



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

Tuesday, the Fifth day of September Two Thousand Seventeen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CRL OP(MD) No.2533 of 2017

M.KATHAR MEERA,

... PETITIONER / DEFACTO COMPLAINANT/
DEFACTO COMPLAINANT

Vs

1 STATE REP.BY

THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH,
RAMANATHAPURAM DISTRICT.
IN CRIME NO.8 OF 2016.

...RESPONDENT NO.1/RESPONDENT/
COMPLAINANT

2 MANIMOZHIYAN,

... RESPONDENT NO.2 / PETITIONER/
ACCUSED NO.2

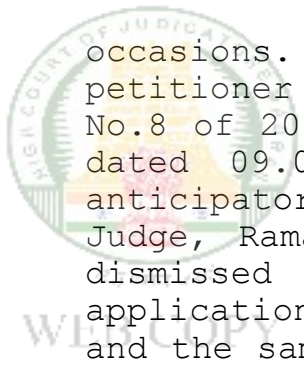
Prayer in CRL OP(MD). 2533/ 2017 :

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 to the accused No.2 / Respondent No.2 herein in Crl.M.P.No.241 of 2017 dated 09.02.2017 on the file of the Learned Principal District and Sessions Judge, Ramanathapuram in Crime NO.8 of 2016 on the file of the 1st respondent police herein and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.D.S. HAROON RASHEED, Advocate for the petitioner and of Mr.A.Ramar, Additional Public Prosecutor for R1 and Mr.C.Muthusaravana, Advocate for R2 the court made the following order:-

This petition has been filed under Section 439(ii) read with Section 482 of the Criminal Procedure Code to cancel the anticipatory bail granted to the second accused/ second respondent in Crl.M.P.No.241 of 2017 dated 09.02.2017 on the file of the learned Principal District and Sessions Judge, Ramanathapuram in Crime No.8 of 2016 on the file of the first respondent police.

2. The petitioner is the defacto complainant and he had given complainant against one Paranikanth (A.1) and Manimozhian (A.2) before the first respondent police on an allegation that they siphoned off the money belonging to the petitioner on various



occasions. As a result, a complaint came to be lodged by the petitioner against the accused and the same was registered in Crime No.8 of 2016 for the offences under Sections 409 and 420 of I.P.C. dated 09.04.2016. Pursuant to which, the second accused moved anticipatory application before the Principal District and Sessions Judge, Ramanathapuram, in Cr.M.P.No.1078 of 2016 and the same was dismissed on 15.04.2016. Thereafter, he moved anticipatory application before this Court by way of CrI.O.P.(MD).No.6727 of 2016 and the same was dismissed on 11.07.2016. Again, the second accused once again approached the Principal District and Sessions Judge, Ramanathapuram, for anticipatory application in Cr.M.P.(MD).No.241 of 2017 and the same was ordered on 09.02.2017. Aggrieved over the same, the petitioner is before this Court.

3. Learned counsel for the petitioner would submit that the Court below failed to consider the aspect that the second respondent suppressed the fact that he had already approached this Court on 11.07.2016 and got dismissal order CrI.O.P.No.6727 of 2016. Despite the said fact, the second respondent managed to get anticipatory bail before the Court below and hence, the attitude of the second respondent has to be taken into account by this Court and prayed for appropriate orders.

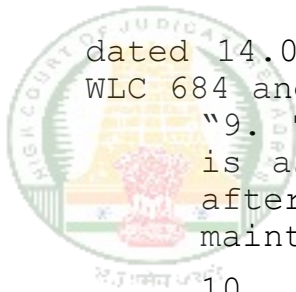
4. Learned Additional Public Prosecutor would submit that he is not aware of the earlier order passed by the Court below and prayed for appropriate orders.

5. Learned counsel for the second respondent would submit that on appreciation of facts of the case, the Court below had granted anticipatory bail to him and therefore, there is no need to interfere with the order of the Court below.

6. Heard the learned counsel for the petitioner; the learned Additional Public Prosecutor appearing for the first respondent and the learned Counsel for the second respondent and perused the materials available on record.

7. The following questions will be useful as to whether the bail granted by the Court below in favour of second respondent will pass the scrutiny of law or not?

- (i) Once the anticipatory bail application is rejected by the High Court, is the accused entitled to make another anticipatory bail application before the Court below and obtain bail?
- (ii) Whether the Court below is competent to grant bail to the accused under Section 438 Cr.P.C ignoring the earlier rejection order of the High court? and
- (iii) Has the complainant locus standi to make application under sub-section (2) of Section 439 Cr.P.C seeking cancellation of bail granted to an accused?



dated 14.03.2001, which is reported in II (2001) DMC 17, 2001 (4) WLC 684 and 2001 (4) WLN 642.

"9. The first question that requires my consideration is as to whether second anticipatory bail application after rejection of the first by the High Court, is maintainable ?

10. It may be understood that power to grant anticipatory bail does not flow from Article 21 of the Constitution of India but it has been conferred by the statute enacted by the Parliament and the Parliament can, by amending the Code of Criminal Procedure or by enacting special law take it away also. Even this provision can be omitted by the State Amendment and such amendment will not have the effect of depriving a person of his personal liberty. State of Uttar Pradesh by U.P. State Amendment excluded the applicability of Section 438, Cr.P.C. But the provisions contained in Section 439, Cr.P.C. cannot be omitted as they flow from Article 21 of the Constitution and relate to personal liberty of a person.

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13. Now I proceed to deal with the submissions advanced by learned Counsel for the petitioner in regard to maintainability of second anticipatory bail application. Babu Singh v. State of U.P., (1978) SCC 579, was the case wherein the High Court convicted the accused under Section 302, I.P.C. The accused approached the Supreme Court in their statutory right of appeal. Hon'ble Supreme, Court rejected the bail application of the accused but granted second bail application after six months with the following observations :

"An order refusing an application for bail does not necessarily preclude another on a latter occasion giving more materials, further developments and different considerations. While the Court should set store by the circumstance that the bail application was once rejected it cannot be said that the Court is barred from second consideration at a later stage."

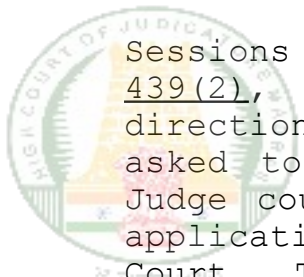
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15. In Ram Gopal v. The State of Rajasthan, 1983 RLW 270, this Court indicated that if there are some circumstances which were not before the Court when the earlier bail application was rejected, or some additional grounds or there are 'some further developments' and 'different considerations' and if 'some more details' are available at a later stage at the time of second or subsequent bail application, the Court has jurisdiction to entertain the subsequent bail application.

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

22. It is difficult to agree with the submission of learned Counsel for the accused petitioners that the



Sessions Judge could not exercise the powers under Section 439(2), Cr.P.C. independently and was influenced by the directions of the High Court. The Sessions Judge was only asked to decide the legal question whether the Sessions Judge could have entertained the second anticipatory bail application even after rejection order passed by the High Court. The Sessions Judge who in the earlier order justified his action of granting anticipatory bail to the accused petitioners on the ground that no concealment of earlier rejection order was made by them, could have again justified the order of granting bail had he reasons and legal grounds to justify the same.

23. This Court as already stated, dismissed the bail application of the accused petitioners made under Section 438, Cr.P.C. on August 21, 1998 after considering the case diary and the statements of Fateh Singh, Kistoori and Harphool and also the fact that the deceased Vinod died within two years of her marriage. But it is distressing to note that the learned Sessions Judge only after two months and nine days of the High Court's rejection order, when the ink of the order was still wet, ignored the order and granted bail to the accused petitioners.

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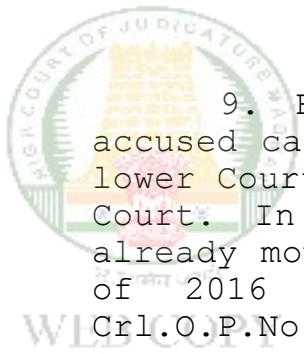
29. Their Lordships of the Supreme Court in Bimla Devi v. State of Bihar, 1994 Criminal LJ 638, held that provisional bail granted by Magistrate in spite of rejection of two earlier successive bail applications by the High Court was against the principles of judicial discipline.

30. This Court in Sahabuddin Meb v. Shiv Lal and Ors., 1990 RCC 445, observed in somewhat similar situation, thus-

"No doubt the powers of this Court as well as of Sessions Court are concurrent but the question is that once this Court has disallowed bail application under Section 438, Cr.P.C. whether propriety demands or is it proper for the learned Sessions Judge then to allow bail to the same accused person to whom bail has been disallowed by this Court ? In my opinion learned Sessions Judge may have jurisdiction but in a case in which this Court has dismissed bail then it will be improper exercise of jurisdiction and discretion to allow bail to the accused person. If this view is not taken then there may be no sanctity of the higher Court and if this Court dismisses the bail application, next day learned Sessions Judge will release the accused person on bail."

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33. In the result the criminal miscellaneous petition stands dismissed. Let a copy of this order be placed before Hon'ble the Chief Justice for taking such action against the erring judicial officer on the administrative side as may be deemed fit by his Lordship."



9. From the above judgment, it is crystal clear that the accused cannot make an application for anticipatory bail before the lower Court once the anticipatory bail application dismissed by this Court. In the case on hand, admittedly, the second respondent already moved Court below and got dismissal order in Cr.M.P.No.1078 of 2016 dated 15.04.2016. Again, he moved this Court in CrI.O.P.No.6727 of 2016 and the same was also dismissed by this Court on 11.07.2016. Suppressing the said fact, the second respondent once again moved the Principal District and Sessions Judge, Ramanathapuram and obtained anticipatory bail in CrI.M.P.No.241 of 2017 which cannot be sustained in the eye of law in the light of the authoritative pronouncement cited supra.

10. In my considered opinion, the attitude of the second respondent is an abuse of process of law and he has not come before this Court with clean hands and therefore, I have no hesitation to hold that the bail granted by the Court below has no legs to stand and it is liable to be cancelled. Accordingly, the anticipatory bail granted to the second respondent in Cr.M.P.No.241 of 2017 dated 09.02.2017 is cancelled.

With the above observation and discussion, this petition is allowed.

sd/-
05/09/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, RAMANATHAPURAM
- 2 THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH,
RAMANATHAPURAM DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

COPY TO:THE REGISTRAR(I.T)
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1. CC to M/S.C.MUTHUSARAVANAN, Advocate SR.No.29871

ORDER
IN
CRL OP (MD) No.2533 of 2017
Date :05/09/2017