



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.1027 of 2018

A.Senthilkumar

... Petitioner

Vs.

1.The State Rep. by  
The Inspector of Police,  
Suthamalli Police Station,  
Tirunelveli District.  
(Crime No.299 of 2017)

2.Rajkumar

... Respondents

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.6042 of 2017, vide order dated 05.12.2017.

|                |   |                                                         |
|----------------|---|---------------------------------------------------------|
| For Petitioner | : | Mr.R.Anand                                              |
| For R1         | : | Mr.A.Robinson<br>Government Advocate<br>(Criminal side) |
| For R2         | : | No Appearance                                           |

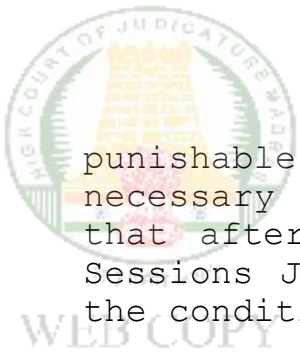
ORDER

The petitioner herein is the de-facto complainant in Crime No.299 of 2017 on the file of the first respondent police. The abovesaid case was registered by the first respondent police as against two accused, in which, the second respondent herein is arrayed as first accused.

2.Now, the petitioner filed this petition to cancel the anticipatory bail granted by the learned Principal Sessions Judge, Tirunelveli, in favour of the second respondent, vide order dated 05.12.2017, in Cr.M.P.No.6042 of 2017.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The first and foremost contention raised by the petitioner is that since the alleged case has been registered for the offence



punishable under Section 379 IPC, custodial interrogation is necessary for recovering the stolen property. Further, he added that after getting anticipatory bail from the learned Principal Sessions Judge, Tirunelveli, the second respondent had not obeyed the condition imposed by the said Court.

4. On the other hand, the learned Government Advocate (Criminal side) appearing for the first respondent fairly conceded that as of now the property, which was stolen away during the time of occurrence, was not recovered. Further, the second respondent herein did not obey the condition as imposed by the learned Principal Sessions Judge, Tirunelveli.

5. With regard to the said issue, on going through the order dated 05.12.2017, passed in Cr.M.P.No.6042 of 2017, it is seen that the second respondent was directed to sign before the learned Metropolitan Magistrate No.IV, Chennai, daily twice i.e., at 10.30 a.m. and 5.00 p.m. until further orders and on holidays, he should appear before the Assistant Commissioner of Police, Saidapet, daily twice, i.e., 10.30 a.m. and 5.00 p.m. until further orders. Subsequently, in Cr.M.P.No.320 of 2018, which was filed by the very same second respondent and one Sankarapandian before the Court of Sessions, Tirunelveli Division, for relaxing the condition imposed as above, the learned counsel on either side submitted that the second respondent complied with the conditions from 22.12.2017 to 24.12.2017 alone. Further, the report dated 03.01.2018 submitted by the learned Metropolitan Magistrate No.IV, Saidapet, Chennai, shows that the second respondent is not complying with the conditions imposed by the learned Principal Sessions Judge, Tirunelveli.

6. Secondly, on going through the stage of investigation, according to the submission made by learned Government Advocate (Criminal side) that the alleged stolen property in this case is not recovered so far, it is true that in order to recover the stolen property, custodial interrogation is necessary. However, on going through the order passed by the learned Principal Sessions Judge, Tirunelveli, it is seen that nothing has been mentioned with regard to recovery of stolen property. Factually, the value of the stolen property fixed by the petitioner/de-facto complainant in the complaint is Rs.60,000/-.

7. With regard to factual aspects, now, it is useful to refer the judgment of the 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.

8. Applying the principles laid down by our Hon'ble Supreme Court with the present case on hand, the petitioner/de-facto complainant had not lodged the complaint as if he saw the occurrence, in which, the second respondent committed the offence of theft. Furthermore, the first respondent police had not raised any issue with regard to the reasonable apprehension of tampering the witnesses or apprehension of threat to the complainant. On going through the entire reading of the FIR, it is seen that the petitioner/de-facto complainant has suspicion over the second respondent herein.

9. So, in the above circumstances, this Court cannot come to the conclusion that the petitioner/de-facto complainant lodged a complaint against the second respondent with *prima facie* case. Even though the second respondent has not complied with the condition as fixed by the learned Principal Sessions Judge, Tirunelveli, considering the nature of accusation, it would not prejudice to the process of investigation. Considering the principle that the bail is the rule and jail is an exception, this Court is of the view that the order dated 05.12.2017, passed by the learned Principal Sessions Judge, Tirunelveli, in Cr.M.P.No.6042 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 Sub 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