

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2017

PRONOUNCED ON : 14.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.1702 of 2016

State rep by
The Deputy Superintendent of Police
Vigilance and Anti-Corruption
Viluppuram

... Petitioner

Vs.

M.Shanmugam

.... Respondent

Prayer:- Petition filed under Section 439 (2) of Cr.P.C., to cancel the bail granted to the respondent/accused by the Chief Judicial Magistrate Court, Viluppuram in CMP No.474 of 2011 dated 18.03.2011.

For Petitioner

:

Mr. C.Emalias

Additional Public Prosecutor

For Respondent

:

Mr.Perumbulavil Radhakrishnan

ORDER

This petition has been filed to cancel the bail granted to the respondent/accused by the Chief Judicial Magistrate, Villupuram in C.M.P.No.474 of 2011 on 18.03.2011.

2. On the complaint lodged by one Prakasam/de facto complainant, the

police registered a case in Cr.No.3 of 2011 for the offences under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act against Shanmugam/accused and took up the investigation. It is the case of the de facto complainant that Shanmugam/accused, who was working as Commercial Inspector in the Office of the Assistant Engineer, Tamil Nadu Electricity Board, Gingee Taluk was demanding Rs.5,000/- as bribe for arranging a new service connection to the irrigation well of the de facto complainant's father. After negotiations, Shanmugam/accused appears to have reduced the bribe amount to Rs.3,000/-. The respondent police laid a trap with a decoy witness, into which Shanmugam fell and was arrested, remanded to custody and thereafter, released on bail. The police completed the investigation and filed a final report in Special Case No.17 of 2014 before the Special Court for P.C. Act cases, Villupuram against Shanmugam, in which, the prime witness is Prakasam/de facto complainant.

3. Trial commenced after framing of charges and the prosecution have, so far, examined 9 witnesses and marked 17 documents. The prosecution have been trying their best to serve the witness summons on Prakasam/de facto complainant, but to no avail. It came to the light of the police that Shanmugam/accused and his Advocate were in constant touch with Prakasam/ de facto complainant and were deliberately keeping him away from coming to the Court for giving evidence. Hence, the prosecution have filed the present petition for cancellation of bail.

4. Heard Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State and Mr.Perumbulavil Radhakrishnan, learned counsel for

Shanmugam/accused.

5. Shanmugam/accused has filed a counter denying the allegations and contending that he has no intention of dragging on the proceedings before the trial Court and that he himself had filed Crl.O.P.No.21387 of 2014 under Section 482 Cr.P.C. for a direction to the trial Court to complete the trial expeditiously, pursuant to which, this Court, by order dated 27.08.2014, had directed the trial Court to complete the trial in Special Case No.17 of 2014 expeditiously. Hence, Mr. Perumbulavil Radhakrishnan submitted that, it is the accused whose agony is prolonging on account of the delay in examining Prakasam/de facto complainant.

6. This Court gave its anxious consideration to the rival submissions.

7. In support of the application for cancellation of bail, the Investigating Officer has sworn to an affidavit dated 12.01.2016, wherein, he has stated as follows:

"5. I further submit that in the mean time, it is found that the de facto complainant, Tr.Prakasam was kept out of the way by the accused from the following materials.

The de facto complainant moved out of his residence and cannot be traced anywhere around his village. By sources, it is found that he has been residing in or near Bengaluru and when the Inspector of Police attempted to trace him he is evading and cannot be traced. It is learnt from the sources that the complainant has been eloped with one Tmt.Uma and that the said Tmt.Uma was owning a cell no.9742746531. This cell number had been used in various handsets having nine different IMEI numbers including 3597712053178430 and 359712057063710.

6. I submit that the complainant was owning cell No.9742546531. He used this cell number in various handsets having nine different IMEI numbers including the above two IMEI numbers, viz. 3597712053178430 and 359712057063710. The cell phone addresses of both Tmt.Uma and Tr.Prakasam had been mentioned as No.172, Gangamma Temple Road, near Shani

Mahathma Temple, V.P.Road, Madivala, Bommanahalli, Bengaluru - 560 068, i.e., one and the same. Thus, it is proved that both Tmt.Uma and Tr.Prakasam are living together at Bangalore. The Respondent/Accused - Shanmugam was using a cell phone No.9444265624 and his Advocate using cell no.9444403035. Between 17.10.2014 and 04.06.2015, the Respondent/Accused - Tr.M.Shanmugam contacted the de facto complainant for 35 times through 9444265624 to 9742746531 and 112 times through 9629968632 to 9742746531 between 19.01.2015 and 03.08.2015. Tr.Sivaraman, Advocate for the Respondent/Accused contacted the complainant for 20 times through his cell no.9444403035 to 9742746531 between 11.11.2014 and 20.06.2015.

7. I submit that both the Respondent/Accused and his Advocate had contacted the de facto complainant for nearly 157 times in such a short span as above. So, the complainant was kept away effectively by the Respondent/Accused and thereby the prosecution cannot make any further progress in tracing the de facto complainant.

8. I further submit that it shows that the de facto complainant is under the control and influence of the Respondent/Accused.

9. I submit that the influence by the Respondent/Accused on the de facto complainant shows that the Respondent/accused tampered the de facto complainant and wantonly hampered the progress of the trial."

In support of this, the learned Additional Public Prosecutor submitted the call detail records, which clearly show that Shanmugam/accused has been in touch with Prakasam/de facto complainant.

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8. That apart, in the counter affidavit dated 27.08.2017 filed by Shanmugam/accused, he has not refuted these specific allegations and had merely given a general denial.

9. In view of the above, this Court is satisfied that Shanmugam/ accused is in contact with Prakasam/de facto complainant, which clearly amounts to tampering with the evidence and violation of bail conditions. In the opinion of

this Court, Shanmugam's conduct tantamounts to running with the hare and hunting with the hounds, inasmuch as, on the one hand, he has filed an application for a direction to the trial Court to expeditiously complete the trial and has also obtained a direction from this Court for expeditiously completing the trial and on the other hand, he is in liaison with the principal witness, Prakasam/de facto complainant, as could be seen from the call detail records. Hence, this Court is of the view that interest of justice will be served if the bail granted to Shanmugam/accused is cancelled.

In the result, this petition is allowed and the bail granted to Shanmugam/accused in C.M.P.No.474 of 2011 on 18.03.2011 is cancelled. It is open to the respondent police to arrest Shanmugam/accused and produce him before the trial Court for remanding him to custody under Section 309 Cr.P.C.'73.

gms

14.09.2017

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P.N.PRAKASH, J.

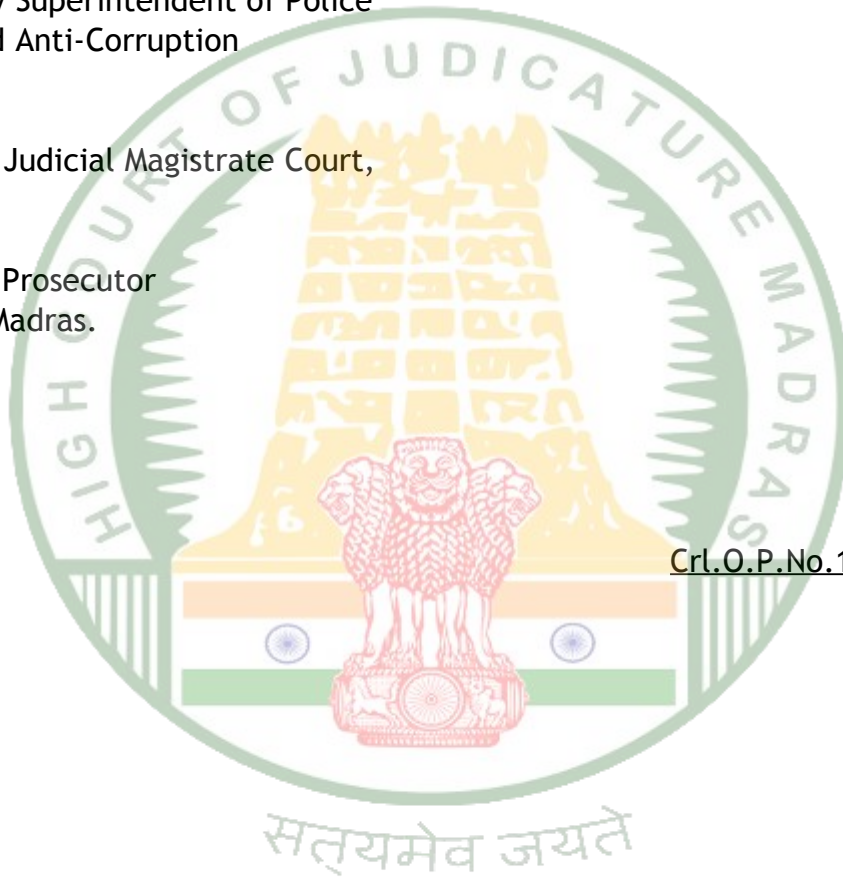
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To

1.The Deputy Superintendent of Police
Vigilance and Anti-Corruption
Viluppuram.

2.The Chief Judicial Magistrate Court,
Viluppuram.

3.The Public Prosecutor
High Court, Madras.



Crl.O.P.No.1702 of 2016

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