

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08-12-2017

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.O.P.No.25284 of 2017

M. Rathinavel

Appellant

Vs

1. The State rep by
The Inspector of Police,
S.H.O D-Nagar Police Station,
Puducherry
(Cr.No.133 of 2017)

2. N. Arjunan

Respondents

Appeal filed under Section 439 (2) of Criminal Procedure Code to cancel the anticipatory bail granted to the 2nd respondent by an order dated 05.07.2017 passed in CrI.O.P.No.11558 of 2017 on the file of this Court and consequently direct the 1st respondent to arrest the 2nd respondent.

For Appellant :

Mr.G. Mohana Krishnan for
Mr.R. Saravanan

For 1st respondent:

Mr.R. Thangavel
Addl. Public Prosecutor

ORDER

This petition has been filed to cancel the anticipatory bail granted to the 2nd respondent by an order dated 05.07.2017 passed in CrI.O.P.No.11558 of 2017.

2. On the complaint lodged by the defacto-complainant, the respondent police registered a case in Cr.No.133 of 2017 on 04.06.2017 for the offence punishable under Secs.341, 386 and 506 (ii) r/w 34 IPC against one A.K. Ramesh @ Senthil (A1) and Arjunan(A2).

3. The case of the defacto-complainant is that his wife Vijayalakshmi had purchased a plot bearing No.32, Thattan Chavadi Revenue village from one Indirani, a Singapore citizen, who in turn, had purchased the plot from A.K. Ramesh(A.1). According to the defacto-complainant, A.K. Ramesh (A.1) had divided a large extent of land into small plots and had sold plot No.32 to Indirani, who, in turn, had sold to the wife of the defacto-complainant in the year 2009.

4. After having sold the plot, it is alleged that A.K.Ramesh(A.1) and his father Arjunan(A2) were trying to re-take possession of the property by force and were intimidating the buyers like the defacto-complainant to return the property. Hence on the complaint of the defacto-complainant, the police have registered a case in Cr.No.133 of 2017 as stated above. While so, A.K. Ramesh (A1) and Arjunan(A2) filed Crl.O.P.No.11558 of 2017 for anticipatory bail. During hearing of the petition, it was brought to the notice of this Court, that there were three previous cases against A.K. Ramesh(A.1) and that he is an history sheeter.

5.While so, the learned counsel, appearing for Mr.A.K. Ramesh, withdrew the anticipatory bail petition. This Court has recorded all these aspects in the order 05.07.2017 in Crl.O.P.No.11588 of 2017. However, this Court granted anticipatory bail to Arjunan(A2), father of A.K. Ramesh(A1) in Crl.O.P.No.11588 of 2017 on 05.07.2017 on certain conditions, one of which, is that he shall report before the respondent police for interrogation until further orders.

6. Arjunan/A.2 surrendered before the jurisdictional Magistrate and furnished sureties. Thereafter, he appeared before the respondent police from 31.7.2017 to 11.09.2017. The condition imposed by this Court was relaxed completely on 11.09.2017 vide CrI,M.P.No.11480 of 2017. While so, the defacto-complainant has filed the present petition for cancellation of anticipatory bail that was granted to Arjunan(A2) on the ground that he is threatening the defacto complainant to withdraw the complaint and that he has also issued a legal notice dated 28.08.2017 to the defacto-complainant making baseless allegations and calling upon him to withdraw the police complaint,

7. On notice, Mr.G. Mohana Krishnan, learned counsel entered appearance for the accused Arjunan(A2) and filed his counter. The police have also filed their counter.

8. Heard the learned counsel for the parties.

9. It is trite that the parameters for grant of bail is different from the parameters for cancellation of bail. The Court should be slow in cancelling bail that is granted to an accused and only if it is shown that the accused had misused the liberty to the prejudice of the victim, can the bail be cancelled.

10. Mr.G. Mohanakrishnan, learned counsel appearing for Arjunan/accused submitted that Arjunan is 72 years old and the he appeared before the police from 31.07.2017 to 11.09.2017 and cooperated with the investigation.

11. Per contra, the learned counsel appearing for the defacto-complainant reiterated that Arjuna/accused has been continuously threatening the defacto-complainant to withdraw the complaint and had also issued a legal notice dated 28.08.2017 as stated above. Arjunan (A2) has filed a counter affidavit dated 06.12.2017, wherein, he has admitted issuance of the legal notice dated 28.08.2017 and has further stated that the defacto-complainant has also sent a reply notice dated 11.11.2017. In the counter affidavit, Arjunan (A2) has given the following undertaking:

"Further I undertake to I shall not threatened petitioner any time."

12. Mr.Kalaiarasan, Sub Inspector of Police, who is the investigating officer has filed a counter affidavit, wherein, in paragraph-8, he has stated as follows:

" Though the accused A2/2nd respondent had appeared before the respondent as directed by this Hon'ble High Court, he did not co-operate for the investigation of this case."

13. The learned Government Advocate (Crl Side) submitted that though Arjunan (A2) appeared before the respondent police for enquiry from 31.07.2017 to 11.09.2017, the police were not able to make any headway in the investigation because his son A.K. Ramesh (A1) was in abscondence and that A.K. Ramesh(A1) was arrested only on 05.11.2017, but, whereas, this Court had completely relaxed the bail conditions of Arjunan (A2) on 11.09.2017. After arrest of A.K. Ramesh (A1) on 05.11.2017, the police have obtained several incriminating materials about which, they

want to enquire with Arjunan (A2), but Arjunan (A2) did not appear before the police.

14. Mr.G. Mohanakrishnan, learned counsel appearing for Arjunan(A2) submitted that the police have not issued any summons till date and it is merely the ipse-dixit of the police that he had not co-operated with the investigation after arrest of his son on 05.11.2017.

15. On a reading of the legal notice dated 28.8.2017, Arjunan(A2) has denied the allegations in the first information report and has alleged that he will take action against the defacto-complainant for damages.

16. In the opinion of this court, the respondent police should not be carried away by such legal notice or even legal proceedings if initiated by Arjunan(A2) against the defacto-complainant in respect of the case under investigation. It has become a practice for land

grabbers to file some frivolous suit or the other to distract the course of investigation and cover up their misdeeds.

17. Mr.G. Mohanakrishnan, learned counsel appearing for Arjunan(A1) submitted that the defacto-complainant is a retired police officer and he is having political influence in Pondicherry, with which, he is harassing the accused.

18. Per contra, learned counsel for the defacto-complainant submitted that the defacto-complainant is a retired police officer of Tamil Nadu State and not from Pondicherry cadre and that he has no influence either in the Pondicherry Police or with Pondicherry particulars.

19. Be that as it may, I am of the view that in the interest of justice, the case in Cr.No.133 of 2017 on the file of Dhanvanthri Police Station should be conducted by an Officer of the rank of Superintendent of Police (North) (which is equal to the rank of Deputy Superintendent of Police in Tamil Nadu cadre).

20. The investigation officer shall proceed with the investigation in a fair and unbiased manner without any manner being influenced by the legal notice dated 28.08.2017 issued by Arjunan(A2).

21. If Arjunan(A2) or his son A.K. Ramesh (A1) initiates any legal proceedings against the defacto-complainant, which is vexatious in nature, it is always open to the defacto-complainant to approach the superior forum for remedy. However, the undertaking given by Arjunan((A2) that he will not threaten the defacto-complainant for withdrawing the complaint is recorded. If there is any threat from Arjunan(A2), it is open to the defacto-complainant to lodge a fresh complaint to the investigating officer in Cr.No.133/2017 so that a fresh case can be registered against him and liberty is given to the police to move this court for cancellation of anticipatory bail. The investigation officer shall issue summons under Sec.160 of Criminal Procedure Code for the appearance of Arjunan(A2) for enquiry and on receipt of summons, he is duty bound to appear before the investigating officer and co-operate with the investigation.

22. With the above direction, the petition for cancellation of bail is closed with a further direction to the Superintendent of Police (North) to conduct the investigation in Dhanvanthri P.S.Cr.No.133/2017.

08-12-2017

sr

Speaking/Non-speaking order
Index:yes/no
website:yes

To

1. The Inspector of Police,
S.H.O D-Nagar Police Station,
Puducherry
2. The Public Prosecutor, High Court, Madras

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P.N. PRAKASH,J.,

sr



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