

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 30.11.2018

CORAM  
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAYAN

CRL.O.P. Nos.24769 and 27529 of 2017

The General Manager (Integration),  
M/s.Venkateswara Hatcheries Pvt. L:td.,  
No.34/7, Ramya's Apartments,  
3<sup>rd</sup> Floor, North Usman Road,  
T.Nagar, Chennai-600 01

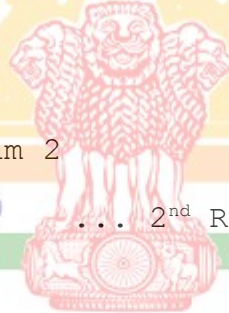
...Petitioner/Defacto-complainant  
in both Crl.O.Ps.

Versus

M.Nagajothi ... 1<sup>st</sup> Respondent/ Accused-2  
in Crl.O.P.No.24769 of 2017

T.Rajendran ... 1st Respondent/Accused-1  
in Crl.O.P.No.27529 of 2017

State of Tamilnadu  
represented by  
The Inspector of Police  
Central Crime Branch - Team 2  
Chennai City  
(CCB Crime No.275 of 2015)



... 2<sup>nd</sup> Respondent/ Complainant in  
both Crl.O.Ps.

PRAYER in Crl.O.P.No.24769 of 2017 : Criminal Original Petition  
filed under Section 439(2) of Code of Criminal Procedure, to  
cancel the bail granted in Crl.M.P.No.17169 of 2017 and 17249 of  
2017(Intervene petition) by the Principal Sessions Judge,  
Chennai vide order dated 08.11.2017 in CCB Crime No.275 of 2015.

PRAYER in Crl.O.P.No.27529 of 2017 : Criminal Original Petition  
filed under Section 439(2) of Code of Criminal Procedure, to  
cancel the bail granted in Crl.M.P.No.18781 of 2017 and  
Crl.M.P.No.19139 of 2017(Intervene petition) by the Principal  
Sessions Judge, Chennai vide order dated 04.12.2017 in CCB Crime  
No.275 of 2015.

For Petitioner : Mr.Ramanlaal  
in both Crl.O.Ps

For 1<sup>st</sup> Respondent  
in both Crl.O.Ps : Mr.A.Prabakaran(Senior Counsel)  
For Mr.D.Arun

For 2<sup>nd</sup> Respondent  
in both Crl.O.Ps.: Mrs.M.Prabhavathi  
Additional Public Prosecutor

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#### C O M M O N O R D E R

The petition in Crl.O.P.No.24769 has been filed by the petitioner/de-facto complainant to cancel the bail granted to the 1<sup>st</sup> respondent/accused-2 by the learned Principal Sessions Judge, Chennai vide order dated 08.11.2017 in Crl.O.P.No.17169 of 2017 in CCB Crime No.275 of 2015.

2. The petition in Crl.O.P.No.27529 of 2017 has been filed by the petitioner/de-facto complainant to cancel the bail granted to the 1<sup>st</sup> respondent/accused-1 by the learned Principal Sessions Judge, Chennai vide order dated 04.12.2017 in Crl.O.P.No.18781 of 2017 in CCB Crime No.275 of 2015.

3. The case for the prosecution is that there are totally two accused in this case and both the accused are husband and wife and they have been arraigned as A1 and A2. The 1<sup>st</sup> accused was working as Assistant General Manager (Marketing) in M/s.Venkateswara Hatcheries Pvt. Ltd. which is doing the business of Broiler chicken. During his employment from 2007 to 2014, he had misappropriated a sum of Rs.1.5 Crores. Further, it is alleged that the amounts have been misappropriated by the 1<sup>st</sup> accused and the same has been transferred to the account of 2<sup>nd</sup> accused, who is his wife and subsequently, they had also purchased various properties from 2008 to 2014. Further, it is alleged that the 1<sup>st</sup> accused was drawing only a sum of Rs.30,000/- salary per month. When it was so, the amounts received from various dealers for supply of broiler chicken, have been deposited directly to the account of the 1<sup>st</sup> and 2<sup>nd</sup> accused. Hence, the complaint.

4. The learned counsel for the petitioner/de-facto complainant would submit that the respondents/1<sup>st</sup> and 2<sup>nd</sup> accused are husband and wife. The 1<sup>st</sup> accused was working as Assistant General Manager (Marketing) from 2007 to 2014. During audit, it was found that the accused had committed misappropriation of Rs.1.5 crores. From the year 2008 to 2014, the amounts received from various dealers have been diverted to the account of the 2<sup>nd</sup> accused who is his wife. On receipt of such amount,

29 properties were purchased in and around Tirupur and Coimbatore and out of the said 29 properties, 7 properties have been sold out by the accused persons. In fact, they are paying life insurance which comes to Rs.15,000/- per month. Further, he submitted that the third application for bail has been filed by the accused and they were enlarged on bail by the Principal Sessions Judge, Chennai in CrI.M.P.No. 17169 of 2017 dated 08.11.2017 and 18781 of 2017 dated 04.12.2017. He further submitted that the 2<sup>nd</sup> accused was enlarged on bail only on mercy ground. Both the accused were granted bail on condition that they shall deposit a sum of Rs.5,00,000/-. Further, he relied upon the judgements reported in (2009) 1 SCC 678 and (2005) 4 Supreme Court Cases 634 and he prayed for cancellation of bail granted to the accused.

5. Per contra, the learned Senior Counsel appearing for the respondents/1<sup>st</sup> and 2<sup>nd</sup> accused submitted that the court below granted bail only on the ground that the accused have been in incarceration for nearly 56 and 57 days and not only on mercy ground. Further, the Court below granted bail to the respondents only on the following conditions:

ii) Petitioner is ordered to be released on bail on his executing a bond for Rs.10,000/- with two sureties, both must be Government Servants, each for a likesum to the satisfaction of the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Chennai.

iii) The petitioner shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the credit of Crime No.275/2015 before the said court and the final order in respect of the amount will be passed at the end of the criminal proceedings by the trial Court.

iv) The petitioner shall appear before the Investigation Officer daily at 10.30 a.m for one month. After production of sureties, the respondents have duly complied with the conditions and they never violated any condition as imposed by the Court below. Further, the learned Senior Counsel contended that grant of bail is a matter of right and therefore, it cannot be cancelled mechanically. Further, he would rely upon the judgements reported in (1995) 1 Supreme Court Cases, 349 and 2000 Supreme Court Cases (Cri) 1508.

6. The learned Additional Public Prosecutor would submit that the condition imposed by the Court below is duly complied by the accused persons. Further, she would submit that in this case, charge sheet has been laid and taken cognizance of the offence in C.C.No.4818 of 2018 on the file of the Special Magistrate, CCB and CBCID. Further, she would submit that the accused persons 1 and 2 have filed discharge petition before the said court and it is also pending.

7. Heard the learned counsel appearing for the petitioner/de-facto complainant, the learned Senior Counsel

appearing for the respondents/1<sup>st</sup> and 2<sup>nd</sup> accused and also the learned Additional Public Prosecutor appearing for the State.

8. On a perusal of records, it is seen that the 1<sup>st</sup> accused was working as Assistant General Manager (Marketing) in M/s.Venkateswara Hatcheries Pvt. Ltd., from the year 2007 to 2014 and during the said period, he has misappropriated to the tune of Rs.1.50 Crores. The broiler chickens have been supplied to various dealers, in turn, the amount has not been deposited in the account of de-facto complainant. Instead of that, all the amounts have been diverted to the account of the 1<sup>st</sup> and 2<sup>nd</sup> accused. In turn, after receipt of the said amount, the accused persons have purchased various properties in and around Coimbatore and Tiruppur. Therefore, they have been arrested and remanded to judicial custody and subsequently, they have been released on bail by the Principal Sessions Judge, Chennai in Crl.M.P.No. 17169 and 18781 of 2017 dated 08.11.2017 and 4.12.2017. Further, the Court below has granted bail to the respondents/1<sup>st</sup> and 2<sup>nd</sup> accused only on the following conditions:

ii) Petitioner is ordered to be released on bail on his executing a bond for Rs.10,000/- with two sureties, both must be Government Servants, each for a likesum to the satisfaction of the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to Cheating Cases in Chennai) and CBCID Metro Cases, Chennai.

iii) The petitioner shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the credit of Crime No.275/2015 before the said court and the final order in respect of the amount will be passed at the end of the criminal proceedings by the trial Court.

iv) The petitioner shall appear before the Investigation Officer daily at 10.30 a.m for one month.

and the respondents have also duly complied with the conditions imposed on them and on enlargement of their bail, they have also deposited Rs.5,00,000/- each to the credit of Crime No.275/2015 and now it is lying in the same crime number. Now, the charge sheet has also been laid and have taken cognizance of the offence on the file of the Special Magistrate, CCB and CBCID, Allikulam, Chennai and it is pending for trial. In the meanwhile, the respondents/1<sup>st</sup> and 2<sup>nd</sup> accused have also filed discharge petition and the same is also pending. In the circumstances, that too, when the accused having been complied all the conditions imposed by the Court below, the bail cannot be cancelled at this stage. Further, the learned counsel for the petitioner/de-facto complainant would rely upon the judgement reported in (2005) 4 SCC 634 (Arvind Mohan Jhohri and another v. State of U.P and another) in which it is held as follows:

“Although the prayers made by the applicants herein in their applications were confined to the directions

issued against them it is found having regard to the peculiar facts and circumstances of the present case, that if a substantial sum lying with them is not available for disbursement to the claimants, the very purpose for enlarging the appellant herein on bail would not be subserved and therefore the order dated 3.11.2004 passed in Arvind Mohan Johri case, (2005) 4 SCC 640 granting bail to the appellants herein should be recalled. Accordingly, the appellants are directed to surrender before the trial court within one week whereupon they may be taken into custody".

The learned counsel for the petitioner would also rely upon the judgement reported in (2009) 1 Supreme Court Cases 678 (Brij Nandan Jaiswal v. Munna Alias Munna Jaiswal and another) in which it has been held as follows:

"12. It is now a settled law that the complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary".

In the above judgements, the Hon'ble Supreme Court of India held that the complainant can always question the order of granting bail if the order is not validly positive. Herein, now as per the case on hand is, the accused persons were granted bail after 55 days. They are entitled for statutory bail after 60 days. Further, the Court below has also imposed condition that the accused persons shall pay Rs.5,00,000/- each and the above said condition was also duly complied by them. There is no illegality or infirmity in the bail order passed by the Principal Sessions Judge, Chennai.

9. The learned Senior Counsel appearing for the respondents has relied upon the judgement reported in (1995) 1 Supreme Court Cases 349 (Dolat Ram and others v. State of Haryana) in which, it has been held as follows:

"Rejection of 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 bail, broadly (illustrative and not exhaustive) 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 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted".

10. Further, the learned counsel for the respondents has also relied upon another judgement reported in 2000 Supreme Court Cases (Crl.) 1508 (Subhendu Mishra v. Subrat Kumar Mishra and another) in which it has been held as follows:

"4. In *Dolat Ram v. State of Haryana* while drawing a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, it was opined by this Court: (SCC pp.350-51, para 4)

"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 bail, broadly (illustrative and not exhaustive) 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 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted".

The above said judgements are squarely applies to the case on hand. Further, once bail is granted, it cannot be cancelled mechanically. Further, it is seen from the case records, after filing of charge sheet the case has been taken on file and the trial is pending in C.C.No.4818 of 2018 before the Special Magistrate, CCB and CBCID, Allikulam, Chennai. In such circumstances, this Court is not inclined to cancel the bail granted to the respondents/accused Nos.1 and 2. However, the petitioner/de-facto complainant is granted liberty to move appropriate petition before the trial Court praying not to alienate the properties purchased by the accused during the employment of 1<sup>st</sup> accused. Further, considering the facts and circumstances of the case and the offence committed by the 1<sup>st</sup> and 2<sup>nd</sup> accused, this Court deems it fit to direct the trial Judge to complete the trial within a stipulated time. Hence, the Special Magistrate, CCB and CBCID, Allikulam, Chennai is directed to dispose of the discharge petition within a period of four weeks from the date of receipt of a copy of this order and thereafter, within six months, the trial proceedings in C.C.No.4818 shall be completed.

11. With the above observations, the Criminal Original Petitions are disposed of.

Sd/-  
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Magistrate,  
CCB and CBCID,  
Allikulam, Chennai

2.The Inspector of Police,  
Central Crime Branch - Team 2  
Chennai City.  
(CCB Crime No.275 of 2015)

3.The Public Prosecutor,  
High Court, Madras.

+2ccs to Mr.R.Ramanlal, Advocate, S.R.No.82997 and 82998

CrI.O.P.No.24769 and 27529 of 2018

BS (CO)

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