



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

Monday, the Tenth day of April Two Thousand Seventeen

PRESENT

The Hon`ble Dr.Justice G.JAYACHANDRAN

CRL OP(MD) No.2843 of 2017

P.UDHAYA SURIYAN ... PETITIONER / DEFACTO COMPLAINANT

Vs

1 KUMAR @ HOME GUARD KUMAR
(NOW HE IS REMANDED IN CENTRAL
PRISON MADURAI)

2 STATE REPRESENTED BY
THE INSPECTOR OF POLICE
B-6, JAIHINDPURAM, POLICE STATION
(LAW & ORDER), MADURAI
CRIME NO. 1283/2011)

... RESPONDENTS

For Petitioner : M/S.K.M.PRISCILLA JANSI, Advocate

For First Respondent : M/S.N.ANANTHA PADMANATHAN, Advocate

For Second Respondent : Mr.K.V.RAJARAJAN,
Govt. Advocate (Crl. Side)

PETITION FOR CANCELLATION BAIL Under Sec. 439(2) Cr.P.C.

ORDER : The Court Made the following order :-

This petition is for cancellation of bail granted to the 1st respondent/Kumar @ Home Guard Kumar by the Sessions Court in the case of alleged attempt of murder of two persons by name, Murali and Madhan.

2.The petitioner herein is father of Murali. The reason stated in this petition is that there is a long-standing political rivalry between his family and the 1st respondent. On 26.10.2011, the 1st respondent and others attempted to kill his son Murali and his brother's son Madhan with lethal weapon. Both of them got grievously hurt and admitted in the hospital as inpatient and later discharged.

3.The Sessions Court granted bail to the 1st respondent on 17.11.2011 in this case. Thereafter, the 1st respondent became more
chemical towards the petitioner and his son. On 02.02.2015 the
petitioner and his son were threatened by the 1st respondent to



withdraw the case, if not, they will have to face dire consequences. The petitioner refused to withdraw the case, but gave a complaint to the police, regarding the intimidation. The Police did not take action against the 1st respondent on his complaint. The 1st respondent on 25.05.2016 murdered the petitioner's son Murali.

4. As a witness in both the cases, the petitioner apprehends that if the 1st respondent/accused is allowed to be on bail, he will harm him and other witnesses, hence, for the breach of bail conditions, the 1st respondent has to be remanded to judicial custody after cancelling the bail.

5. On notice, the 1st respondent represented by his counsel, contended that the Police has falsely fixed him in the murder of Murali and he was not at all in the station on the date of occurrence. The 1st respondent has not violated any of the bail conditions. Hence, this petition is liable to be dismissed.

6. The Code of Criminal Procedure, which providing provision for granting bail, has also laid down the circumstances under which the bail granted can be cancelled.

7. It is the trite principle of criminal jurisprudence that in a civilised society, the individual liberty is paramount and deprivation of the same is only subject to the larger social interest. Deprivation of liberty shall always be with the sanction of law. However, there is no hard and fast rule which says that once bail granted, it cannot be cancelled.

8. In ***Prakash Kadam and others vs. Ramprasad Vishwanath Gupta and another***, reported in **2011 (6) SCC 189**, while making a distinction between cancellation of bail and consideration for grant of bail, the Hon'ble Supreme Court has held as follows:-

'18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.'

9. In the case on hand, the 1st respondent on earlier occasion, has attempted to murder the petitioner's son Murali on 26.10.2011, in which, he was arrested and released on bail on 17.11.2011. Thereafter, he had been threatening the petitioner and his son Murali to withdraw the case. Hence, the petitioner has given a complaint regarding intimidation to the police on 02.02.2015 and the Police has acknowledged the receipt of complaint vide CSR No.25/2015 dated 02.02.2015. The 1st respondent has emboldened by the inaction of the police and had murdered the petitioner's son Murali on 25.05.2016. Thus, what could not succeed earlier had been



accomplished by the 1st respondent, while he was set at liberty by granting bail. The petitioner, who is an eye witness to the crime apprehends that the 1st respondent may do away him also.

10. In **Ash Mohammed vs. Shiv Raj Singh Alias Lalla Babu**, reported in 2013 (1) TNLR 1 (SC), the Hon'ble Supreme Court has observed as follows:-

'32. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction of liberty of the accused.'

11. The petitioner has placed on record that he is being intimidated by the 1st respondent. One of the victims by name, Murali had been murdered and the 1st respondent is the sole accused in that case. Hence, the accused/1st respondent by killing the victim of his earlier crime, has literally obliterated one of the witnesses in that case, for which, he was granted bail. Therefore, there can be no more better reason to cancel the bail.

12. Hence, this Criminal Original Petition is allowed. Bail granted on 17.11.2011 by the Principal Sessions and District Judge, Madurai, in Cr.M.P.No.198/2011 in Crime No.1283 of 2011, is hereby cancelled. It is stated that the 1st respondent is preventively detained under Act 14/82. Hence, this order may be communicated to the concerned Jail Superintendent and Court concerned for further proceedings.

sd/-
10/04/2017

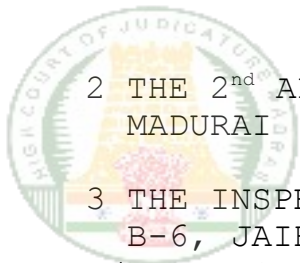
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

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

THE PRINCIPAL SESSIONS AND DISTRICT JUDGE,
MADURAI



2 THE 2nd ADDITIONAL ASSISTANT SESSIONS JUDGE,
MADURAI

3 THE INSPECTOR OF POLICE,
B-6, JAIHINDPURAM, POLICE STATION,
(LAW & ORDER), MADURAI .

4 THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 cc to MR.N.ANANTHAPADMANABAN, ADVOCATE, SR No.19851

+1cc to M/S.S.THANGARAJ, ADVOCATE SR.No. 51120

CSL/BS/SAR-IV/11.04.2017 : 4P/8C

ORDER

IN

CRL OP(MD) No.2843 of 2017

Date :10/04/2017