

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.26859 and 26860 of 2017

A.Thangavelu,
S/o.Annamalai.

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

Vs.

1.The Inspector of Police,
District Crime Branch,
Erode.
(Crime No.11 of 2017)

...1st Respondent/complainant
in both Crl.O.Ps.

2.Kalaivanipriya,
S/o.Mani.

...2nd Respondent/1st Accused

3.K.K.Mani,
S/o.Karupa Gounder.

...3rd Respondent/2nd Accused

4.Sakunthala,
W/o.Mani.

...4th Respondent/3rd Accused
in Crl.O.P.No.26859 of 2017

2.M.P.Suresh Balaji,
S/o.M.Palanisamy.

...2nd Respondent/Petitioner/4th Accused
in Crl.O.P.No.26860 of 2017

COMMON PRAYER: Criminal Original Petitions filed under Section 439(2) of Cr.P.C., to cancel the bail granted in Crl.M.P.No.2950 of 2017 to the respondents 2 to 4/accused 1 to 3 on 15.11.2017 and to the 2nd respondent/4th accused in Crl.M.P.No.1390 of 2017 on 03.11.2017, by the learned Principal District and Sessions Judge, Erode.

For Petitioner : Mr.S.Parthasarathy
(in both cases)

For R1 : Mr.C.Iyyapparaj
(in both cases) Additional Public Prosecutor.

For RR2 to 4 : Mr. Deepan Uday
(in Crl.O.P.No.26859 of 2018)

For R2 :Mr.C.E.Pratap
(in CrI.O.P.No.26860 of 2018)

O R D E R

This criminal original petition has been filed to cancel the bail granted to respondents 2 and 4 herein, in CrI.M.P.No.2950 of 2017 on 15.11.2017 by the learned Principal District and Sessions Judge, Erode.

2.The petitioner has filed a private complaint before the Judicial Magistrate, Sathyamangalam, and thereafter the said complaint was forwarded to the District Crime Branch, Erode u/s.156(3) Cr.P.C and a case was registered against the respondents 2 to 4.

3.The case of the prosecution is that the 1st accused/2nd respondent viz., Kalaivanipriya, approached the petitioner that a property is available at Tanapudhur, Punjai Puliampatti and it is fit for construction of hospital. Hence, the petitioner has paid Rs.3,50,00,000/- to the 1st accused towards purchase of land. Thereafter, the 1st respondent neither registered a sale deed in favour of the petitioner nor they repaid the amount. When the petitioner approached to repay the amount, the respondents 2 to 4, the 1st accused/2nd respondent paid Rs.84,00,000/- through RTGS to the petitioner on different dates. However, the remaining amount of Rs.2,66,00,000/- has not been paid. When the petitioner requested to repay the amount, the respondents 2-4 threatened the petitioner with dire consequences. Hence, the petitioner has made a private complaint before the Judicial Magistrate, Sathyamangalam and thereafter transferred to the District Crime Branch, Erode and a case was registered against the respondents 2-4 under Section 120(b) and 420 of IPC.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for respondents 2 to 4.

5.The learned counsel for the petitioner/defacto complainant would submit that the entire facts was submitted before the lower Court. However, the lower Court without considering the veracity of the offence committed by the 2nd respondent/1st accused, simply granted bail to all the accused persons/respondents 2 to 4, without imposing any condition to deposit any amount is not acceptable. Hence, he seeks for cancellation of bail granted to the respondents 2 to 4 by the lower Court.

6.The learned counsel for the respondents 2 to 4 would submit that after registration of a case in Crime No.11 of 2017, the respondents and other accused were arrested and

remanded to judicial custody and thereafter detailed discussion and also considering the period of incarceration, the respondents were enlarged on bail by the learned Principal District and Sessions Judge, Erode. The respondents are law abiding person and they did not commit any offence as alleged by the prosecution. Hence, there is no superstitious circumstances arise for cancellation of bail.

7.The learned Additional Public Prosecutor would submit that the respondents 2 to 4 have received Rs.3,50,00,000/- from the petitioner/defacto complainant in order to purchase a property, suitable to construct a hospital. However, the respondents neither gave the land nor they repaid the money to the petitioner. Hence, the petitioner made a complaint before the District Crime Branch, Erode and after registration of FIR, the 2nd respondent had paid Rs.84,00,000/- through RTGS on various dates and the remaining amount of Rs.2,66,00,000/- has not been paid and thereby cheated the petitioner.

8.Considering the facts and circumstances of the case and also the submissions made by the learned counsels, the undisputed fact remain that the 2nd respondent had received Rs.3,50,00,000/- from the defacto complainant in order to purchase a property. Thereafter, they have not purchased any land or repaid the money. When the petitioner demanded to return the money, the 2nd respondent/1st accused has paid Rs.84,00,000/- through RTGS on various dates to the petitioner's bank account. However, the balance amount has not been paid. But, the lower Court though discussed about the submission made by the learned counsel for the defacto complainant in Paragraph 9 of its judgement, that the accused may be enlarged on bail, if the Court directs them to deposit atleast 50% of the amount involved, without considering the factual aspects enlarged the respondents 2 to 4 on bail without imposing any condition to deposit any amount into the credit of crime number.

9.Considering the facts and circumstances of the case and also the amount involved in this case and also considering that the law is well settled that without assigning any valid reason, this Court cannot cancel the bail. The amount involved in this case is Rs.3.5 Crores and by using innovative method the unscrupulous persons have collected huge money from the petitioner in order to deceive the petitioner. Considering the gravity of offence and considering the value of amount involved in, this Court is inclined to cancel the bail in respect of A1, viz., Kalaivanipriya. Accordingly, the Criminal Original Petition No.26859 of 2017 seeking to cancel the bail in respect of 1st respondent/A1-Kalaivanipriya is allowed. However, there are no materials to show that the respondents 2 and 3 have actively participated in the money

transaction. They were only parents of the main accused Kalavanipriya. Accordingly, the application to cancel the bail with respect to respondents 3 and 4/A2 and A3 is dismissed.

10.Since, the petitioner in Criminal Original Petition No.26860 of 2017 had not produced any material to show that the 2nd respondent/4th accused has involvement in the money transaction with the 1st accused viz., Kalaivanipriya, I do not find any reason to interfere with the order of the lower Court. Accordingly, the Criminal Original Petition stands dismissed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District & Sessions Judge, Erode.

2.The Inspector of Police,
District Crime Branch,
Erode.

3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. S.Parathasarathy, Advocate SR.19968 (14.11.2018)

+ 1 cc to MR. Deepan Uday, Advocate SR.20015 (14.11.2018)

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RJI (CO)
EU (14/11/2018)

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