

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 01.10.2018  
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.15723 of 2017

M.Valanrayan ... Petitioner

Vs.

1.Sulaimankhan

2.The State rep. by:  
The Inspector of Police,  
CCB (Team XXII),  
Land Grabbing,  
Chennai - 7.  
(Crime No.140 of 2015) ... Respondents

Prayer:

Petition filed under Section 439(2) of Cr.P.C., seeking to cancel the order of bail granted to the first respondent in Crl.M.P.No.2333 of 2017 dated 25.07.2017 on the file of the Principal District and Sessions Judge (i/c), Tiruvallur.

For Petitioner : Mr.A.E.Ravi Chandran  
For Respondents : Mr.J.Thilakraj for R1  
Ms.S.Thankira for R2  
Government Advocate (Crl.Side)

O R D E R

The petitioner/ defacto complainant has filed this petition seeking cancellation of bail under Section 439(2) of Cr.P.C. against the order dated 25.07.2017 made in Crl.M.P.No.2333 of 2017 by the learned Principal District and Sessions Judge (i/c), Tiruvallur.

2.The case of the prosecution is that the petitioner is the manufacturer of automobile spares having industry in Ayanambakkam, Ambattur for the past 20 years and he was looking for purchase of plot and in this connection, the petitioner was shown plot no.15, Kasturi Nagar, Ayanambakkam, measuring an extent of 6400 sq.ft. owned by one Varsha during the month of January, 2015 by one Soman who brought the original title documents belonging to the owner Varsha and after verifying the original documents, the petitioner wanted to meet the owner Varsha and met her in Cafe Cofee Day, Mugappair on 11.07.2015 and accordingly, the total sale consideration was fixed at Rs.1.35 Crores and also paid an advance of Rs.1 Lakh.

3.Thereafter, the petitioner paid a sum of Rs.5 Lakhs by way of demand draft dated 11.02.2015 to the said Varsha and fixed the execution of sale on 19.02.2015. Thereafter, the petitioner mortgaged his residential property with the Repco Bank, Padi Branch and obtained a loan of Rs.1.50 Crores and thereafter paid the balance sale consideration of Rs.80 Lakhs by way of demand draft and the

remaining Rs.49 Lakhs by way of cash on 19.02.2015 and the sale

deed was registered as Document No.2277 of 2015 dated 19.02.2015. Thereafter, the petitioner received the original parent title document bearing Document No.7174 of 1993 from the owner Varsha.

4. Thereafter for deficit stamp duty, the Registration Department initiated proceedings under Section 47 A of the Indian Stamps Act. Thereafter, the petitioner came to know from the Sub Registrar Office, Ambattur that the document furnished by the said Varsha to the petitioner is a bogus document. Thereafter, the petitioner came to know that the first respondent and other accused impersonated the original owner Varsha and registered the sale deed in favour of the petitioner. Hence, the petitioner filed complaint before the respondent police.

5. The learned counsel appearing for the petitioner would submit that the first respondent is arrayed as A3. Initially, the first respondent filed Crl.O.P.No.10631 of 2017 seeking anticipatory bail and the said petition was dismissed as withdrawn on 04.07.2017. He would further submit that thereafter the first respondent approached the lower Court by filing Crl.M.P.No.2333 of 2017 without disclosing

the dismissal of the earlier petition by this Court, wherein, the petitioner filed petition for intervening in CMP No.2468 of 2017. However, without considering the same, the lower Court granted anticipatory bail to the first respondent in a mechanical manner against which, the present cancellation of bail petition has been filed.

6. The learned counsel appearing for the petitioner would further submit that the first respondent is the main accused and he received the demand draft for a sum of Rs.80 Lakhs drawn in favour of Varsha, opened account in the name of Varsha. However, the said Varsha did not appear before the Bank. The first respondent colluded with the Bank Officials and withdrew the entire amount. Though CCTV footage regarding the same was produced before the lower Court, the lower Court did not consider the same, but granted anticipatory bail to the first respondent which is un-sustainable.

7. The learned counsel appearing for the first respondent would submit that though the first respondent did not disclose about the withdrawal of the earlier criminal original petition, the petitioner appeared before the lower Court by filing intervenor petition and

disclosed all the facts before the lower Court and only thereafter, anticipatory bail was granted to the first respondent.

8. Repudiating the submissions made by the learned counsel appearing for the first respondent, the learned counsel appearing for the petitioner would submit that though the first respondent withdrew the earlier criminal original petition, the learned Sessions Judge, without considering the gravity of the offence, CCTV footage and other relevant documents, mechanically granted anticipatory bail to the first respondent and also dismissed the petition for intervening filed by the petitioner. Apart from this, the petitioner is a habitual offender involved in yet other three cases of similar nature i.e., C.C.No.15601 of 2008 before the competent Court for land grabbing cases, Cr.No.40 of 2016 and Cr.No.56 of 2016. He would further submit that the first respondent would approach the innocent buyers and make convergence and would further submit that the first respondent is an expert in creating forged documents.

9. In support of his contentions, the learned counsel appearing for the petitioner relied upon the

following decisions of the Hon'ble Apex Court:

(i)(2010) 2 MLJ (Crl.) 348 (SC) (Subodh Kumar Yadav vs. State of Bihar and Another), the relevant portion of which reads as follows:

¶12.The findings recorded by the learned Sessions Judge and the High Court make it clear that the learned Magistrate had exercised discretion vested in him under Section 437 with oblique motive. The learned Magistrate was apparently bent upon granting bail to the appellant and, therefore, not only decided to hear the bail application presented by the appellant on the same day, but had also called for record from the superior court and granted bail to the appellant without hearing the learned counsel for the complainant. As the judicial discretion was exercised by the learned Judicial Magistrate First Class in an arbitrary manner and with oblique motives, the learned Sessions Court was justified in setting aside the order granting bail to the appellant. To say the least, the order passed by the learned Magistrate was the result of arbitrary exercise of discretion vested in him. Further the learned Magistrate had taken into consideration totally irrelevant documents which were never referred to in the complaint at all. By taking into consideration those documents the learned Magistrate exhibited his anxiety to release the appellant anyhow on bail. On the facts and in the circumstances of the case, this Court is of the opinion that the High Court did not commit any error in confirming the order of the Sessions Judge cancelling the bail which was arbitrarily granted to the appellant by the learned Judicial Magistrate First Class and, therefore, the instant appeal is liable to be dismissed.¶

(ii)(2001) 6 Supreme Court Cases 338 (Puran Vs. Rambilas and Another), the relevant portion of which reads as follows:

¶10.Mr.Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of Dolat Ram & Ors. vs. State of Haryana reported in 1995 (1) S.C.C. 349. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly 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. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

13.Our view is supported by the principles laid down in the case of Gurcharan Singh & Others, etc. vs. State (Delhi Administration) reported in 1978 (1) S.C.C. 118. In this case it has been held, by this Court, that under Section 439(2), the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere.¶

(iii)(2009) 8 Supreme Court Cases 325 (Savitri Agarwal and Others vs. State of Maharashtra and Another), the relevant portion of which reads as follows:

¶29.It may be true that some of the circumstances, noticed by the High Court in the impugned order, viz., no reference to lantern in the spot panchnama or the necessity of cleaning the lantern at 4 p.m. and/or availability of an inverter in the house etc., could have persuaded the Sessions Judge to take a

different view but it cannot be said that the factors which weighed with the Sessions Judge in granting bail were irrelevant to the issue before him, rendering the order as perverse. Moreover, merely because the High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge, in our view, was not a valid ground to label the order passed by the Sessions Judge as perverse. It also appears to us that the High Court has overlooked the distinction of factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.

30. In *Dolat Ram & Ors. Vs. State of Haryana*, while dealing with a similar situation where the High Court had cancelled the anticipatory bail granted by the Sessions Judge in a dowry death case, this Court had observed that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail had to be considered or dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted, which, in our opinion, were missing in the instant case. Nothing was brought to our notice from which it could be inferred that the appellants have not co-operated in the investigations or have, in any manner, abused the concession of bail granted to them.□

10. In support of his contentions, the learned counsel appearing for the first respondent relied upon the following decisions of the Hon'ble Apex Court:

(i) (2004) 13 Supreme Court Cases 617 (*Ramcharan Vs. State of M.P.*), the relevant portion of which reads as follows:

□4. It is not a case of State before this Court nor was it before the High Court that the appellant abused, in any manner, the order suspending his sentence pending appeal and directing his release on bail. It is well settled that different considerations have to be weighed while considering an application for grant of bail and while considering an application for cancelling the bail already granted. It is apparent from the impugned order cancelling bail that the bail was cancelled on reappraisal of the facts of the case. In the order dated 11-1-2002, sentence was directed to be suspended noticing the submission of the counsel for the appellant that the overt act attributed to him in evidence before the Court was wholly contradictory to

what was stated by the witnesses in their statements before the police. In the impugned order, the High Court has noticed on a perusal of evidence that the deceased had died of several cutting and stab wounds and the appellant is attributed to have given knife-blows to the deceased and it is in this context, the impugned order mentions that the order for bail passed on 11-1-2002 was based on some misapprehension of factual position.

5. The order of bail can be cancelled on existence of cogent and overwhelming circumstances but not on reappraisal of evidence as was done by the High Court. No supervening circumstances have been brought to our notice which may warrant the recalling of the order dated 11-1-2002. The principles that have to be kept in view for recalling the order of bail are set out in *Dolat Ram v. State of Haryana*.□

(ii) (2009) 10 Supreme Court Cases 652 (*Hazarilal Das vs. State of West Bengal and Another*), the relevant portion of which reads as follows:

□6. Although the High Court did notice in the impugned order that the considerations which should be in the mind of the court while considering the prayer for grant of bail are not the same for the purpose of cancellation of bail, yet we find that these considerations were not kept in mind and the order of the Sessions Judge granting anticipatory bail was set aside. In *Dolat Ram And Ors. vs. State of Haryana*, (1995) 1 SCC 349, this Court held:

"4. 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."

7. There is nothing on record that there has been interference or attempt to interfere with the due course of administration of justice by the appellant. It also does not appear from the record that concession granted to him has been abused in any manner. No supervening circumstances have surfaced nor shown justifying cancellation of anticipatory bail. The judicial discretion exercised by the Sessions Judge in granting the anticipatory bail has been interfered with by the High Court in the absence of cogent and convincing circumstances. We are, thus, satisfied that the impugned order cannot be sustained.□

(iii)(1978) 2 Supreme Court Cases 366 (Mohan Singh Vs. Union Territory, Chandigarh), the relevant portion of which reads as follows:

□1. The offence alleged in this case against the appellant is one under Section 5(2) of the Prevention of Corruption Act. Bail was granted by the Sessions Judge after hearing counsel on both sides but it was cancelled by the High Court mainly for the reason that the appellant had simultaneously moved for bail in the Sessions as well as in the High Court without disclosing to the Sessions Court that he had moved for bail in the High Court. This naturally made the High Court feel that the party was not straight-forward in his dealings, with the Court. The consequence was that the bail already granted was reversed.□

11. Heard the arguments advanced on either side and perused the materials available on record.

12. The present petition has been filed by the petitioner on the ground that though the first respondent suppressed the dismissal of the earlier petition seeking anticipatory bail and filed petition seeking anticipatory bail before the lower Court, the lower Court, without considering the same has granted anticipatory bail to the first respondent. Perusal of the order dated 25.07.2017 passed in Crl.M.P.No.2333 of 2017 discloses that though the first respondent has suppressed the dismissal of the earlier petition by this Court, the petitioner had filed petition for intervening in CMP No.2468 of 2017 and disclosed the above fact before the lower Court. The order also discloses that the lower Court has granted anticipatory bail to the first respondent on the ground that A1 in the case has already been released on bail.

13. The further allegation of the petitioner is that the lower Court has granted anticipatory bail to the first respondent in a mechanical manner without considering the material facts submitted by the petitioner.

14. This Court is well aware that 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. Further, the Hon'ble Apex Court has repeatedly held that very cogent and overwhelming

circumstances are necessary for an order directing the cancellation of the bail already granted.

15.In the present case, the first respondent has received the amount, prepared fictitious person and encashed the demand draft drawn for the sum of Rs.80 Lakhs given by the defacto complainant. It is also brought to the notice of this Court that the petitioner is also involved in yet other three cases of similar nature. However, all these things are not discussed in the bail order dated 25.07.2017 passed in Crl.M.P.No.2333 of 2017.

16.The petitioner has opened account in the name of one Varsha who is the original owner of the property by impersonation and encashed a sum of Rs.80 Lakhs with the connivance of the Bank Officials. The petitioner is also involved in yet other three cases in which two other cases are of similar nature and the above said facts are not discussed in the impugned order. Hence, this Court is inclined to allow this petition.

17.This criminal original petition is accordingly allowed and the anticipatory bail granted to the first respondent in Crl.M.P.No.2333 of 2017 dated 25.07.2017 by the learned Principal District and Sessions Judge (i/c), Tiruvallur, is hereby cancelled. The petitioner is directed to surrender before the law enforcing agency.

01.10.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No Internet: Yes/ No

To

1.The Inspector of Police,  
CCB (Team XXII),  
Land Grabbing,  
Chennai - 7.  
(Crime No.140 of 2015)

2.The Public Prosecutor,  
High Court of Madras,  
Chennai 600 104.

M.DHANDAPANI,J.

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Crl.O.P.No.15723 of 2017

01.10.2018