



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2016

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

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Criminal Original Petition (MD) No.17621 of 2015

J.Gajendran

... Petitioner/Internor/ Informant
Vs.

1.N.Rajendran

...Respondent/Petitioner/ First Accused

2.The State of Tamil Nadu

Represented by the Sub Inspector of Police,
Sattur Town Police Station, Sattur,
Virudhunagar District.

... Respondent/Respondent/ Complainant

PRAYER: This petition is preferred under Section 482 Cr.P.C to cancell the bail granted to the first respondent/first accused by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur vide order dated 27.08.2015 in Crl.M.P.No.5111 of 2015.

For Petitioner : Mr.N.Dilip Kumar
For R1 : Mr.S.Bala Murugan
For R2 : Mr.P.Kannithevan
Government Advocate(Crl.Side)

ORDER

The petitioner/defacto complainant has come out with the present petition with a prayer to cancel the bail granted to the first respondent/first accused by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur vide order dated 27.08.2015 in Crl.M.P.No.5111 of 2015.

2. The case of the defacto complainant/petitioner is that the first accused/first respondent was employed with the firm of the defacto complainant to get orders for sale of urndhu dall and coriander seeds. The defacto complainant is doing whole sale business. The first accused/first respondent, due to confidence imposed by the defacto complainant on the first respondent/first accused, used to get orders and collected money for the bills running several lakhs of rupees. The first accused introduced the third accused and the fourth accused as transport carriers and A5 and A6 as purchasers. The second accused, who is the wife of the first accused, along with the first accused have prepared bogus bills in the names of various persons and supplied the goods to A5 and A6 and misappropriated the funds to the tune of Rs.57 lakhs. All the accused colluded together and committed the offences. On the complaint, the case has been registered for the offences punishable under Sections 408, 415, 418, 420, 424, 465, 468, 474 and 477 of IPC.



3. The learned counsel for the petitioner submitted that A1 and A2 filed CrI.O.P.(MD)No.5770 of 2015 for anticipatory bail. After hearing the arguments, when this court was not inclined to grant anticipatory bail to the first accused/first respondent, the learned counsel for respondent sought permission of this Court to withdraw the said petition as against the first accused and endorsement was made that petition may be permitted to withdraw as against the first accused/first respondent and the same was dismissed as withdrawn as against the first accused.

4. Considering the allegations against the accused persons this court granted anticipatory bail to the second accused on certain conditions. Subsequently, two Criminal Original Petitions filed by A1/first respondent for anticipatory bail were dismissed by this Court. Suppressing this fact, the first accused/first respondent filed Cr.M.P.No.5111 of 2015 for anticipatory bail before the learned Principal District Judge, Virudhunagar at Srivilliputhur. The defacto complainant/petitioner filed intervening petition and brought to the notice of the learned Principal District Judge that this Court dismissed the petition for anticipatory bail filed by the first accused/first respondent.

5. The learned Judge granted anticipatory bail to the second accused on the grounds that A2 was granted anticipatory bail, she met with an accident and sustained serious injuries. The first accused also underwent operation for perianal abscess. The complaint was given after six months of registration of the case against the first accused; and that, there is no serious demand for custodial interrogation and there is no serious objection that the first accused would tamper the investigation.

6. The defacto complainant/petitioner filed this petition for cancellation of bail.

7. The learned counsel for the petitioner submitted that the learned Judge failed to consider that three earlier petitions for anticipatory bail filed by the the first accused/first respondent were dismissed by this Court. The learned Judge did not consider the serious nature of offence committed by the first accused and others and has not formed any opinion as to whether that there is a *prima facie* case made out in the complaint and reasons given by the learned Principal District Judge, Virudhunagar at Srivilliputhur are not valid. In view the serious allegations made against the accused and huge amount misappropriated is yet to be recovered he prayed for cancellation of bail.

8. He relied on judgment reported in 2011 6 SCC 189(In Prakash Kadam and Others Vs. Ramprasad Vishwanath Gupta and Another). In that judgment, paragraph Nos.18 and 19 read as follows:

18.In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, *prima facie* case against the accused, the position and standing of the accused etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him.



Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before the appellate/Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

He relied on the judgment reported in 2007 (2) 1437 (SC) (In Kumari Suman Pandey Vs. State of Uttar Pradesh and Another) also.

9. In the judgment reported in 2015-2-L.W.(Crl.) 441 (Manikka Thyagarajan VS. Dr. c.s. Meenatchi and others), in paragraph no.21 it has been held as follows:

21. ... the Court below ought not to have released the accused/ respondents 1 and 2 on the same day. Even assuming that they have surrendered on 25.03.2015, the Magistrate ought to have allowed the police to take custody of the accused, permitting them to investigate, so as to enable the police to find whether there is any possibility of recovery of articles, take specimen signature etc. The present case is one of the breach of trust attracting Section 420 of IPC and that the accused have cheated to the tune of more than Rs. 88 lakhs, I find that there is much force in the contention of the counsel for petitioner/defacto complainant that unless and until the custody of the accused is ordered, the bail petition could not have been entertained, since it is not a procedure contemplated under law and the Court below has lost sight of the same, is acceptable.

10. The learned counsel for the first accused/first respondent submitted that the learned Judge has considered all the facts and circumstances of the case and also the fact that there is no demand for custodial interrogation and that the first accused/first respondent may not tamper with investigation has granted bail. In the circumstances, the bail already granted is not liable to be dismissed. Therefore, he prayed for dismissal of the petitions.

11. In support of his contention, the learned counsel for the first accused/first respondent relied on the judgment reported in 2011 (1) SCC 694 (Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others). Paragraph No.89 in that judgment is extracted hereunder:

89. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully co-operating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.



12. He also relied on the judgment reported in 2009(10) SCC 652 (Hazari Lal Das Vs. State of West Bengal and Another). Paragraph No.6 in that judgment is extracted as under:

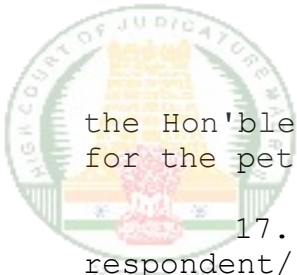
6. ... Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on one different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference 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 concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non bailable case in the first instance and the cancellation of bail already granted".

13. The learned Government Advocate(CrI.side) submitted that serious allegations of misappropriation to the tune of Rs. 57,44,050/- is made against the first accused/first respondent stating that he prepared bogus bills and sold the same to third parties, who are not mentioned in the bills and misappropriated the amounts. The first accused is not co-operating with the investigation and therefore, custodial interrogation of the first accused/first respondent is necessary.

14. I have carefully perused the materials on record and considered the arguments advanced by either side and the judgments relied on by the parties.

15. From the judgments relied on it is seen that the court while granting bail must consider the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; prima facie satisfaction of the Court in support of the charge and bail can be cancelled even if there is no likelihood of misuse of condition of bail.

16. From the order of the learned Judge it is seen that, there is no consideration as to whether any *prima facie* case made out to support the complaint, anticipatory bail has been granted on the ground that the second accused was granted anticipatory bail by this Court and the first accused/first respondent was suffering from illness. Further, the learned Judge has granted anticipatory bail, as the Public Prosecutor has not seriously sought for custodial interrogation. These reasonings are not valid. The learned Judge failed to consider the ratio laid down by



the Hon'ble Apex Court referred to above relied on by the learned counsel for the petitioner/defacto complainant.

17. The judgments relied on by the learned counsel for the first respondent/first accused do not support his case.

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18. Considering the facts and circumstances of the case and nature of allegations made against the accused persons and considering the fact that the alleged misappropriated amount is not recovered, anticipatory bail granted to the first accused/first respondent by the learned Principal Sessions Judge, Virudhunagar District, at Srivilliputhur vide order dated 27.08.2015 in Cr.M.P.No.5111 of 2015 is hereby cancelled.

19. In the result, this petition is allowed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

- 1.The Sub Inspector of Police,
Sattur Town Police Station, Sattur, Virudhunagar District.
- 2.The Principal Sessions Judge,
Virudhunagar District at Srivilliputhur
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Judicial Magistrate II,
Sattur,

+1 CC to Mr.S.Balamurugan, Advocate, SR No.5169

CrI.O.P(MD) .No.17621 of 2015
27.01.2016

CM

SH/SKS-RR/SAR-I:26.02.2016:5P/6C