

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.15837 of 2013

Ramasamy Athappan

...Petitioner/ Defacto complainant

Vs

1. K.C. Palanisamy

2. The Inspector of Police,
Central Crime Branch,
Team- I, Egmore,
Chennai.

..Respondents/ Complainant

Criminal Original Petition filed under Section 439(2) of Cr.P.C., to cancel the bail granted to the first respondent vide order dated 10.03.2008 in Crl.M.P.No.678/2008 in FIR No.54 of 2008(now converted to CC.No. 16320 of 2009) by the learned Additional Metropolitan Magistrate, Egmore Chennai.

For Petitioner : S.J.Sivanantharaj

For Respondent : Mrs.D.Saraswathi for R1.

Mr.C.Emalias
(Additional Public Prosecutor) for R2.

ORDER

This petition has been filed to cancel the bail granted to the first respondent vide order dated 10.03.2008 in Crl.M.P.No.678/2008 in FIR No.54 of 2008(now converted to CC.No. 16320 of 2009) by the learned Additional Metropolitan Magistrate, Egmore Chennai.

02. On the complaint lodged by Cheran Enterprises against X Crime No, 54 of 2008 undersections 409, 420,465,468,471 r/w. 465 IPC and arrested K.C.Palanisamy. K.C.Palanisamy filed CrI.M.P.No678/2008 in X Cr.No.54/2008 under section 437 Crpc for bail and he was enlarged on bail by the learned Additional Chief Metropolitan Magistrate Egmore, Chennai by order dated 10.03.2008 on the following conditions:

“ Under these circumstances, this court is inclined to enlarge the petitioner on bail subject to the following conditions:

a) The petitioner shall be released on bail on his executing a bond for Rs.50,00,000/- with two sureties each(Solvent sureties) for the likesum.

b)The petitioner shall stay at Nagercoil and appear and sign before the Chief Judicial Magistrate, Nagercoil daily at 10.30 A.M until further order.

c) The petitioner shall not enter into Coimbatore and Erode District without prior permission of this court.

d) The petitioner shall not tamper the witnesses and hamper the investigation.

6. With the above conditions, the petitions is allowed.”

03. Challenging the bail order Ramasamy Athappan representing the defacto complainant has filed the present application under section 439 Cr.P.C for cancellation of bail.

04. Heard. Mr.Sivanantharaj the learned counsel appearing for the Ramasamy Athappan, Mrs.D.Saraswathy learned counsel appearing for R1 and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State.

05. Mr.Sivanantharaj the learned counsel appearing for the defacto complainant contended that after release on bail K.C. Palanisamy is harassing the petitioner by filing several frivolous litigations and thereby preventing the petitioner/ defacto complainant from coming to India. He is also filing cases against the counsel representing the defacto complainant and is stifling the prosecution.

06. Per contra, the learned counsel appearing for K.C Palanisamy refuted the allegations. Be that as it may the learned Additional Public Prosecutor submitted that the investigation in Cr.No.54/08 was completed and charge sheet was filed in CC No. 16320/2008 under sections 463,464,468,469 and 471 IPC against K.C.Palanisamy before the Additional Chief Metropolitan Magistrate, Egmore, Chennai and the trial is pending.

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

08.The fact remains that K.C. Palanisamy was granted bail in the year 2008 by the trial court and this application for cancellation of bail has been filed in the year 2013 and now we are in the year 2017.

09.The reasons given for cancellation of bail cannot be countenanced. It is settled law that the parameters for granting bail are different from the

parameters for cancellation of bail. In this case there is no allegations that K.C Palanisamy is intimidating the witness by unlawful methods and preventing them from giving evidence in the trial.

10. In view of the above, this Court is of the considered view that this is not a fit case to cancel the bail that was granted to K.C.Palanisamy in the year 2008.

11. If the accused adopts any dilatory tactics, it is open to the trial Court to remand him to custody in terms of the law laid down by the Supreme Court in **State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319]**.

12. However, if K.C.Palanisamy thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

With the above observation this petition is closed with liberty to the petitioner to file a fresh application for cancellation of bail, if K.C.Palanisamy is found violating the conditions of bail.

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To

1. The Inspector of Police,
Central Crime Branch,
Team- I, Egmore,
Chennai.

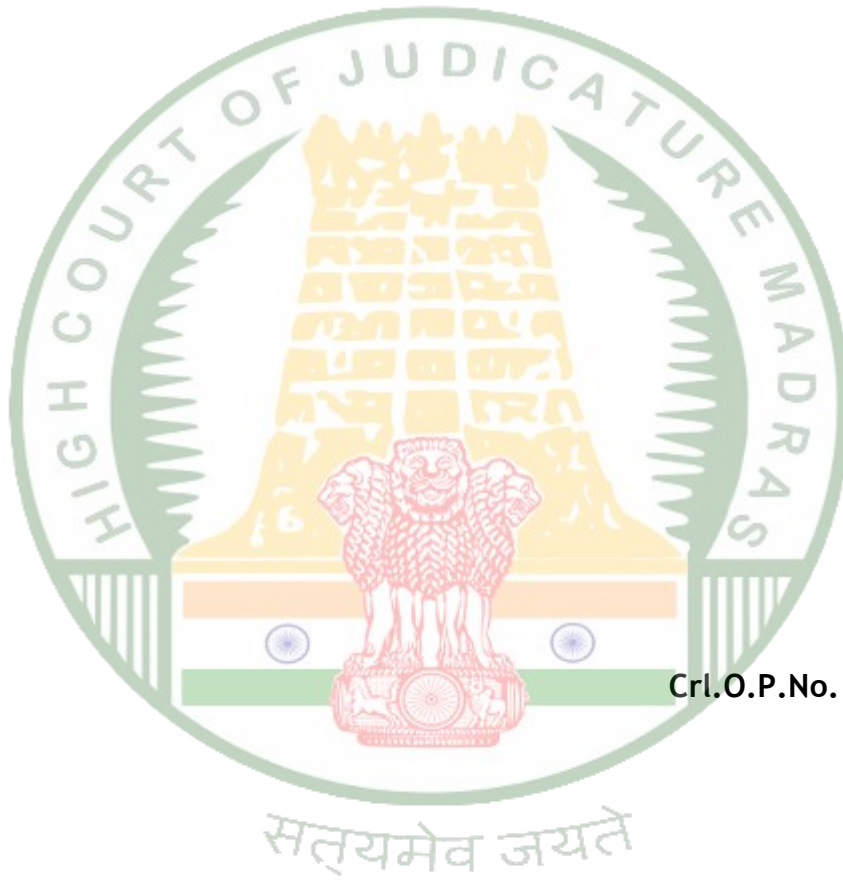
2.The Public Prosecutor, High Court, Madras.



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P.N.PRAKASH,J

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