

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.17951 of 2018

Duraisamy ... petitioner

Vs

1.The Inspector of Police,
Kodumudi Police Station,
Erode District.

2.Sivanandhan
... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to cancel the Anticipatory Bail granted to the 2nd respondent in Crl.O.P.No.13991 of 2018 dated 25.05.2018.

For Petitioner: Mr.R.Diwakaran

For R1 : Mr.B.Arul Mozhi Maran
Government Advocate(Crl.Side)

For R2 : Mr.S.Vijayakumar

ORDER

This petition has been filed by the Defacto Complainant to cancel the Anticipatory Bail, which was granted by this Court to the Second respondent by the order passed in Crl.O.P.No.13991 of 2018 dated 25.05.2018.

2.Heard Mr.R.Diwakaran, learned counsel for the Petitioner/Defacto Complainant. Mr.B.Arul Mozhi Maran, learned Government Advocate(Crl.Side) for the first respondent and Mr.S.Vijay Kumar, learned counsel for the second Respondent/Accused.

3.The learned counsel appearing for the petitioner has submitted that the second respondent is none other than the son of petitioner's wife's brother. He further submitted that as per the Judgment and decree passed in O.S.No.65 of 1996, on the file of the I Additional Subordinate Judge, Erode, the

properties situated in Survey Nos.302/1 and 302/2 of the Ichipalayam Village belongs to the petitioner. He further submitted that as per the decree passed in the aforesaid suit the second Respondent/Accused has to remove the bathroom, which was constructed by him obstructing the drainage. He further submitted that the petitioner made a request to the second Respondent/Accused to remove the aforesaid bathroom, and enraged by the same, the second Respondent/Accused has damaged the tapioca crop which was raised by the petitioner in his lands and also the Drip Irrigation pipes by using tractor, rotator, etc., on 05.05.2018, and thereby caused a loss of Rs.1,73,500/-. He further submitted that with regard to the said offence, the petitioner has lodged a complaint before the first respondent on 07.05.2018, but the first respondent has not registered the case immediately. He further submitted that the second respondent, taking advantage of the inaction on the part of the first respondent, has filed an Anticipatory Bail application in CrI.OP.No.13991 of 2018, before this Court. He further submitted that this Court, by the order dated 25.05.2018 has granted Anticipatory Bail to the second Respondent and only thereafter i.e., on 26.05.2018, the first respondent has registered a case in Crime No.100 of 2018 under Sections 447, 427, and 507, Part (ii) IPC. He further submitted that even though in the complaint, it is specifically stated that the loss caused to the petitioner was about Rs. 1,73,500/-, the first respondent instead of registering the case under Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, he has registered the case under Section 427 IPC as if the second respondent had committed only minor offences. He further submitted that the second respondent has obtained Anticipatory Bail by suppressing the material facts. The second respondent has not disclosed the allegations made in the complaint against him that he had caused loss to the tune of Rs.1,73,500/-, and hence he prayed to cancel the Anticipatory Bail which was granted by this Court to the second respondent as per the order dated 25.05.2018 in CrI.OP.No.13991 of 2013.

4. Mr.B.Arul Mozhi Maran, learned Government Advocate submitted that the complaint was received by the first respondent only on 08.05.2018 and thereafter a primary enquiry has been conducted and a case was registered on 26.05.2018, but, in the mean while, the second respondent/accused had moved this Court seeking Anticipatory Bail by filing petition in CrI.OP.13991 of 2018. He further submitted that this Court, after considering the rival submissions, had granted Anticipatory Bail by imposing certain conditions. He further submitted that the second respondent has complied with the conditions without any deviation. He further submitted that the investigation is under progress and if the investigation reveals that the second respondent had caused a loss of Rs.1,73,500/-,

the first respondent will file a final report including Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992. He further submitted that the first respondent has not received any complaint from the petitioner as the second respondent is threatening the witness and therefore he opposed this application.

5.The learned counsel for the second respondent / accused has submitted that the allegations that the second respondent has damaged the tapioca crop and drip irrigation system and caused loss of Rs.1,73,500/- to the petitioner as false. He further submitted that since the second respondent has not complied with the demand made by the petitioner that he should remove the bath room, the petitioner himself might have caused damages to his tapioca crops and drip irrigation system and gave a false complaint belatedly. He further submitted that the petitioner has not suppressed any fact at the time of moving Anticipatory Bail application and this Court only after considering the rival submissions, has granted Anticipatory Bail to the second respondent by imposing certain conditions and the second respondent has complied with the said conditions without any deviation and therefore he prayed to dismiss this petition.

6.It is seen from the typed set filed by the petitioner that the petitioner has lodged a complaint before the first respondent on 08.05.2018, and in the said complaint he has stated that he has raised tapioca crops in the land measuring about 2 acres situated in Survey Nos.302/1 and 302/2 of the Ichipalayam Village. He further stated that on the evening of 05.05.2018, he has seen the aforesaid crops and went to his house and thereafter on the next day, he found that the tapioca crops and drip irrigation system were damaged by using tractor. He further stated that the second respondent would have damaged the tapioca crops and drip irrigation system by using his tractor or his friend's tractor, but he has not specifically stated that the second respondent herein has caused the aforesaid damage. The averments made in the complaint would show that only on suspicion, the petitioner made a complaint against the second respondent.

7.It is also to be pointed out that though the petitioner has stated in his complaint that on 06.5.2018 at 06.00 a.m., itself he has noticed the aforesaid damage, but he has lodged the complaint only on 8.5.2018 at about 09.00 a.m. It is true that the first respondent has not registered the case immediately and he has registered the case only after Anticipatory Bail was granted by this court. Further, in the

said FIR, section 3 of the Tamil Nadu public properties (Prevention of Damage and Loss) Act, 1994, has not been included. But merely because the first respondent has not registered the case under proper penal provisions of law, the Anticipatory Bail, which was granted to the second respondent cannot be cancelled. Admittedly, the case is at investigation stage. If the investigation discloses that the second respondent has caused damage or loss to the value of one hundred rupees or upwards, the first respondent will have to file final report including section 3 of the Tamil Nadu Public Properties (Prevention of Damage and Loss) Act, 1994, as submitted by the learned Government Advocate(Crl.Side). The petitioner should have establish that the second respondent has obtained the order of Anticipatory Bail, by suppressing the material facts. In this case, as already pointed out, though the complaint was lodged with a delay of two days, the petitioner has not specifically stated that the second respondent/ accused caused damage to his properties. Further, as per the arguments advanced by the learned Government Advocate, the first respondent has not received any complaint that the second respondent is tampering the witness and further the first respondent has not stated that the second respondent is not co-operating for investigation.

8. Under the said circumstances, this court is of the view that the petitioner has not made out a case for cancelling the Anticipatory Bail, which was granted to the second respondent. Therefore this petition is liable to be dismissed and accordingly the same is dismissed. The first respondent is directed to expedite the investigation and file final report at early un-influenced by the observations made in this order.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

stm

To

1. The Inspector of Police,
Kodumudi Police Station,
Erode District.

2. The Public Prosecutor
High Court, Madras 104.

Crl.O.P.No.17951 of 2018

SP(09/08/2018)