

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.No.11062 of 2018

Nigar Shiraj

... Petitioner/De-facto Complainant

/Vs/

1. The State Rep by
The Inspector of Police,
T-1, Ambattur Police Station,
Chennai. 1st Respondent
2. G.S.Raju 2nd Respondent

PRAYER: Criminal Original Petition filed under sections 439(2) of Cr.P.C., to cancel the bail granted to the second respondent by this Court vide order dated 07.03.2018 in Crl.O.P.No.6634 of 2018.

For Petitioner : Mr.C.P.R.Kamaraj

For R-1 : Mr.K.Prabakar
Additional Public Prosecutor

For R-2 : Mr.John Sathyan

O R D E R

This Criminal Original Petition has been filed by the de-facto complainant to cancel the bail granted to the second respondent by this Court, vide order dated 07.03.2018 in Crl.O.P.No.6634 of 2018.

2. The learned counsel for the petitioner/de-facto complainant would submit that the second respondent/accused gave newspaper advertisement promising partnership to persons who invest in their firm and thereby, the husband of the petitioner met accused in Ambattur, who informed him that their firm is a Franchisee of "CARNATION", a company dealing in multi-brand auto solutions and is making huge profits and thereby, the husband of the petitioner/defacto complainant was induced to invest Rs.35 lakhs in the firm, of which, Rs.5 lakhs would be adjusted

towards the capital and the balance would be taken as a short term loan and offered to repay the same with interest at the rate of 24% per annum. The further case of the defacto complainant is that the accused refused to induct her as a partner in the firm and also failed to pay the interest on the amounts. On the complaint given by the petitioner/defacto complainant, the case in Crime No.2935 of 2017 was filed by the first respondent police for the alleged offences under Section 406, 420 and 120-B of IPC against the second respondent. The counsel for the petitioner would submit that the bail had been obtained by the second respondent by misrepresenting before this Court that an amount of Rs.10,00,000/- has been paid to the defacto complainant by RTGS. Hence, the learned counsel sought for cancellation of bail, since the order of bail had been obtained by misrepresentation.

3. The second respondent has filed a counter stating that the allegations in the complaint is in respect to the financial transaction and a false complaint had been given as a case of cheating and that on the instructions of the petitioner/defacto complainant and her husband the second respondent had repaid the amount of Rs.5.70 lakhs to one Mr.Briji Bhushan Agarwal, who had paid money for the defacto complainant and further Rs.15,000/- was paid to one Irudhayaraj at the behest of Mr.Shiraj the husband of the petitioner. It was further stated that an amount of Rs.5,00,000/- was paid to Mr.Shiraj by way of cash in the month of May 2017, for which he refused to give any receipt stating that it would be adjusted and acknowledged at a later point in time. Trusting the words of Mr.Shiraj the second respondent did not insist on the receipt. The conduct of the defacto complainant and her husband speaks volumes on their malicious mind set and as a matter of fact, it was them who intended to cheat the second respondent and his wife to usurp a successful business and would submit that their amount has been repaid and a case of money dispute has been attempted to convicted as a case of cheating. He would further submit that the petitioner was already in jail and arrested on 24.02.2018.

4. The learned counsel for the 2nd respondent would further submit that the second respondent/accused was originally arrested on 07.12.2017 and during the hearing of the bail application the second respondent filed an undertaking affidavit undertaking to settle the entire amount disputed by the defacto complainant and thereby, interim bail was granted on 11.01.2018. Since due to arrest, the petitioner suffered loss in his business he was unable to comply with the undertaking and thereby, the second respondent was send back to jail on 22.02.2018 and thereafter, the second bail application was filed and he was enlarged on bail on 07.03.2018. The second respondent has also produced the statement of account to show that an amount of Rs.1,70,000/- was transferred on 17.07.2017 and an

amount of Rs.4,00,000/- was transferred to the account of Mr.Briji Bhusan Agarwal on 05.06.2017 that it had been done on the instruction of the petitioner/de-facto complainant. The learned counsel would submit that no case for cheating has been made out against the 2nd respondent and the 2nd respondent had no intention to cheat at all and that his intention was only to settle the due, however due to the false case and arrest, his entire business has been collapsed.

5. The learned counsel would further submit that no misrepresentation had been made by the petitioner at the time of bail whereas the petitioner/de-facto complainant in the cloak of this petition to cancel the bail is virtually attempting to convert this court as a execution court. He would further submit that the petitioner/de-facto complainant has not made out a case for cancellation of bail and the 2nd respondent has not violated any condition warranting cancellation of bail. He would also submit that bail once granted should not be cancelled unless to a cogent case, based on a supervening event has been made out by the petitioner and prayed for dismissal of the petition.

6. Heard the arguments of both sides.

7. In the case reported in 2018 SCC Online SC 549 (X V.State of Telangana) Hon'ble Apex Court has held as follows:-

"14. In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in *Dolatram v. State of Haryana* observed that:

" Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion of 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."

15. These principles have been reiterated by another two judge Bench decision in Central Bureau of Investigation, Hyderabad v. Subramani Gopalakrishnan and more recently in Dataram Singh v. State of Uttar Pradesh:

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. 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 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 concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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."

8. This Court is of the opinion that no cogent case or any supervening event has been projected by the petitioner/de-facto complainant for cancellation of bail. Moreover, on the facts of the complaint also this court is of the opinion that this is not a case warranting the cancellation of bail.

9. In view of the above observation, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

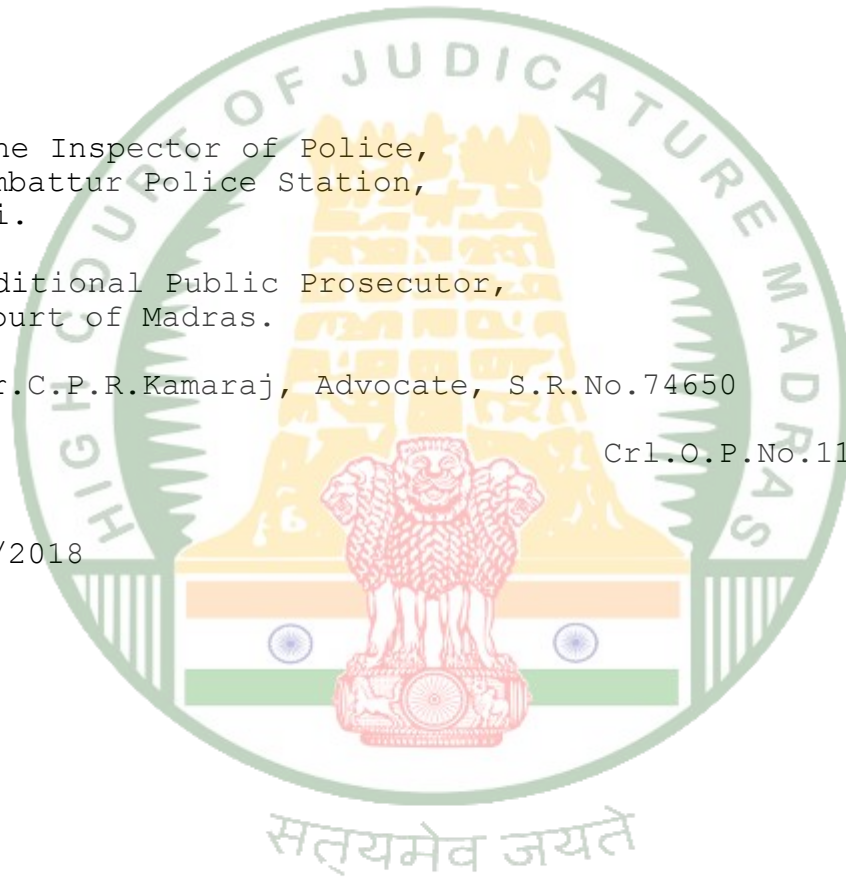
1. The The Inspector of Police,
T-1, Ambattur Police Station,
Chennai.
2. The Additional Public Prosecutor,
High Court of Madras.

+1cc to Mr.C.P.R.Kamaraj, Advocate, S.R.No.74650

Crl.O.P.No.11062 of 2018

RSI(CO)

rrs 20/11/2018



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