



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

Thursday, the Thirteenth day of July Two Thousand Seventeen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CRL OP (MD) No.7023 of 2017

PERIYARAJ

... PETITIONER/ACCUSED NO.1

Vs

STATE REP.BY ITS,  
THE INSPECTOR OF POLICE  
SOUTH POLICE STATION,  
THOOTHUKUDI DISTRICT  
CRIME NO.1048/2016

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.C.T.PERUMAL Advocate

For Respondent : MR.A.RAMAR, Additional Public Prosecutor

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner is accused in Crime No.1048 of 2016 on the file of the respondent police, apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 147, 148, 294(b), 364(A), 395, 397 & 506(ii) of I.P.C and hence, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner/accused No.1 used filthy languages against the defacto complainant and kidnapped him with the other accused on 08.09.2016. The further case of the prosecution is that the petitioner snatched a gold chain from the defacto complainant. The petitioner submits that he was arrested on 09.09.2016. By an order, dated 15.11.2016, he was granted bail by this Court in Crl.O.P.(MD).No.21641 of 2016 and released on 16.11.2016. Therefore, the petitioner complied with the conditions from 17.11.2016 to 04.01.2017 by appearing before the respondent police. It is the further case of the petitioner that he filed Crl.O.P.(MD).No.23602 of 2016 before this Court to quash the First Information Report in the present crime, he was not permitted to sign before the respondent police. Thereafter, the respondent police filed an application under Section 437(5) of the Criminal Procedure Code before the learned Judicial Magistrate No.1, Thoothukudi to cancel the bail granted to him on the ground that the petitioner has not reported before the respondent police. The



petitioner filed a detailed counter to the afore-said application stating that he reported to the respondent police for 48 days and despite the said fact, the learned Judicial Magistrate without considering the afore-said facts has cancelled the bail granted to him by an order dated 15.05.2017 in CrI.M.P.(MD).No.1367 of 2017. Hence, he come forward with the present petition.

3. Learned counsel for the petitioner submits that the case is a false one registered by the respondent police with an ulterior motive and further it is alleged that due to the harassment and high handed behaviour of the respondent police, the petitioner was unable to comply with the conditions as directed by this Court. Hence, he prayed for appropriate orders.

4. The learned Additional Public Prosecutor would submit that since the petitioner did not comply with the order of this Court made in CrI.OP(MD).No.21641 of 2016, dated 15.12.2016, the learned Judicial Magistrate concerned thought it fit to cancel the bail granted to the petitioner. Further, he refuted the allegations levelled against the respondent police. Hence, he prayed for the dismissal of this anticipatory bail.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor (CrI. Side) for the respondent/State and perused the materials available on record.

6. The moot question involved in this matter is that whether the bail granted by the High Court can be cancelled by the Judicial Magistrate or not?

7. It can be pointed out that the power to grant bail under sub-sections (1) and (2) of Section **437**, referred to above, is with the officer-in-charge of a police station (SHO) or with a Court other than the High Court or Court of Session. I.e., with the Magistrates. Therefore, the power to cancel bail under Section **437 (5)** can be exercised by the Magistrate Court, only if such bail has been granted by such police officer or by that Magistrate Court. However, under Section **439(2)** of the Criminal Procedure Code power to cancel bail has been given to the High Court and the Sessions Court. This power is quite wide and it extends to any bail granted under Chapter 33 of Cr.P.C. which includes Sections **437, 438 and 439**. Therefore, the High Court and Sessions Court can also cancel the bail granted by a Police Officer or by a Magistrate Court under Section **437**, in addition to the power to cancel bail granted by such Court itself (I.e. by High Court or the Sessions Court) under Section 439. Thus, the Section is very clear that the Magistrate concerned cannot cancel or alter the bail granted by the Sessions Court or by the High Court under Section **439(2)** of Cr.P.C.

8. However, in the case on hand, at the time of granting conditional bail to the petitioner in CrI.O.P.(MD).No.21641 of 2016 dated 15.11.2016, one of the conditions imposed by the High Court, in paragraph No.5 is usefully extracted below:-

5. (i) .....

...

1. On breach of any of the afore-said conditions, the Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner



released on bail by the Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala, [(2005) AIR SCW 5560 ]**.

9. In this connection, it is useful to refer the judgment reported in **P.K.Shaji Vs. State of Kerala, [(2005) AIR SCW 5560 ]**., wherein, the operative portion of the order is usefully extracted below:-

"The order of the Sessions Court shows that the learned Magistrate has been empowered to consider the question of violation of any of the conditions imposed by the sessions Court and was given powers to pass appropriate orders. The plea raised by the appellant's learned Counsel had no such power, the Sessions Court was not empowered to invest that power in the Magistrate. We do not find any force in his contentions. The superior Court can always give directions of this nature and authorise the subordinate Court to pass appropriate orders and the trial Magistrate would be the competent authority to decide whether any conditions had been violated by the person who had been released on bail. When there is a specific direction to pass appropriate orders as if the conditions for granting bail had been imposed by the learned Magistrate himself the impugned order is legal and valid"

10. Admittedly, the petitioner has not complied with the conditional order passed by this Court. Even assuming if the police has harassed the petitioner as alleged by him, he could have very well moved for relaxation of the said condition or atleast modification of the said order. But, he did not do so for the reasons best known to him. Needless to say that once anticipatory bail is granted to the litigant, invariably, he has to comply with the conditions imposed by this Court in letter and spirit, without citing any reason.

11. Rightly, the Judicial Magistrate concerned has passed the order. There is no reason to interfere with the order impugned in this petition. Hence, this criminal original petition stands dismissed. However, considering the fact that the petitioner had complied with the conditions for about 47 days and also considering the facts and circumstances of the case, the petitioner is directed to surrender before the same Court and the bail application filed by the petitioner shall be considered on the same day, on merits and in accordance with law.

sd/-  
13/07/2017

/ TRUE COPY /

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



TO

1 THE INSPECTOR OF POLICE  
SOUTH POLICE STATION, THOOTHUKUDI DISTRICT.

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

COPY TO:

1 THE REGISTRAR (JUDICIAL),  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE JUDICIAL MAGISTRATE NO.1,  
THOOTHUKUDI

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
THOOTHUKUDI

+1. CC to M/S.C.T.PERUMAL Advocate SR.No.26463

SSM

CSL/CM-MSA/SAR-III/14.07.2017 : 4P/6C

ORDER

IN

CRL OP(MD) No.7023 of 2017

Date :13/07/2017