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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2018

Delivered on : 20.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.O.P. (MD) No.311 of 2018

Muthukumar

...Petitioner/Defacto Complainant
Vs.

- 1.Rajendran
- 2.Rajkumar
- 3.Mohanraj
- 4.Boominathan @ Boomibalan
- 5.Viji

6. The Inspector of Police,
Manamelkudi Police Station,
Pudukkottai District.
(Crime No.243/2017

... Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 439(2) r/w. 482 of the Code of Criminal Procedure, to cancel the bail granted to the respondents 1 to 5 by the learned Principal Sessions Judge, Pudukkottai, vide order dated 05.12.2017, made in Cr.M.P.No.2018 of 2017.

For Petitioner : Mr.A.Jayaramachandran

For R1 to R5 : Mr.T.Lenin Kumar

For R6 : Mr.A.Robinson
Government Advocate
(Criminal side)

ORDER

The petitioner herein is the de-facto complainant in Crime No.243 of 2017 on the file of the sixth respondent police.

2.Now, this Criminal Original Petition has been filed to cancel the bail granted in favour of the respondents 1 to 5, who are all arrayed as A1 to A4 and A6. In the abovesaid crime number, initially, the respondents 1 to 5 filed a petition under Section 482 Cr.P.C. before this Court in Cr.O.P.(MD)No.16307 of



2017, in which, on 28.11.2017, this Court directed the learned Principal Sessions Judge, Pudukkottai, to consider the bail application filed by them and pass appropriate orders on the same. Accordingly, on 05.12.2017, in complying with the orders passed by this Court, the learned Principal Sessions Judge, Pudukkottai, granted bail in favour of the respondents 1 to 5. Aggrieved over the same, the petitioner/de-facto complainant has filed the present Criminal Original Petition.

3.The first and foremost contention raised by the learned counsel appearing for the petitioner is that the sixth respondent herein registered a case against the respondents 1 to 5 for the offences punishable under Sections 147, 341, 323 and 506(i) IPC r/w. Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as 'the SC/ST (POA) Act']. Since the offences committed by the respondents 1 to 5 are under the provisions of the SC/ST (POA) Act, it is mandatory on the part of the Presiding Officer for sending notice to the victim and then only, the order of bail can be passed by the Presiding Officer of the concerned Court. Further, he added that despite the provision available under Section 15-A of the SC/ST (POA) Act, the respondents 1 to 5 got an order of bail without sending any notice to the victim and thereby, the bail granted by the learned Principal Sessions Judge, Pudukkottai, is nothing but abuse of process of law. Accordingly, the order passed by the said Court is liable to be cancelled.

4.On the other hand, the learned counsel appearing for the respondents 1 to 5 submitted that as per the order passed by this Court in CrI.O.P.(MD)No.16307 of 2017, the respondents 1 to 5 surrendered before the Principal Sessions Court, Pudukkottai, on 05.12.2017. Before that, on 04.12.2017 itself, the very same respondents sent a notice to the petitioner/de-facto complainant through their counsel, in which, they informed that they are proposed to surrender before the learned Principal Sessions Judge, Pudukkottai, for getting bail.

5.With regard to sending notice by the respondents 1 to 5, the learned counsel appearing for the petitioner raised an objection that the notice is not properly served. Furthermore, the Court alone is having the duty to send a notice to the victim. In this regard, admittedly, the Court, in which, the order of bail was granted in favour of the respondents 1 to 5, not issued any notice to the victim in this case.

6.Section 15-A of the SC/ST (POA) Act, defines the rights of victims and witnesses. The relevant portion of the said Section reads as follows:

**''15-A.Rights of victims and witnesses.-(1)**

It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.''

7.On facts, there is no ground to interfere with the order passed by the Trial Court. Even considering Section 15-A of the amended SC/ST (POA) Act, it is mentioned that the victim is entitled to contest the proceedings and file objections to the bail petition, if the party really wants to contest the petition, but there is no prohibition to consider the bail petition. There is no mandate under the said provision that the Court has to issue notice, hear the victim and then pass appropriate orders on the bail petition.

8.A careful understanding of the said provision clearly discloses that if the victim wants to contest the proceedings, then the Court has to provide an opportunity to the victim and then proceed and pass appropriate orders in this regard.

9.In the abovesaid facts and circumstances, the bail has already been granted by the Trial Court considering the facts and gravity of the offence and since then the respondents 1 to 5 have not violated any of the conditions. When such being the case, I



do not find any strong reasons to set aside the order passed by the Trial Court and cancel the bail. Hence, this Petition deserves to be dismissed. Accordingly, this Criminal Original Petition is dismissed.

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Sd/-

Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar

To

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

+1cc to Mr.T.Lenin Kumar, Advocate Sr.No.49952

SMN2

VB/CVC/SAR1/05.03.2018/4P/5C

order in
Crl.O.P. (MD) No.311 of 2018
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