

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.23936 of 2018

K.Raghupathy ... Petitioner / Intervenor/de-facto
complainant

/Vs/

1. Gani @ Mohammed Gani ... Respondent / Petitioner
/Sole Accused

2. State by:
Inspector of Police,
Central Crime Branch, Team-I,
Vepery, Chennai-600 007.
(X.Crime No.285/17) Respondent/Complainant

PRAYER: Criminal Original Petition filed under section 439 (2)
of Code of Criminal Procedure, to cancel the bail granted to the
Respondent/Accused in Crl.O.P.No.20391 of 2017 dated 06.10.2017.

For Petitioner : Mr.V.Karthik, Senior Counsel
For Mr.K.M.Ramesh
For R-1 : No Appearance
For R-2 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed by the intervener/de-facto
complainant seeking to cancel the bail granted by this Court to
the accused in Crl.O.P.No.20391 of 2017 on 06.10.2017.

2. The case in Crime No.285 of 2017 has been registered
against the accused for offences under Sections 420 and 506(i)
of IPC. The first respondent/petitioner/sole accused was
arrested on 02.09.2017.

3. For the sake of convenience the
petitioner/intervenor/de-facto complainant is hitherto refer as
"the petitioner" and the first respondent/petitioner/sole
accused is referred as "the first respondent" and the respondent
/complainant is referred as "the second respondent".

4. The learned counsel appearing for the petitioner would submit that the bail has been obtained by the 1st respondent accused in Crl.O.P.No.20391/2017 by misrepresentation of facts and also by fraud. He would further submit that, at the time of grant of bail, the learned counsel Mr.G.Mohanakrishnan, who had represented the petitioner had misrepresented before this Court that the parties have arrived at a settlement and have entered into a Memorandum of understanding with the respondent and that the 1st respondent had also filed an affidavit to that effect. The learned counsel for the petitioner would submit that infact no such settlement was arrived between the petitioner and the 1st respondent and would submit that on coming to know that a misrepresentation had been made before this Court, the petitioner had filed a complaint against his erstwhile counsels who had represented him in the bail application before the Bar Council and the Bar Council has initiated enquiry against the counsels. He would submit that on coming to know about the misrepresentation made by the erstwhile counsels, the present petition seeking cancellation of bail has been filed.

5. Notice was ordered to the first respondent/accused and he had engaged one Mr.A.Satish, who had filed vakalat on behalf of the 1st respondent. Thereafter, the matter was listed before this Court on 25.01.2018 and on the request of the learned counsel for the 1st respondent, the matter was directed to be posted on 29.01.2018. From 29.01.2018, the matter was again posted on 31.01.2018 and on 31.01.2018, this Court directed the learned counsel to inform the first respondent to be present before this Court for hearing and directed the matter to be posted on 05.02.2018. However, the matter was not listed on 05.02.2018 and it was taken up in the list on 12.02.2018 and since it did not reach, the matter was again posted on 13.12.2018. On 13.02.2018 one Mr.P.Ramkumar, counsel representing Mr.A.S.Satish, learned counsel for the 1st respondent submitted that Advocate Mr.Satish is hospitalised with heart ailments and he had also produced a copy of the letter sent by Mr.A.S.Satish to the 1st respondent asking him to appear before the Court. In the letter, the learned counsel had also stated that he is withdrawing the vakalat filed on behalf of the 1st respondent and has asked the 1st respondent to make alternative arrangement for proceeding with the case. However, since no proof was produced by the counsel for the 1st respondent regarding service of letter on the 1st respondent the matter was adjourned to 20.02.2018 for filing an affidavit regarding proof of service of the letter on the 1st respondent before this Court. In the meanwhile, the 2nd respondent through the learned Additional Public Prosecutor was directed to inform the first respondent to appear before this Court on 20.02.2018. After that, the matter had been posted for hearing on

28.02.2018. On 28.02.2018, the 2nd respondent was also directed to file a status report with regard to the investigation done in this matter. On 11.04.2018, this Court directed the learned Additional Public Prosecutor to inform the Assistant Commissioner to be present with CD file on 18.04.2018.

6. On 18.04.2018 Mr.Ramkumar, learned counsel representing Mr.Satish had filed an affidavit of service regarding service in respect of the letters sent to the 1st respondent/accused on 15.02.2018.

7. Since, the 1st respondent did not appear before the Court, the second respondent was directed to produce the 1st respondent/accused before this Court and the second respondent investigating officer would also submit that the respondent accused had absconded and they were not aware of the whereabouts of the accused and they are taking steps to secure the accused.

8. The learned counsel for the petitioner was once again directed to take private notice on the first respondent/accused by RPAD. Learned counsel for the petitioner had also taken private notice on 06.06.2018 and would submit that the private notice sent to the registered post with acknowledgement due had been returned unserved stating that the respondent/accused has left.

9. Now, with regard to the petition for cancellation of bail. Notice has been served on the 1st respondent/accused and he had engaged the counsel and thereafter the counsel had also withdrawn the appearance. After withdrawal of appearance the counsel for the 1st respondent/accused had also duly intimated it to the 1st respondent/accused and no steps have been taken by the 1st respondent/accused to engage any other counsel to represent him. Thereafter, the counsel for the petitioner/de-facto complainant was also asked to take fresh notice to the 1st respondent/accused and the notice taken by the petitioner has also been returned with endorsement left, the second respondent/complainant was also directed to inform the 1st respondent/accused. After verification at the residence of the 1st respondent/accused the 2nd respondent has also stated that 1st respondent /accused is not available at the residence and that he is absconding. Notice has been served on the respondent and he has engaged a counsel and thereafter the counsel has withdrawn the memo of appearance and also informed the 1st respondent about the withdrawal of the memo. Thereafter the 1st respondent had failed to engage another counsel and failed to appear in person. It is clear that the 1st respondent/accused has wilfully evaded to appear before this Court. No counter has been filed to deny the averments in the petition for cancellation of bail and thereby, the averments have been left

uncontroverted and this Court accepts the averments made in the petition for cancellation of bail.

10. I am inclined to cancel the bail granted to the 1st respondent/accused on 06.10.2017 in CrI.O.P.No.20391 of 2017. The 1st respondent/accused shall surrender before the learned Metropolitan Magistrate for Exclusive trial of CCB Cases in Chennai and CBCID Metro Cases, Chennai within two weeks from the date of receipt of a copy of this order. If he fails to surrender the 2nd respondent /complainant shall take steps to arrest him and remand him to judicial custody.

11. With the above observation the Criminal Original Petition is allowed.

12. In respect of summoning of Advocates/Persons, separate order has been passed.

During the course of the hearing, learned counsel appearing for the petitioner /defacto complainant brought to the notice of this Court that five advocates who are junior Advocates attached to the office of the counsel who appeared on behalf of the petitioner/de-facto complainant in the bail application and who have earlier entered into an agreement with the de-facto complainant in respect of the transaction between the parties have threatened the petitioner /de-facto complainant and thereby this Court on 18.04.2018 directed the concerned advocates to appear before this Court.

2. Today, Mr.T.Kumar, Mr.T.Madhanagopal, B.Prakash, K.Balaji appeared in person before this Court and Mr.P.V.S.Giridhar and Mr.Rajasekar Advocates made submissions on their behalf. Mr.P.V.s.Giridhar would submit that the above persons have not entered into any such agreement as stated by the petitioner/ defacto complainant and would submit that in respect of the very same allegation, a complaint has been filed before the Bar Council by the petitioner/de-facto complainant and that they are facing enquiry before the Bar Council and would submit that they have been unnecessarily impleaded in the crossfire between the petitioner/de-facto complainant and the 1st respondent/accused and would submit that they are unnecessary parties in this petition for cancellation of bail and would pray that they may be discharged from this proceedings.

3. The presence of Mr.T.Kumar, Mr.T.Madhanagopal, B.Prakash, K.Balaji are noted. In view of the submissions made by the learned counsel the persons who have been summoned by this Court by order dated 18.04.2018 are discharged.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Central Crime Branch, Team-I,
Vepery, Chennai-600 007.
2. The Public Prosecutor,
High Court of Madras.
3. The Metropolitan Magistrate for Exclusive
Trial of CCB Cases in Chennai and CBCID
Metro Cases, Chennai.

Cr1.O.P.No.23936 of 2017

srg 30/08/2018

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