed by the accused person is an organised crime and large section of public are affected especially poor people
5. The involvement of other accused persons to be identified, who are all behind their big racket.
6. Source of supply of lottery tickets to be cracked down.
7. The transaction of fraudulent money of the accused persons to be unearthed.
8. The offences committed by the accused along with other accused persons are grave in nature. Deep rooted and sustained investigation is much required to bring all the facts to light in this case.
9. If the accused person is released on bail, he may influence the witnesses and other persons, who have come forward to clear their menace.
10. If the petitioner/accused person is released on bail, he will hamper the investigation by way of threatening and also he may abscond, in order to avoid court proceedings.
11. If the petitioner/accused person is released on bail, he may again commit the same offence.
12. If the petitioner/accused is released on bail, he disappears and the case will be in-completed in the Court.

2.6 Ravikumar's third bail application was adjourned from time to time and on 03.08.2016, when the Judicial Magistrate No.I, Puducherry was on leave, the Judicial Magistrate No.II, in charge of the Court, granted bail to Ravikumar (A3) Similarly, on the same day, the in charge Magistrate had granted bail to all the other accused also in the case. Challenging the bail

orders, the State filed applications for cancelling the bail under Sections 439, Cr.P.C. before the Principal Sessions Court, Pudhucherry, who, after notice to the accused and hearing them, cancelled the bail granted to them by order dated 29.08.2016, challenging which Ravikumar (A3) is before this Court.

3 Mr. V. Raghavachari, learned counsel for Ravikumar (A3) submitted that Ravikumar (A3) was remanded on 08.07.2016 and was granted bail only on 03.08.2016 by the Judicial Magistrate No.1, Pudhucherry, by which time, investigation must have almost been completed. He further submitted that there is no allegation against Ravikumar (A3) that he had not cooperated during investigation or that he would tamper with evidence, if released on bail. It is his further submission that the parameters for grant of bail are different from the parameters for cancellation of bail and the case at hand does not satisfy the parameters laid down by the Supreme Court for cancellation of bail. In support of this contention, he placed reliance upon the judgment of the Supreme Court in Abdul Basit alias Raju and others vs. Mohd. Abdul Kadir Chaudhary and another [(2014) 10 SCC 754].

4 In oppugnation, Mr. M.R. Thangavel, learned Additional Public Prosecutor (Pudhucherry) submitted that the order passed by the in charge Judicial Magistrate No.1, Pudhucherry granting bail is prima facie perverse, inasmuch as she has erroneously recorded in the bail order as follows:

"There is no any objection on the part of the prosecution and the learned APP has endorsed no objection in the reply."

whereas, the police have filed a very strong objection to the grant of bail and have also set down the reasons for opposing the bail. He also contended that departmental action has been taken against the Assistant Public Prosecutor for burking the objection raised by the police and saying "No objection" for grant of bail to Ravikumar (A3). Under such circumstances, he submitted that the order of the Principal Sessions Judge, Pudhucherry, cancelling the bail granted to Ravikumar (A3) does not suffer from any infirmity warranting interference by this Court under Section 482, Cr.P.C.

5 This Court gave its anxious consideration to the rival submissions and perused the materials on record.

6 It is true that the parameters for grant of bail are different from those for cancellation of bail. In Abdul Basit

alias Raju (supra), relied on by the learned counsel for Ravikumar (A3), the facts are slightly different. In that case, Abdul Basit was granted bail by the High Court under Section 167 (2), Cr.P.C. on the ground that the original charge sheet had become infructuous as the High Court had ordered further investigation in the case. Thereafter, the victim filed a Miscellaneous Petition before the High Court for cancellation of bail on which, the High Court cancelled the bail. In those circumstances, the Supreme Court held that a Miscellaneous Petition to cancel the bail already granted, cannot be entertained and that the grant of bail under Section 167(2), Cr.P.C. can be cancelled subsequently after the charge sheet is filed. In the same judgment, the Supreme Court has relied upon the following passage from *Ranjit Singh vs. State of M.P.* [(2013) 16 SCC 797]:

"19. There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court."

7 In the case at hand, the earlier two bail applications filed by Ravikumar (A3) were dismissed by the regular Judicial Magistrate No.1, Pudhucherry. On 30.08.2010, the regular Magistrate was on leave and the in charge Magistrate took up the bail application for hearing. In all fairness, the in charge Magistrate should have adjourned the bail application to the next day for being dealt with by the regular Magistrate, inasmuch as he had already dismissed Ravikumar's bail applications twice earlier. The in charge Magistrate did not choose to do that. Apart from that, the in charge Magistrate has wished away the strong objections that were filed by the police, which find place in the record called for by this Court and perused. She had very conveniently turned a Nelson's eye to the objections and proceeded on the "No Objection" stated by the Assistant Public Prosecutor for grant of bail to all the accused in this case. The nature of allegations against the accused is that of manufacturing other States' lottery tickets illegally and selling them in Puducherry. It is not a case of genuine lottery tickets of other States being sold in Puducherry. But, the accused have arrogated to themselves, the power of the State and manufactured bogus lottery tickets for sale to gullible persons.

The gargantuan nature of the allegation must have deterred her from dealing with the bail application. Thus, it can safely be held that the judgment of the Supreme Court in Abdul Basit (supra) is distinguishable on facts and hence, can hardly be of any avail to Ravikumar.

8 Under such circumstances, the order passed by the Principal Sessions Judge, Puducherry, cancelling the bail is perfectly justified. When the Union Territory has initiated enquiry in the conduct of the Assistant Public Prosecutor, the High Court should not lag behind, but, conduct an enquiry on the conduct of the Judicial Magistrate, Puducherry, who granted bail to the accused en masse on 30.08.2010 in the absence of the regular Magistrate.

In the result, this Criminal Original Petition is dismissed and the connected Crl.M.P. is closed. The Registry is directed to place this matter before the Hon'ble Chief Justice to decide the desirability of ordering Vigilance enquiry into the manner in which all the accused in this case were granted bail by the in charge Magistrate.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cad
To

- 1 The Station House Officer
D'Nagar Police, Puducherry
- 2 The Principal Sessions Judge, Puducherry
- 3 The Registrar-Vigilance, High Court of Madras
- 4 The Public Prosecutor, Puducherry
- 5 The Section Officer 'B' Section, High Court, Madras
(for necessary steps)

+1 CC to Mr. V. Raghavachari, Advocate Sr.No.57165
+1 CC to Mr. Government Pleader, cum Public Prosecutor
Pondicherry Sr.NO.57454 (07/11/2016)

Crl.O.P. No.20157 of 2016

SCD (CO)
MD : 05/10/2016