

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

(Orders reserved on 25.04.2018)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.2390 of 2018

State represented by
The Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai - 18.
(Crime No.1352 of 2013) Petitioner/Complainant

.. Vs ..

B.William Respondent/A-5

PRAYER in WP. 2390 of 2018: Criminal Original Petition filed under Section 439 (2) of Cr.P.C., to cancel the bail granted to the respondent/A-5 by this Court in Crl.O.P.No.2314 of 2015, dated 02.02.2015.

Prayer in Crl.Op.No. 2314 of 2015: Criminal Original Petition filed under section 439(2) of Cr.P.C to enlarge the petitioner on bail in Cr.No. 1352/13 pending on the file of the Respondent Police.

For Petitioner : Mr.C.Emilias, Public Prosecutor
Assisted by

Mr.T.Shanmuga Rajeswaran,
Government Advocate

For Respondent : Mr.G.Murugendran

For Intervener : Ms.D.Muralidharan

ORDER

This criminal original petition is filed by the State to cancel the bail granted to the respondent/A-5 by this Court in Crl.O.P.No.2314 of 2015, dated 02.02.2015.

2. The case of the petitioner/State is that A.1's son Basi

(A.3) also became an advocate during 2012 and property in dispute value also increased manifold running to several crores of rupees. Earlier, many panchayats have been conducted by A.1 family which was assisted by the respondent/A.5, Yesurajan (A.6) and James Sathiskumar (A.7) but ended in vain. Hence, the respondent/A.5 who is neighbour of A.1 family & childhood friend of A.1 family also a lawyer since 2011 conspired with all the other accused and murdered Dr.Subbaiah so that the land could be grabbed without any resistance and hindrance.

3. Based on the complaint given by the de facto complainant, a case was registered in Crime No.1352 of 2013 for the offence under Section 307 IPC by Srinivasan, then Inspector of Police, Abiramapuram police station. It appears from the records that during the course of investigation, the respondent/A.5 has filed a petition in CrI.O.P.No.24092 of 2013 seeking anticipatory bail and the same was dismissed on 29.10.2013.

4. Again, the respondent/A.5 has filed a petition for anticipatory bail before the Summer Vacation Court and obtained an order of anticipatory bail in CrI.O.P.No.11550 of 2014, on 16.05.2014. As against the said order of granting anticipatory bail, the de facto complainant has filed S.L.P.No.6186-6187 of 2014 before the Supreme Court and the same was allowed by the Supreme Court and again the matter was remitted back to the High Court by an order dated 10.10.2014.

5. On 14.11.2014, this Court had dismissed the anticipatory bail petition filed by the respondent/A.5 and as against which, the respondent/A.5 has filed S.L.P. No.9350 of 2014 and it was dismissed on 27.11.2014. Subsequently, the respondent/A.5 has surrendered before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai on 01.12.2014.

6. At this juncture, it is necessary to point out that the petitioner/A.5 approached the learned Principal Sessions Judge, Chennai, seeking bail in CrI.O.P.No.20090 of 2014 and the said petition was dismissed on 22.12.2014 and subsequently, he has moved High Court in CrI.O.P.No.33483 of 2014 and it was also dismissed on 06.01.2015. Subsequently, in CrI.O.P.No.2314 of 2015, the respondent/A.5 was granted bail on 02.02.2015 and on 28.04.2015 charge sheet has been laid before the Committal Court.

7. After completion of investigation, charge sheet was filed on 28.04.2015 altering the charge into one under Sections 120 (b), 109, 341 and 302 r/w. 34 IPC and the case was taken as P.R.C.No.80 of 2015 by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and subsequently after committal, reallocated to the learned VII Additional Sessions Judge,

Chennai, in S.C.No.348 of 2015 and the trial was posted to 24.01.2018 for examination of witnesses.

8. As stated supra, considering the fact that the trial is already commenced and taking note of the scope of the enquiry that has to be carried on in this petition for cancellation of bail by imposing self respect I am not commenting or expressing any view on the evidence of P.W.4, P.W.5, P.W.7 and P.W.8, which are now recorded by the trial Court in the ongoing trial. The case of the State in this petition is that the respondent/A.5 has abused and threatened the above said listed witnesses not to give evidence in the case in which they are happened to be witnesses and immediately thereafter the complaint has been lodged before the police and they are also taken steps to register FIR in respect of one case and C.S.R. was given in respect of another case subsequently it is also been fortified by the act of L.W.3 in refusing to receive the summons citing personal reasons.

9. The present petition for cancellation of bail is filed on the ground that when the matter is listed for trial and for examination of prosecution witness, the respondent/A.5 had threatened the vital witnesses who are listed as witnesses to speak about the criminal conspiracy for the alleged charge under Section 120(b) r/w. 302 IPC. It is the specific case of the State that the respondent/A.5 has threatened the witnesses L.W.3, L.W.55, L.W.56 and L.W.57.

10. In short, the case of the state is that after commencement of the trial, the respondent/A.5 had threatened the witnesses and thereby trying to tamper the witnesses and causing hindrance to the fair trial by threatening L.W.3, L.W.55, L.W.56 and L.W.57.

11. Learned Additional Public Prosecutor appearing for the State would contend that in view of the threat given by the respondent/A.5, the prosecution has to examine those witnesses deviating from the line of the order of the examination and hence L.W.55 was examined as P.W.4 while L.W.56 was examined as P.W.5 and L.W.58 was examined as P.W.7 and L.W.57 was examined as P.W.8. In this connection, the attention of this Court was drawn to the complaint given by one witness Bensam on 24.08.2017 and another complaint given by another witness wherein F.I.R. was registered by Kotticode police station in crime No.101 of 2017 on 24.08.2017. Further, the attention of this Court was also drawn to the copy of the letter received by the eye witness Gopinath dated 01.12.2017 and based upon the complaint given by one Shivaji, case was registered and copy of the C.S.R. was also produced.

12. Copy of the affidavit and the typed set of documents are also been served to the respondent/A.5. He has also filed counter affidavit.

13. The sum and substance of the counter affidavit filed on behalf of respondent/A.5 is that during the investigation, one I.P.S. officer has remarried the daughter of the victim and thereafter the investigation has taken a different stand and that Senior I.P.S. Officer, who married the daughter of the victim girl is behind the entire episode and he is falsely implicated on the complaint alleged to have given by the witness and it is only a hand work of the I.P.S. Officer who is now D.I.G. and strongly opposed for cancellation of bail. The respondent did nothing and also drawn the attention of this Court to the version given by the alleged threatened witnesses viz., P.W.4, P.W.5, P.W.7 and P.W.8 before the trial Court.

14. The de facto complainant has filed intervening petition, however, without serving copies to the respondent/A.5.

15. After hearing the arguments of the State as well as for the accused and after going through the records, considering the scope of the petition, by imposing self restriction, this Court is not commenting upon the stand of the evidence given by P.W.4, P.W.5, P.W.7 and P.W.8, who are examined before the trial Court in connection with conspiracy angle and role of this particular accused, this Court is not expressing any view on the evidence as the same is for the trial Court to decide the issue.

16. This petition being one for the cancellation of bail granted by this Court on 02.02.2015 in CrI.O.P.No.2314 of 2015 on the ground that the respondent/A.5 has threatened the vital witnesses to the prosecution touching upon the conspiracy angle involving the fifth accused.

17. The short point that needs to be addressed by me in this petition is whether the averments made by the State regarding the alleged threat is existence or not. After going through the complaint given by the witness Bensam and the witness Shivaji and after perusing the F.I.R. complaint and C.S.R. that have been produced before this Court, this Court finds that prima facie the respondent/A.5 is involved in tampering the witnesses after the case is posted for commencement of the trial and issuance of summons to the witnesses. In view of the criminal threat given by the respondent/A.5, the prosecution has left with no other option but to examine them in a hurried manner whereby L.W.3, L.W.55, L.W.56, L.W.57 and L.W.58 are examined as P.W.4, P.W.5, P.W.7

and P.W.8.

18. The learned Government Advocate would contend that the respondent/A.5 is not only involved in this case but also involved in few more cases which are mentioned below:-

S.No.	Station with Crime No.	Section of Law	State of the case
1.	Anjugramam P.S., Kanyakumari District Crime No.467 of 2013	147, 447, 427 IPC @ 147, 447 IPC & 3 (1) of TNPPDL Act	Not taken on file
2.	Anjugramam P.S., Kanyakumari District Crime No.407 of 2016	341, 447 and 506 (i) IPC	Under Investigation
3.	Anjugramam P.S., Kanyakumari District Crime No.488 of 2016	294(b) and 506(i) IPC	Under Investigation

19. It is further submitted by the learned Government Advocate that though the respondent/A.5 is an Advocate, but he was frequently involved in criminal activity and in the instant case, after the commencement of the trial, he was involved in threatening the witnesses and thereby committed tampering the prosecution witnesses and further submitted that the respondent/A.5 having tampered with the witnesses prayed to cancel the bail granted to him.

20. After going through the complaint, FIR and also CSR copy, I find that the respondent/A.5 is involved in tampering of the witnesses touching upon the charge of criminal conspiracy under Section 120(b) IPC with which this accused is charged and that being the case, I find that on factual position and also of the attending circumstances and taking note of the documents filed before this Court, the order dated 02.02.2015 granting bail in CrI.O.P.No.2314 of 2015 is hereby warrants interference and hence, the Criminal Original Petition is allowed. The bail granted to the respondent/R.5 on 02.02.2015 in CrI.M.P.No.2314 of 2015 is hereby cancelled.

28.04.2018
Internet : Yes
Jrl

After pronouncement of the order in the open Court the learned counsel appearing for the respondent/A.5 submitted that bail was granted to the A.5 on 02.02.2015 and all along he being attended the case and his personal liberty shall not be taken

away without availing the remedy before the Apex Court and hence, seeks to keep the order in abeyance for a period of four (4) weeks.

2. In this regard, the learned Government Advocate was heard. The sessions Trial stands adjourned to 05.06.2018. After hearing both sides and in the interest of the justice, this Court directs the petitioner/Inspector of Police not to arrest the respondent/A.5 till 15.05.2018 at 6.00 p.m.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

msv

TO

1. The VII Additional Sessions Judge,
Chennai.
2. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.
3. do- Through The Chief Metropolitan magistrate,
Chennai.
4. The Inspector of Police,
E-4 Abiramapuram Police Station,
Chennai -18.
5. The Public Prosecutor, High Court, Madras.

+2cc to Mr.G.Murugendiran, Advocate SR.No.8729, 8719

+1cc to Mr.Muralitharan, Advocate SR.No.32425

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NRL (CO)

GN(28/04/2018)