

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2017

CORAM:

THE HONOURABLE DR. JUSTICE P.DEVADASS

Crl.O.P. No.7566 of 2017

1.Sam Japakumar
2.Anbu @ Anburaj .. Petitioners

Vs.

State Rep. by
The Inspector of Police,
Roshanai Police Station,
Tindivanam. .. Respondent

Criminal Original Petition filed under Article 438 of the Constitution of India to enlarge the petitioner on bail in the event of arrest by the respondent police in Crime No.626 of 2016 pending on his file.

For Petitioners	: Mr.R.Sreedhar
For Respondent	: Mr.E.Raja Additional Public Prosecutor

ORDER

This petition is for Anticipatory Bail.

2.Already on 24.01.2017 in CRL O.P.No.908 of 2017, the petitioners were granted Anticipatory Bail. As per the condition in para No.6(iii), the bail

bond shall be executed within 15 days from the date of receipt of a copy of the order. However, they did not do so.

3. In the circumstances, fresh petition for grant of anticipatory bail has been filed. Once bail or anticipatory bail is granted, it will be in force, unless it is set aside in a manner known to law.

4. Chapter 33 of the Code of Criminal Procedure running from Section 436 to 450 Cr.P.C., is in two parts. Sections 436, 437 & 439 Cr.P.C. deals with bail. While Section 438 Cr.P.C. deals with anticipatory bail. However, there is no word "Anticipatory Bail" in the said Section. It deals with issuance of direction in the event of arrest, which is commonly known as anticipatory bail.

5. The second part of Chapter 33 of Cr.P.C. consists of Section 450, which deals with bail and bail bond. It refers to bail bond executed by the accused and the surety bond executed by the sureties (Section 441 Cr.P.C) in bail or anticipatory bail petitions. Since the matter relates to personal liberty of a person, which are to be tested on the anvil of Article 21, of the Constitution of India, it cannot be easily cancelled.

6. A bail order cannot evaporate or cannot vanish into the air. It could be cancelled either under Section 437 (5) or under Section 439(2) of Cr.P.C.

7. There are certain other provisions to cancel bail or anticipatory order. Even under Section 397 Cr.P.C., when the bail or anticipatory bail granted is against law or against settled provisions of law, there are procedural violations, the bail or anticipatory bail granted may be set aside. Under certain extraordinary circumstances, bail can be cancelled under Section 482 Cr.P.C.

8. Further, under Section 397 Cr.P.C., the Sessions Court and the High Court in fit and appropriate cases cancel the bail under Section 397 Cr.P.C. There cannot be duplication of bail orders, so long as bail or anticipatory bail order is in force. There can't be passing of another bail order. As and when 15 days is over, some courts say the bail order is over. Some Courts say such orders are stand cancelled automatically. But, such type of orders are not having the sanction of law.

9. In order to avoid complication and prevent any malpractice and to create a sense of responsibility in the mind of accused, time limit has been fixed by the court to execute the bail bond. Otherwise, anticipatory bail order might have been passed. The accused may come to execute the bond.

10. But once the time limit is over, it does not mean that the bail order is over because, it has not been set aside by any Court in a manner known to law. Then, how to work it out, since the time limit is over. If the order is

produced, the Sessions Court or the Magistrate will not entertain it. But, we can make it work out by giving further time to execute the bail bond. There is no wrong in it. There is no prohibition in law to do so. Once further time is extended, it becomes operative.

11. In the Code of Criminal Procedure 1973, there is no provision like Section 148 in the Code of Civil Procedure. There is no specific provision in the Code of Criminal Procedure for extension of time to execute the bail bond or anticipatory bail. But, the relief of extension of time can be granted either under Sections 437, 439 Cr.P.C. or under Section 438 Cr.P.C. under certain extraordinary circumstances, in the interest of justice, such extension of time can be granted under Section 482 Cr.P.C. Thus, we can't pass anticipatory bail order in the second bail petition when already the anticipatory bail order passed has not been cancelled. However, under Section 438 Cr.P.C., this Court can pass appropriate orders.

12. In the facts and circumstances, instead of passing fresh anticipatory bail order, this Court will pass an order extending the time to surrender and execute the bail bond.

13. In view of the foregoing, it is ordered as under:

(i) Petitioners are given 15 days further time from the date of receipt of a copy of this order to execute the bail bond in pursuance of the anticipatory bail order of this Court passed in CrI.O.P.No.908 of 2017 on 24.01.2017.

(2)Accordingly, this Criminal Original Petition is disposed of.

26.04.2017

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Speaking order

Index: Yes

Internet Yes

To

- 1.The Principal Session Judge,
Villupuram.
- 2.The Chief Judicial Magistrate,
Villupuram.
- 3.The Judicial Magistrate-I,
Tindivanam
- 4.The Additional Public Prosecutor,
High Court,
Madras
- 5.The Inspector of Police,
Roshanai Police Station,
Tindivanam.

Copy to

The Director,
Tamilnadu State Judicial Academy,
Greenways Road,
R.A.Puram,
Chennai – 28.

Dr. P.DEVADASS, J.
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