

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Sixth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice S. BASKARAN

CRIMINAL ORIGINAL PETITION NOS.12428 & 12436 of 2018

THE SUPERINTENDENT OF POLICE [PETITIONER / COMPLAINANT
BANK SECURITIES AND FRAUD CELL, IN ALL THE PETITIONS]
CENTRAL BUREAU OF INVESTIGATION (CBI),
GANGA NAGAR, BANGALORE - 560 032.
REF.CR.NO.6/2015 DATED 21.09.2015
REF.CR.NO.8(E)/2015 DT.09.11.2015
REF NO.7(E)/2015 DT.30/09/2015.
REF CRIME NO.10 (E)/2016 DATED 02.06.2016.
REF CRIME NO.2 (E)/2016 DATED 08.01.2016.
REF CRIME NO.9 (E)/2016 DATED 31.05.2016.

Vs

FAROUK IRANI [RESPONDENT / ACCUSED
IN ALL THE PETITIONS]

Petition praying that in the circumstances stated therein the High Court will be pleased to Cancel the Anticipatory Bail granted to Shri Farouk Irani (Accused No.2/ Respondent) vide common Order dated June 14, 2017 in CRL.OP.NOS.9589/2017, 9590/2017, 9828/2017, 9829/2017, 9830/2017, 9831/2017, 9832/2017, 9833/2017 and 9834/2017 in the interest of justice.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of MR.K.SRINIVASAN SPECIAL PUBLIC PROSECUTOR FOR CBI CASES [IN ALL THE PETITIONS] for the petitioner and of MR.A.RAMESH SENIOR COUNSEL FOR M/S.C.ARUN KUMAR, Advocate [IN ALL THE PETITIONS] on behalf of the Respondent the court made the following order:-

These petitions have been filed seeking to cancel the Anticipatory Bail granted to Shri Farouk Irani (Accused No.2/Respondent) vide common order dated 14.06.2017 in Crl.OP.Nos.9589, 9590, 9828, 9829, 9830, 9831, 9832, 9833 and 9834 of 2017.

2.The respondent/2nd accused was granted bail by order of this Court dated 14.06.2017, passed in Crl.O.P.Nos.9589, 9590, 9828, 9829, 9830, 9831, 9832, 9833 and 9834 of 2017. Subsequently, as per order dated 06.07.2017, passed in Crl.O.P.Nos.8087 to 8095 and 9828 to 9834 of 2017 and 9589 and 9590 of 2017, the condition imposed by this Court was modified. In the said modified condition, the trial Court was directed to issue notice to Enforcement Directorate, Chennai and to ascertain as to whether the passport as stated by

the petitioner has been surrendered before the Enforcement Directorate and after receiving the reply from Enforcement Directorate, proceed in accordance with law.

3.Now, the investigating agency (CBI), the petitioner herein, has come forward with the petitions seeking to cancel the anticipatory bail granted to the 2nd accused/respondent herein on the ground that the accused has given false information to the Court while seeking anticipatory bail.

4.The investigating agency contends that while seeking anticipatory bail, by filing Crl.OP.Nos.9589, 9590, 9828, 9829, 9830, 9831, 9832, 9833 and 9834 of 2017, the respondent/2nd accused represented on Oath that his passport has already been seized by the officials of Enforcement Directorate. However, while entertaining the said petitions granting anticipatory bail, this Court imposed the condition that the accused shall surrender his passport before the learned Additional Chief Metropolitan Magistrate, for CBI cases at Chennai, if not already surrender in any other case. While the accused surrendered before the said Court on 23.06.2017, it was represented on Oath that Deputy Director, Directorate of Enforcement, Chennai had seized his passport on 17.07.2015. However, no proof was produced by the accused about his surrendering of passport. Accordingly, the surrender petition filed by the accused was returned by the Additional Chief Metropolitan Magistrate, CBI Cases, Chennai. Subsequently, the accused filed the modification petition before this Court seeking modification of conditions imposed while granting anticipatory bail on 14.06.2017. In the modification petition, the accused stated on Oath that the Deputy Director, Directorate of Enforcement, Chennai had seized his passport on 17.07.2015 and the passport is not in his custody. The same was verified by Enforcement Directorate authorities and by letter dated 29.06.2017, the Directorate of Enforcement Chennai, denied the seizure of passport of the accused herein. The Director also informed that the accused submitted only photo copy of his passport No.L1035390 and informed about the loss of his original passport. The Director of Enforcement by subsequent letter dated 07.07.2017 confirmed that the accused never surrendered his passport bearing No.N1400850 issued on 17.07.2015. Thus, according to the investigating agency/the petitioner herein, false statement has been made by the accused before the Additional Chief Metropolitan Magistrate for CBI Cases, Chennai as well as before this Court that his passport had been seized by Enforcement Directorate. The accused knowingly has made such false representation with the intention of retaining his passport with him, so that he can make use of it to abscond from this country. It is contended by the petitioner that having made false representation before the two Judicial Forums, the accused is deliberately trying to escape from the judicial process by going away from this Country. Thus, the investigating agency seeks to cancel the anticipatory bail granted to the accused by common order dated 14.06.2017 passed in Crl.O.P.Ns.9589, 9590, 9828, 9829, 9830, 9831, 9832, 9833 and 9834 of 2017.

5. On the other hand, opposing the claim of the investigating agency, the learned counsel appearing for the respondent/2nd accused contends that there is no ground for cancelling the anticipatory bail already granted to the accused. It is pointed out that no violation of bail condition is committed and the allegations now made by the investigating agency were there at the time of granting anticipatory bail itself and therefore no new ground is alleged to effect cancellation of the anticipatory bail granted by this Court.

6. It is conceded by the prosecuting agency that there is no violation of bail conditions committed by the accused. It is also admitted by the prosecuting agency that the accused has now surrendered his passport as stated earlier. It is the contention of the accused that he surrendered his passport to the Enforcement Directorate earlier also, but no acknowledgment was given by them. Subsequently, the accused claims his passport was found in the Post Box of his house and he collected the same, which is now again surrendered to the Enforcement Directorate. Thus, the apprehension expressed by the prosecuting agency that the accused is attempting to flee away from the country is not acceptable, since the passport is already surrendered. Further, as per the order passed by this Court on 06.07.2017, the Trial Court was directed to issue notice to the Enforcement Directorate, Chennai and to ascertain as to whether the accused already surrendered his passport prior to filing of anticipatory bail petition as claimed by him and after receiving any reply from the Enforcement Directorate to proceed with in accordance to law. It is conceded by the prosecuting agency that they are not in a position to say as to whether any such notice was issued to the Enforcement Directorate and enquiry conducted. Thus, the contention of the accused that he initially surrendered the passport to the Enforcement Directorate and the same was later found in the Post Box of his house and again the same was surrendered to the Enforcement Directorate is not verified so far. Therefore, the contention of the prosecuting agency that the accused has filed false affidavit before this Court while seeking anticipatory bail and therefore the same is to be cancelled is premature. Unless and until, the trial Court, as ordered earlier by this Court finds out as to when and how the passport was surrendered by the accused, the plea of the prosecuting agency seeking cancellation of anticipatory bail for the reasons stated in the petition cannot be considered. It is premature for the prosecution agency to come forward with the petition. Hence, the petition is liable to be dismissed. However, the prosecuting agency at its liberty to come forward with the petition seeking the same relief, if the trial Court after inquiring with the Enforcement Directorate comes to any adverse conclusion about the averments made by the accused herein, regarding his claim of surrender of passport to Enforcement Directorate. In such circumstances, the trial Court, as and when it enquires about the surrender of passport, as directed by this Court, is directed to issue notice to the accused also for the said hearing. Thus, the plea of the petitioner granting cancellation of anticipatory bail

granted to the petitioner is devoid of merits at this stage and hence the same is to be negatived. The Point is answered accordingly.

7.In the result, the Criminal Original Petitions are dismissed.

-sd/-
26/07/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SUPERINTENDENT OF POLICE,
BANK SECURITIES AND FRAUD CELL,
CENTRAL BUREAU OF INVESTIGATION (CBI),
GANGA NAGAR, BANGALORE - 560 032.

2 THE SPECIAL PUBLIC PROSECUTOR,
FOR CBI CASES, HIGH COURT, MADRAS.

+3CC to MR.C.ARUNKUMAR Advocate on payment of necessary charges
SR NO.13985

CRL.O.P.No.12428 to 12436 of 2018

Date :26/07/2018

MK:16/08/2018

सत्यमेव जयते

WEB COPY