

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 29.04.2016****CORAM:****THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM****Cr1.O.P (MD)No.22669 of 2015****ORDERS RESERVED ON : 13.04.2016****ORDERS DELIVERED ON : 29.04.2016**

P.Balasubramanian ... Petitioner/3rd party/ De-facto complainant

Vs.

1.Shankar ... 1st respondent/petitioner/sole accused

2.State : Inspector of Police,
Shenkottah Police Station,
Tirunelveli District,
(crime No.170/2015)

... 2nd Respondent/Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439(2) of the Code of Criminal Procedure, praying to cancel the order of Bail granted in Cr.M.P.No.4393 of 2015 on the file of the learned Principal Sessions Judge, Tirunelveli dated 07.08.2015.

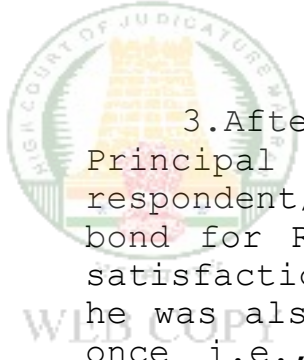
For Petitioners : Mr.N.Anandapadmanabhan

For 2nd Respondent : Mr.K.V.Raja Rajan,
Govt. Advocate (Cr1.Side)

ORDER

This Criminal Original Petition is filed to cancel the anticipatory bail granted to the first respondent/accused in Cr.M.P.No.4393 of 2015 by the learned Principal Sessions Judge, Tirunelveli, dated 07.08.2015.

2.It is seen from the records that the first respondent, namely, Shankar had filed an application for anticipatory bail before the learned Principal Sessions Judge, Tirunelveli, which was numbered as Cr.M.P.Nos.4393 of 2015 and this present petitioner, namely, Balasubramanian also had filed an intervening application, which was numbered as Cr.M.P.No.4482 of 2015.



3. After hearing the arguments of both sides, the learned Principal Sessions Judge, Tirunelveli, granted bail to the first respondent/accused on condition that he should execute the bail bond for Rs.10,000/- with two sureties each for like sum to the satisfaction of the learned Judicial Magistrate, Shencottah, and he was also directed to sign before the respondent police daily once i.e., at 10.30 a.m., for one month and after that, his appearance on summons and further, he should make himself available for interrogation as and when required by the respondent police. After receiving the copy of the order, the present petitioner filed this petition to cancel the anticipatory bail granted to the petitioner on 07.08.2015.

4. Heard both sides.

5. The learned counsel appearing for the petitioner/de-facto complainant would contend that the first respondent/accused has committed the offences punishable under Sections 409, 379 and 420 IPC and he was involved in accepting gold articles of lessor purity without authority and thereby caused monetary loss to the tune of 41 lakhs and hence, it has become essential and necessary to identify the customers, who has brought gold articles of inferior quality and such information can be obtained only by way of custodial interrogation.

6. Further, the learned counsel would contend that the first respondent/accused has furnished false information before the learned Principal Sessions Judge, Tirunelveli and obtained anticipatory bail by way of misrepresentation and fraud.

7. It is pertinent to note that by conducting search over the accused premises, the 2nd respondent has recovered 43 pockets of gold articles out of 123 pockets, which were missing and in respect of which, the complaint is lodged. Unless the bail order granted to the first respondent/accused is cancelled, it will not be possible for the second respondent/complainant to conduct custodial interrogation and to identify the abettors as well as recovery of the remaining gold articles. Since the custodial interrogation is necessary for this case, this petition has to be allowed and the anticipatory bail granted to the first respondent/accused by the learned Principal Sessions Judge, Tirunelveli has to be set aside.

8. The learned Government Advocate (crl.side) appearing for the State submitted that the trial court, after appreciating the entire facts and circumstances of the case, has granted anticipatory bail to the first respondent/accused and there is no ~~injustice~~ in the order passed by the learned trial Judge. Hence, the present petition has to be dismissed.



9. Further, the learned Government Advocate (crl.side) submitted that in this case, the accused has complied with the condition imposed by the learned Principal Sessions Judge, Tirunelveli.

10. In this case, it is admitted by both sides that there are four set of keys kept by the company and on the date of occurrence, the accused and another employee Selvakumar having each set of keys and hence, the accused person cannot take away such a huge volume of jewels by using the key without the help of Selvakumar, who is in possession of another set of key. Further, the locker could be operated with two keys and even as per the Public Prosecutor, after perusal of the Register, submitted that four set of keys were available and no allegation is made against another employee Selvakumar. In view of the above circumstances, the accused cannot open the locker without the key, which is in possession of Selvakumar.

11. Hence, this court is of the considered view that the learned counsel for the petitioner/defacto complainant and the Government side have not raised any objection before the trial Court, at the time of granting anticipatory bail.

12. In view of the above said circumstances, this Court do not find any reason to interfere with the reasoned order passed by the learned trial Judge. Hence, the present petition filed by the petitioner is not maintainable at this stage. Accordingly, this criminal original petition is dismissed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

skn

To

1. The Principal District and Sessions Judge,
Tirunelveli.

2. The Inspector of Police, Shenkottah Police Station,
Tirunelveli District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

GJM/ARK/PV/16.6.16-3P-4C