

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.O.P.No.6088 of 2018

Mrs.Kalpana (32/F)
W/o.Ramesh Shanelio

...Petitioner/
Defacto complainant.

Vs.

1.The State by Inspector of Police,
All Women Police Station,
R.S.Puram,
Coimbatore-641004.
(FIR No.5 of 2017) ...1st Respondent

2.Ramesh Shanelio, (39/M)
S/o.Swamynathan.

3.Swamynathan (74/M)
W/o.Chinnaswamy.

4.Saroja Amma (69/F)
W/o.Swamynathan.

5.Ravi Kumar (48/M)
S/o.Swamynathan.

6.Anuratha (48/M),
W/o.Ravi Kumar. ...2 to 6th Respondents/
Accused 2 to 6.

PRAYER: Criminal Original Petition is filed under Section 439 (ii) of Cr.P.C., to cancel the anticipatory bail granted to accused 2 to 6 in Crl.M.P.No.3283 of 2017 on the file of the 1st Additional District & Sessions Judge, Principal District & Sessions Judge, Coimbatore (FAC) by order dated 09.01.2018 in connection with Crime No.5 of 2017 on the file of the 1st respondent.

For Petitioner : Mr.I.Abrar Md. Abdullah
For R1 : Mr.C.Iyyapparaj
Additional Public Prosecutor.
For RR2 to 6 : Mr.N.Ishtaq Ahmed.

O R D E R

The criminal original petition has been filed seeking to cancel the bail granted to accused 2 to 6 in Crl.M.P.No.3283 of 2017 by the 1st Additional District & Sessions Judge (Principal District & Sessions Judge), Coimbatore (FAC) on

2.The case of the prosecution is that the marriage between the petitioner and the second respondent was solemnized on 30.08.2007 in Kurnool District, Andhra Pradesh for which the petitioner's parents gave 100 sovereign of gold, house hold articles and a car as dowry demanded by the 2nd respondent family. Out of their wedlock, they were blessed with two children. At the time of marriage, it was informed by the 2nd respondent's family that his son is earning Rs.50,000/- per months and awaiting for a post in Bengaluru Public Works Department. Since, he was not able to procure job, he joined with his father-in-law's business in Coimbatore and the entire exigencies were taken care by the petitioner's father. Thereafter, there was a matrimonial dispute between the petitioner and the 2nd respondent and in the year 2017, the respondents came to the petitioner's parents and demanded to buy a house in the name of 2nd respondent and threatened the petitioner and her parents with dire consequences. Hence, the petitioner filed a complaint before the 1st respondent police for demand of dowry and a case was registered, for which the respondents 2 to 6 have filed anticipatory bail application before this Court in CrI.O.P.No.26814 of 2017 and the same was dismissed as withdrawn on 24.01.2018. They filed another anticipatory bail application before the 1st Additional District and Sessions Judge, Coimbatore on 20.12.2017 in CrI.M.P.No.3283 of 2017 and obtained anticipatory bail on 09.01.2018 suppressing the fact of the pendency of Anticipatory bail petition before this Court. Hence, the petitioner has filed the present petition seeking to cancel the anticipatory bail granted to respondents 2 to 6.

3.Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for respondents 2 to 6.

4.Learned counsel further submitted that immediately after the petitioner coming to know about the anticipatory bail obtained by the private respondents by way of suppression, he filed petition to set aside the order dated 09.01.2018 passed in CrI.M.P.No.3283 of 2017, before the lower Court in SR.No.9964 of 2018 on 18.02.2018, however, the same has been returned on 19.02.2018 on the ground that the petition is not maintainable under the provision under Section 482 of Cr.P.C., since there is specific provision under Section 439(2) of Cr.P.C. Hence, the petitioner has approached this Court by filing this petition under the provisions of Section 439(2) of Cr.P.C.

5.The learned counsel for the petitioner would submit that pending anticipatory bail application, the respondents 2 to 6 have filed another anticipatory bail application before the 1st Additional District and Sessions Judge, Coimbatore and obtained an order 09.01.2018 suppressing the fact that they

have filed anticipatory bail application before this Court and the same is dismissed. He further submitted that the respondents 2 to 6 were settled in Andhra Pradesh and the petitioner and her children were residing in her parental house and there is no possibility for negotiation also. Hence, the petitioner and her children are in road without any remedy. Further that the private respondents misled the lower Court and obtained anticipatory bail by way of suppression and fraud. Accordingly, he prays to cancel the anticipatory bail to the respondents 2 to 6.

6.The learned Additional Public Prosecutor on instructions submitted that the respondents 2 and 6 are residing at Andhra Pradesh and they have obtained anticipatory bail suppressing the fact that earlier petition seeking for anticipatory bail is pending before this Court. He further submitted that the respondent 2 to 6 have not complied the condition and thereafter not appeared for the enquiry and the investigation is still pending.

7.The learned counsel for respondents 2 to 6 did not dispute the facts submitted by the learned counsel for the petitioner that pending anticipatory bail petition before this Court, the respondents have filed another application before the lower Court and obtained an order. He further submitted that he had instructed the advocate to withdraw the petition pending before this Court and he was under the impression that it has been withdrawn dismissed. The act of the respondents is neither wilful nor wanton and filed an affidavit before this Court seeking unconditional apology, such affidavit is taken on file and the same is recorded. Accordingly, he prays for dismissal of the petition seeking to cancel the anticipatory bail granted to the respondents 2 to 6.

8.It seems that the private respondents are not interested to co-operate in the investigation. The respondents 2 to 6 have filed affidavit before this Court stating that they had issued instructions to their counsel, who is appearing for anticipatory bail petition in High Court to withdraw the same. However, no records were produced before this Court to show that they have withdrawn the anticipatory bail petition. Hence, this Court has no hesitation to arrive at a conclusion that the private respondents 2 to 6 have deliberately suppressed the pendency of the anticipatory bail petition before this Court and obtained an order before the lower Court. It is a clear case of fraud and it cannot be viewed leniently.

9.Taking into consideration the facts and circumstances of the case and also the submissions made by the learned counsels, it is an admitted fact that there was a matrimonial dispute in between the petitioner and the 2nd respondent and they live separately and there is also no dispute that the children were living with the petitioner. There is also no

serious allegation as against the respondents 2 to 6 except for the demand of dowry, for which the present complaint has been made. It is also not in dispute that the respondents 2 to 6 filed anticipatory bail petition before this Court in CrI.O.P.No.26814 of 2017 and suppressing the very same fact filed another anticipatory bail petition before the lower Court in CrI.M.P.No.3283 of 2017 and obtained bail. However, suppressing the fact and obtaining an order before the lower Court cannot be viewed leniently. Moreover, the learned counsel for the respondents 2 to 6 has requested the respondents several times to come for a compromise. Despite the same, the respondents have not come forward to any compromise and stays at Andhra Pradesh and not even informed to the Police Station. It seems that the respondents are not interested to pursue the matter and this attitude of the respondents 2 to 6 are not acceptable one. Hence, the anticipatory bail granted to respondents 2 to 6 by the 1st Additional District and Sessions Judge, Principal District and Sessions Judge, Coimbatore (FAC) on 09.01.2018 is cancelled. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The 1st Additional District & Sessions Judge,
Principal District & Sessions Judge,
Coimbatore (FAC)

2. The Inspector of Police,
All Women Police Station,
R.S.Puram,
Coimbatore-641004.
(FIR No.5 of 2017)

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Ishtiaq Ahamed, Advocate SR.NO.75254 dt.14.11.18

+1cc to Mr.I.Abrar Md. Abdullah, Advocate SR.NO.77656
dt.14.11.18

RM(CO)

sm:13.11.2018

CrI.O.P.No.6088 of 2018