



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Second day of June Two Thousand Seventeen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CRL MP(MD) Nos.2510 and 3599 of 2017
IN
CRL OP(MD) No.24165 of 2016

T.KANAGARAJ ... PETITIONER/DEFACTO COMPLAINT
IN CRL MP(MD).NO.2150/2017 IN
CRL OP(MD).NO.24165/2016

RAVIBALAN ... PETITIONER/1st PETITIONER
IN CRL MP(MD).NO.3599/2017 IN
CRL OP(MD).NO.24165/2016

Vs

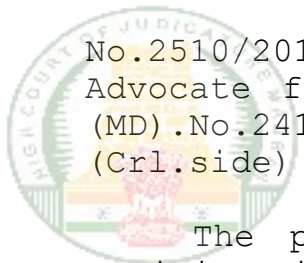
1 V.RAVIBALAN
2 K.C.KRISHNAN
3 VIDYASANKAR ...RESPONDENTS 1 to 3/PETITIONERS
IN CRL MP(MD).NO.2150/2017 IN
CRL OP(MD).NO.24165/2016

4 STATE REP.BY
THE INSPECTOR OF POLICE
PALANI ADIVARAM POLICE STATION DINDIGUL DISTRICT.
...4th RESPONDENT/RESPONDENT
IN CRL MP(MD).NO.2150/2017 IN
CRL OP(MD).NO.24165/2016
...1st RESPONDENT/RESPONDENT
IN CRL MP(MD).NO.3599/2017 IN
CRL OP(MD).NO.24165/2016

Prayer in CRL MP(MD). 2510/ 2017 in CRL OP(MD) No.24165 of 2016 :
Petition praying that in the circumstances stated therein
and in the petition filed therewith the High Court will be pleased
to cancel the Anticipatory Bail Granted in Crl.O.P(MD).No24165/2016
29/12/2016.

Prayer in CRL MP(MD). 3599/ 2017 in CRL OP(MD) No.24165 of 2016 :
Petition praying that in the circumstances stated therein and in
the petition filed therewith the High Court will be pleased to
modify the condition to the effect that the petitioner shall appear
befoe the Judicial Magistrate, Palani daily at 10.30 a.m. instead of
appearing before the respondent police daily at 10.30 a.m. for the
period of four weeks imposed in Crl.O.P.(MD)No.24165 of 2016 dated
29.12.2016 and thus render justice.

Order : These petitions coming on for orders upon perusing the
<https://hcservices.ecourts.gov.in/hcservices/>
petitions filed in support thereof and upon hearing the arguments of
M/S. M.R. SRINIVASAN, Advocate for the petitioner in Crl.MP(MD).



No.2510/2017 in CrI.OP.(MD).No.24165/2017 and Mr.Pon.Karthikeyan, Advocate for the petitioner in CrI.MP(MD).No.3599/2017 in CrI.OP.(MD).No.24165/2017 and of Mrs.S.Prabha, Government Advocate (CrI.side) for R4 the court made the following order:-

The petitioner / defacto complainant has come up with the petition in CrI.M.P.(MD).No.2510 of 2017 seeking to cancel the anticipatory bail order, dated 29.12.2016, granted by this Court in CrI.O.P.(MD).No.24165 of 2016 in favour of the respondents 1 to 3 / A1, A2 and A4.

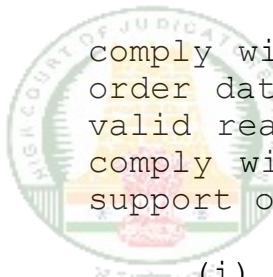
2.The learned counsel for the petitioner/defacto complainant submitted that though this Court granted anticipatory bail to the respondents 1 to 3/A1, A2 and A4 with a condition to appear before the fourth respondent Police daily at 10.30 a.m. for a period of four weeks, the respondents 1 to 3 did not appear before the respondent Police and they disobeyed the order of this Court. Hence, the petitioner/defacto complainant has filed a petition in CrI.M.P.No.1141 of 2017 seeking to cancel the anticipatory bail order, dated 29.12.2016, before the learned Judicial Magistrate, Palani. But, the said petition was rejected by the learned Magistrate on jurisdiction ground. Hence, the petitioner has come up with this petition seeking to cancel the anticipatory bail order dated 29.12.2016.

3.The learned counsel for the respondents 1 to 3 submitted that the third respondent viz., Vidyasankar is aged about 73 years and he has been suffering from cancer and he has undergone chemotherapy and radiation therapy at Chennai and also undergone a surgery in his intestine. The second respondent viz., K.C.Krishnan, who is the nephew of the third respondent, has accompanied the third respondent to various hospitals for treatment. Thus, they could not appear before the respondent Police and to file any exemption or modification petitions.

4.The learned counsel for the respondents 1 to 3 would further submit that as far as the first respondent is concerned, he has suffered by jaundice in the month of February, 2017 and took treatment under Siddha medicine and therefore, he was not in a position to file a petition seeking exemption or modification of the condition. However, immediately after getting recovery from the illness, the first respondent has approached the respondent Police, but they, colluding with the defacto complainant, prevented him from complying with the condition. Only after the first respondent took the issue before the Superintendent of Police, Dindiugl, now he is allowed to comply with the condition from 19.04.2017. Since the fourth respondent / Police harassed him, he has come up with CrI.M.P.(MD).No.3599 of 2017 seeking modification of the condition to the effect that he shall appear before the Judicial Magistrate, Palani daily at 10.30 a.m. instead of appearing before the respondent Police daily at 10.30 a.m. for a period of four weeks imposed in CrI.O.P.(MD).No.21465 of 2016, by order dated 29.12.2016.

<https://hcservices.ecourts.gov.in/hcservices/>

5.The learned counsel for the respondents 1 to 3 would further submit that merely because the respondents 1 to 3 have failed to



comply with one of the conditions imposed in the anticipatory bail order dated 29.12.2016, the same need not be cancelled as they have valid reasons for such non compliance and as they are now ready to comply with the condition and to co-operate with the enquiry. In support of his contention, he relied upon the following decisions:

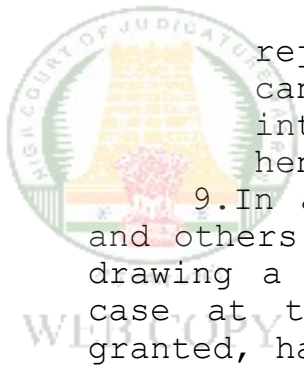
- (i) AIR 1993 SC 1 (Aslam Babalal Desai Vs. State of Maharashtra)
- (ii) (1995) 1 SCC 349 (Dolat Ram and others Vs. State of Harayana)
- (iii) AIR 1999 SC 3026 (Subhendu Mishra Vs. Subrat Kumar Mishra and another)

6. The learned Government Advocate (criminal side) appearing for the fourth respondent submitted that after executing sureties before the learned Magistrate, the respondents 1 to 3/A1, A2 and A4 did not appear before the respondent Police and thereby, they disobeyed the order of this Court and hence, the anticipatory bail order, dated 29.12.2016, granted in favour of the respondents 1 to 3, may be cancelled.

7. The question to be decided in this case is as to whether the anticipatory bail order has to be cancelled or not?. Before going into the issue involved in this case, this Court is of the view that it would be appropriate to look into the decisions relied on by the learned counsel for the respondents 1 to 3.

8. In the judgment reported in AIR 1993 SC 1 (Aslam Babalal Desai Vs. State of Maharashtra), the Hon'ble Supreme Court has enumerated the grounds on which the bail has to be cancelled. The relevant portion in paragraph No.11 reads as follows:

"Once the order of release is by fiction of law an order passed under Section 437(1) or (2) or 439(1) it follows as a natural consequence that the said order can be cancelled under sub-section (5) of Section 437 or sub-section (2) of Section 439 on considerations relevant for cancellation of an order thereunder. As stated in Raghubir Singh's case (AIR 1987 SC 149) the grounds for cancellation under Sections 437 (5) and 439(2) are identical, namely bail granted under Section 437(1) or (2) or 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that



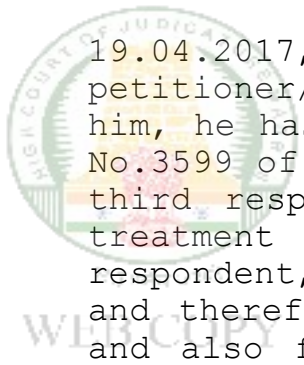
rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

9. In another decision reported in (1995) 1 SCC 349 (Dolat Ram and others Vs. State of Harayana), the Hon'ble Supreme Court, while drawing a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, has opined in paragraph No.4 as follows:

"4.... Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court, it appears to us, overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

10. In yet another decision reported in AIR 1999 SC 3026 (Subhendu Mishra Vs. Subrat Kumar Mishra and another), the Hon'ble Supreme Court has reaffirmed the views expressed in the above decisions.

11. From the above decisions, it is clear that if two views are possible, the matter, belonging to a field of criminal justice involving the liberty of an individual, must be construed strictly in favour of individual liberty since even the law expects early completion of the investigation. Unless there are strong grounds for cancellation of the bail, the bail once granted cannot be cancelled. Here is a case, where the respondents 1 to 3 /A1, A2 and A4 did not appear before the respondent Police, which has been imposed as one of the conditions for granting anticipatory bail in favour of them. But, according to the first respondent, he has suffered by jaundice and therefore, he could not appear before the respondent Police and now he is appearing before the Police from



19.04.2017, i.e., after filing of the cancellation petition by the petitioner/defacto complainant and since the Police has harassed him, he has come up with the modification petition in CrI.M.P.(MD). No.3599 of 2017. According to the second and third respondents, the third respondent is aged about 73 years and he has been taking treatment for cancer and he was accompanied by the second respondent, who is none other than nephew of the third respondent and therefore, they could not appear before the respondent Police and also file any exemption or modification petition before this Court. The second and third respondents have individually filed their affidavits and also produced medical treatment particulars in support of their contentions.

12.It is seen from the record that though this Court granted anticipatory bail to the respondents 1 to 3, by order dated 29.12.2016, the respondents 1 to 3 did not execute the sureties within the stipulated time and they again approached this Court seeking extension of time in CrI.M.P.(MD).No.620 of 2017. This Court also, by order dated 25.01.2017, has extended the time for 10 days and then only, they surrendered before the Magistrate and executed the sureties. Either in the petition for anticipatory bail or in the petition filed for extension of time, the third respondent did not aver about his illness. However, now he has produced the treatment particulars in the typed set of papers. The non-compliance of the order of this Court cannot be taken so lightly, However, considering the submissions made by the learned counsel for the respondents 1 to 3 and also their assurance that they would abide the condition without any deviation and also considering the nature of the allegations raised against the respondents 1 to 3, this Court is not inclined to cancel the anticipatory bail order, dated 29.12.2016. Though the first respondent has sought for modification of the condition, this Court is not inclined to grant the relief as the investigation is still pending before the fourth respondent Police because of their non-cooperation. Therefore, this Court is of the view that it would suffice if the respondents 1 to 3/A1, A2 and A4 are directed to appear before the fourth respondent daily at 10.30 a.m. for a period of four weeks.

13.Accordingly, the respondents 1 to 3/A1, A2 and A4 are directed to appear before the fourth respondent Police daily at 10.30 a.m. for a period of four weeks with the available documents, without fail. The fourth respondent / Police is directed to complete the investigation and to file charge sheet within a period six weeks from the date of receipt of a copy of this order.

14.Both the petitions are accordingly disposed of.

sd/-

02/06/2017

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TO

1 THE JUDICIAL MAGISTRATE, PALANI

2 -DO-THRO THE CHIEF JUDICIAL MAGISTRATE, DINDIGUL DISTRICT

3 THE INSPECTOR OF POLICE

PALANI ADIVARAM POLICE STATION DINDIGUL DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1. C.C. to M/S. M.R. SREENIVASAN Advocate SR.No.23075

+1cc to Mr.R.Pon Karthikeyan, Advocate SR.No.23034

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ORDER

IN

CRL MP (MD) Nos.2510 & 3599 of 2017

IN

CRL OP (MD) No.24165 of 2016

Date :02/06/2017