

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P. No.24220 of 2018

Athinarayanan Subramanian @ Shiva
S/o. Subramanian.

... Petitioner

Vs.

1. J.M.Bahir Ahamed @ Actor Vaali
@ Vijayakarthish

2. The State rep. by
The Assistant Commissioner of Police,
Central Crime Branch-1,
Vepery, Chennai.

... Respondents

Prayer: Criminal Original Petition filed under Section 439(2) Cr.P.C. to cancel the bail granted to the first respondent/Accused 5 in Crl.M.P.No.13398 of 2018 dated 20.08.2018 by the Principal Sessions Court, Chennai and direct his immediate arrest and incarceration in the above said crime number.

For Petitioner : Mr.B.Kumar, Senior Counsel
For T.Sudhan Raj

For Respondents
for R1 : Mr.R.S.Mangal Kumar

for R2 : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition is filed to cancel the bail granted to the first respondent/Accused-5 in Crl.M.P.No.13398 of 2018 dated 20.08.2018 by the Principal Sessions Court, Chennai and direct his immediate arrest and incarceration in the above said crime number.

2. The case of the prosecution is that the first accused posed himself as very influential member of Parliament and asked the petitioner/defacto complainant to invest money in the business like real estate, sand quarry, scrap business etc.,

which yield a profit of 500 times and agreed by the words of A1, the petitioner/defacto complainant has invested a sum of Rs.2.18 crores, which was transferred by way of Cheque and through RTGS between 11.01.2014 and 30.09.2014. It is alleged that the petitioner is an associate of A1 and on instruction of A1, the defacto complainant/petitioner transferred a sum of Rs.28 lakhs to the first respondent/A5 herein, who claimed that he is a Proprietor of "Fashion Mobiles", thereby the first respondent/A5 along with other accused persons cheated the petitioner/defacto complainant to the tune of Rs.2.18 cores. Hence the complaint.

3. The learned Senior Counsel appearing for the petitioner would submit that a sum of Rs.28 lakhs had been transferred to the first respondent/A5 account, who is the Proprietor of "Fashion Mobiles" and the money was deposited on the instruction of A1 and the said money was withdrawn and paid to A1 by the first respondent/A5 herein. Further he would submit that on the wrong representation by the first respondent's counsel as well as the Public Prosecutor, the first respondent/A5 obtained bail from the learned Principal Sessions Judge, Chennai in CrI.M.P.No.13398 of 2018 on 20.08.2018. While considering the bail petition, the learned Judge taken note of the fact that the first respondent/A5 received a sum of Rs.28 lakhs through RTGS, imposed a condition on him that to deposit a sum of Rs.5 lakhs to the credit of Crime No.92 of 2017. Therefore, he sought for cancellation of bail granted to the first respondent herein.

4. The learned counsel appearing for the first respondent/A5 would submit that the first respondent arrested and remanded to judicial custody on 03.07.2018 and after a period of 46 days, the learned Principal Sessions Judge, Chennai was pleased to grant bail that too on condition that the first respondent/A5 shall deposit a sum of Rs.5 lakhs to the credit of Crime No.92 of 2017. The learned Judge also imposed a condition that the first respondent/A5 shall appear before the respondent Police daily at 10.30 a.m., for a period of one month. All the conditions imposed by the learned Principal Session Judge, Chennai duly complied by the first respondent herein and there is absolutely no ground to cancel the bail. Hence, he prays for dismissal of this petition.

5. The learned Additional Public Prosecutor would submit that the investigation is still pending. Further she would submit that all the conditions imposed by the learned Principal Sessions Judge, Chennai have been duly complied by the first respondent/A5.

6. Heard Mr.B.Kumar, learned Senior Counsel appearing for the petitioner, Mr.R.S.Mangala Kumar, learned counsel appearing for the first respondent and Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the second respondent/Police.

7. It is seen from the records, the first respondent/A5 along with other accused induced the defacto complainant to invest money in the business like real estate, sand quarry, scrap business etc., and cheated him to the tune of Rs.2.18 crores. It is also seen that the first respondent was arrested and remanded to judicial custody on 03.07.2018 and after that the learned Principal Sessions Judge, Chennai granted bail to him on the following conditions :-

- " 6.(i) Bail is granted
(ii) Petitioner is order to be released on bail on his executing a bond for Rs.10,000/- with two sureties each for a likesum to the satisfaction of Metropolitan Magistrate for Exclusive Trial of CCB Cases and CBCID Metro Cases, Egmore, Chennai.
(iii) The petitioner shall deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) to the credit of the Crime No.92/2017 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) Petitioner shall report before the respondent police daily at 10.30 a.m., for a period of one month."

8. The first respondent/A5 duly complied with the conditions imposed by the learned Principal Session Judge, Chennai and also deposited a sum of Rs.5 lakhs to the credit of the Crime No.92 of 2017 on the file of the second respondent. Therefore, the petitioner/defacto complainant could not make out any ground to cancel the bail granted to the first respondent/A5. Therefore, this Court is not inclined to cancel the bail already granted to the first respondent/A5. However, considering the above facts and circumstances, this Court feels that it deems to be fit that the petitioner/defacto complainant may be permitted to withdraw the amount, deposited by the first respondent/A5.

9. Accordingly, the petitioner/defacto complainant is permitted to withdraw a sum of Rs.5,00,000/- (Rupees five lakhs only) deposited by the first respondent/A5 in Crime No.92 of 2017, before the learned Metropolitan Magistrate for Exclusive

Trial of CCB Cases and CBCID Metro Cases, Egmore, Chennai by filing proper petition. On such filing of the petition, the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases and CBCID Metro Cases, Egmore, Chennai is directed to disburse the amount to the petitioner.

10. With the above directions, this criminal original petition is disposed of.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Principal Sessions Court,
Chennai.
2. The Presiding Officer,
CCB & CBCID Metropolitan Magistrate Court,
Egmore, Chennai.
3. The Assistant Commissioner of Police,
Central Crime Branch-1,
Vepery, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Metropolitan Magistrate,
for Exclusive Trial of CCB & CBCID Metro Cases,
Egmore.

+1cc to Mr.R.S.Mangala kumar, Advocate Sr.89075

CRL.O.P. No. 24220 of 2018

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srg 22/01/2019