



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.02.2018

Delivered on : 14.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.O.P.(MD)No.1011 of 2018

A.Senthilkumar ... Petitioner /De-facto Complainant

Vs.

1. The State Rep. by
The Inspector of Police,
Suthamalli Police Station,
Tirunelveli District.
(Crime No.436 of 2017)

... 1st Respondent /Complainant

2.Rajkumar ... 2nd Respondent/ Accused No.1

PRAYER: Criminal Original Petition is filed under Section 439(2) of the Code of Criminal Procedure, to cancel the order of anticipatory bail granted by the learned Principal Sessions Judge, Tirunelveli, in Cr.M.P.No.5937 of 2017, vide order dated 29.11.2017.

For Petitioner : Mr.R.Anand

For R1 : Mr.A.Robinson
Government Advocate
(Criminal side)

For R2 : No Appearance

ORDER

The petitioner herein is the de-facto complainant in Crime No.436 of 2017 pending on the file of the first respondent. Based on the complaint given by the petitioner/de-facto complainant, the first respondent herein registered a case against the second respondent for the offences punishable under Sections 341, 294(b) and 506(ii) IPC. After registration of the case, the learned Principal Sessions Judge, Tirunelveli, granted anticipatory bail to the second respondent on 29.11.2017, in Cr.M.P.No.5937 of 2017.

<https://hcservices.ecourts.gov.in/hcservices/> 2. Against the said order dated 29.11.2017, passed in Cr.M.P.No.5937 of 2017, by the learned Principal Sessions Judge, Tirunelveli, this Criminal Original Petition is filed.



3.The first and foremost contention raised by the petitioner is that after granting anticipatory bail, the second respondent, who is the accused in the abovesaid crime number, did not comply with the condition imposed by the learned Principal Sessions Judge, Tirunelveli. Further, he is having one another case in Crime No.299 of 2017 for the offence punishable under Section 379 IPC and therefore, he prayed for cancellation of anticipatory bail already granted in favour of the second respondent.

4.On the other hand, the learned Government Advocate (Criminal side) representing the State submitted that as of now, investigation is in progress.

5.Now, on going through the order dated 29.11.2017, passed in Cr.M.P.No.5937 of 2017, by the learned Principal Sessions Judge, Tirunelveli, it is seen that he imposed certain conditions while granting anticipatory bail to the second respondent, in which, one of them is as follows:

''b. that the above petitioners/accused shall sign before the learned Metropolitan Magistrate No.4, Chennai, daily twice i.e., at 10.30 a.m. and 5.00 p.m. for until further orders and on holidays of Court, they shall appear before the Assistant Commissioner of Police, Saidapet, daily twice i.e., at 10.30 a.m. and 5.00 p.m., for until further orders and the petitioners shall not leave the Corporation limit of Chennai until further orders.''

6.Admittedly, the second respondent herein did not partly abide by the condition. Even though, as of now, the condition imposed by the learned Principal Sessions Judge, Tirunelveli, was modified by him, it is relevant to go through the judgment of our Hon'ble Supreme Court in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and another** reported in **2004 (7) SCC 528**, wherein our Hon'ble Apex Court has held that the factors which are required to be considered by the Court before granting bail are; (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (b) reasonable apprehension of tampering with the witness or apprehension of threat of the complainant, and (c) *prima facie* satisfaction of the Court in support of the charge.

7.Now, applying the ratio laid down by our Hon'ble Supreme Court in the abovesaid decision with the case on hand, the first respondent police have not raised any issue against the second respondent with regard to threatening of witnesses. Furthermore, considering the offence committed by the second respondent, it is obvious that custodial interrogation is not necessary for



completing the investigation. Considering the principle that bail is the rule and the jail is an exception, this Court is of the view that the order dated 29.11.2017, passed by the learned Principal Sessions Judge, Tirunelveli, in Cr.M.P.No.5937 of 2017, does not warrant any interference. Hence, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(Cs-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Tirunelveli.
2. The Inspector of Police,
Suthamallai Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Smn2

AE/KKR/SAR4/22.02.2018/3P/4C

order made in
Crl.O.P. (MD) No.1011 of 2018
14.02.2018