



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2018

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WEB COPY

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD) No.652 of 2018

R.Vivekanandhan

... Petitioner/Defacto Complainant

-Vs-

1.Prasanna
2.Arunachalam
3.Paramaiyan

... Respondents 1 to 3/
Accused Nos.1 to 3

4. State by
Inspector of Police,
Sethubavachathiram Police Station,
Cr.No.167 of 2017
Thanjavur District.

... 4th Respondent/Complainant

Prayer: Criminal Original petition filed under Section 439 (2) of Code of Criminal Procedure, to set aside the order passed by the learned Principal District & Sessions Judge, Thanjavur in Crl.M.P.No.3286 of 2017 dated 08.11.2017 and cancel the bail granted by the Principal District and Sessions Judge, Thanjavur in Crl.M.P.No.3286 of 2017 dated 08.11.2017 to the respondents 1 to 3 (accused 1 to 3) in Crime No.167 of 2017 on the file of the fourth respondent.

For Petitioner	:	Mr.Isaac Mohanlal Senior Counsel for Mr.K.M.Thiruppathi
For R-1 and R-2	:	Mr.R.Maheswaran
For R-3	:	Mr.Nirajan S.Kumar
For R-4	:	Mr.A.Robinson Government Advocate (Crl. Side)

O R D E R

The defacto complainant in Crime No. 167 of 2017, on the file of the fourth respondent herein, has filed this criminal original petition for cancelling the anticipatory bail granted in favour of the accused in the above said Crime Number.

2. At the very outset, the learned Senior Counsel appearing for the defacto complainant / petitioner herein submitted that he would confine his relief against the first respondent / Prasanna alone and he would not press this Criminal Original petition as regards to the respondents Nos. 2 and 3. Such a fair submission has



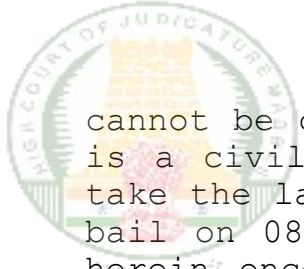
been made taking note of the age of the respondent Nos. 2 and 3.

3. The learned Senior Counsel appearing for the petitioner / defacto complainant wanted this Court to cancel the order passed by the learned Principal District and Sessions Judge, Thanjavur, principally on three grounds.

4. The property in question belongs to the principal of the defacto complainant herein. The first respondent herein is the son of the second respondent herein and they have been making a claim that they have a pathway right over the property that now stands in the name of the principal of the defacto complainant herein. Since the said pathway right is being denied, the first respondent herein had committed trespass and also damaged the compound wall on 09.03.2017. Therefore, Crime No.40 of 2017 was registered on the file of the fourth respondent herein on 11.03.2017. The first respondent herein is shown as first accused in the said First Information Report. While so, on 26.10.2017, once again the accused herein indulged in the very same act and demolished a portion of the compound wall and also committed other offences. Immediately, the petitioner herein lodged a written complaint on 26.10.2017, before the fourth respondent herein and a receipt in C.S.R.No.117 of 2017 has been issued on 27.10.2017, but, the fourth respondent police did not take any action to register a First Information Report, even though cognizable offence was made out. Therefore, the defacto complainant's principal directly moved the Director General of Police, Chennai and thereafter only, the present First Information Report came to be registered on 03.11.2017 in Crime No.167 of 2017. Even though it is mentioned that information was received at the station only on 03.11.2017 at 19 hours it can be seen that there is a clear reference to C.S.R.No.117 of 2017, dated 27.10.2017, in the very First Information Report itself.

5. When the accused applied for anticipatory bail before the Sessions Court, the submission made by the learned Public Prosecutor was that the occurrence took place on 26.10.2017 and it was reported to the police only on 03.11.2017. According to the learned Senior Counsel appearing for the petitioner it is clearly a false statement. He would contend that the learned Principal District and Sessions Judge, Thanjavur was probably swayed by this fact. When the information about the occurrence and the offence is reported belatedly, it is an invariably a ground for granting anticipatory bail.

6. The learned Senior Counsel again contended that the first respondent herein was a habitual offender. Admittedly, he is figuring as A1 in Crime No.40 of 2017, on the file of the fourth respondent herein. He is again figuring as A1 in the present First Information Report also. But the fact that there is a previous case registered against him in respect of the very same subject matter was not brought to the notice of the learned Principal District and Sessions Judge, Thanjavur. More than anything else an offence

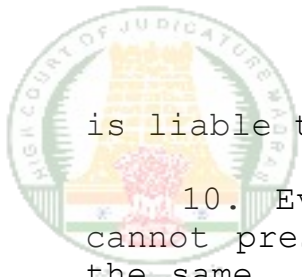


cannot be casually characterised as a civil dispute. Even if there is a civil dispute between the parties it is not open to them to take the law in their own hands. Lastly, after securing anticipatory bail on 08.11.2017 in Cr.M.P.No.3286 of 2017, the first respondent herein once again committed trespass on the property in question. In this regard, the defacto complainant has given one more complaint dated 17.11.2017, to the fourth respondent herein.

7. Per contra, the learned counsel appearing for the first respondent submitted that this Court should bear in mind the fundamental distinction between grant of bail or anticipatory bail and cancellation of bail that has already been granted. He would also point out that there is no question of suppression in this case. This is because in the present First Information Report itself there is a clear reference to the earlier case registered against the first respondent herein. Again, in the First Information Report itself there is reference to the C.S.R issued by the fourth respondent on 27.10.2017. Therefore, this Court can legitimately infer that the learned Sessions Judge was fully aware of these facts before granting the relief to the accused in this case. Therefore, he wanted this Court to dismiss this petition for cancellation.

8. This Court bestowed its serious consideration to the rival contentions. It has been held by the Hon'ble Supreme Court that granting the relief of anticipatory bail cannot be a matter of course. It is not to be granted as a matter of rule. It should be granted only when a special case is made out and the Court is convinced that the accused would not misuse his liberty. **(Rakesh Boban Borhade Vs. State of Maharashtra (2015) 2 SCC 313)**

9. In this case the learned Sessions Judge chose to exercise his discretion in favor of the first respondent herein. This was on 08.11.2017. Within nine days thereafter, the first respondent herein has once again committed trespass on the property in question. The petitioner herein has enclosed a copy of the complaint, dated 17.11.2017 given by him to the fourth respondent at page No.31 of the typed set of papers. In Paragraph No.5 at page No.17 of the present Criminal Original petition, it has been specifically alleged that on 17.11.2017, the very same accused A1 / Prasanna again trespassed into the very same property through the passage opened by the demolition of the compound wall, by using a tractor and threatened the defacto complainant and others by showing deadly weapons, which again attracts the offences under the Indian Penal Code. There is no counter filed by the first respondent to this allegation. Therefore this Court has to necessarily hold that the said allegation as regards conduct of A1/Prasanna subsequent to grant of anticipatory bail is not controverted. It is seen that A1 / Prasanna has consciously and wilfully misused the liberty given to him by the learned Principal District and Sessions Judge, Thanjavur. On this sole ground, the relief of anticipatory bail granted to him vide order dated 08.11.2017 in Cr.M.P.No.3286 of 2017



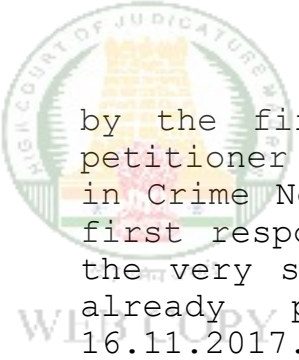
is liable to be cancelled. But, this Court would go further.

10. Even though, the materials are available on record, one cannot presume that the mind of the Court below was duly drawn to the same. The application of mind of the Court can only be judged by what is there in black and white in the order passed by it. In this case, what is recorded in the order in question is that the learned Public Prosecutor had made a specific submission that while the occurrence took place on 26.10.2017, the report was on 03.11.2017. This submission, on the very face of it, is incorrect and erroneous. It is proved by the materials on record that the complaint was lodged immediately after the occurrence on the very same day i.e., on 26.10.2017. The police have also given C.S.R receipt on the very next date i.e., on 27.10.2017. The registration of criminal case was only belated. Even that did not happen smoothly or on its own. The principal of the defacto complainant had to move the Director General of Police, Chennai to get the First Information Report registered. This itself shows how powerful the first respondent is in the locality.

11. The learned Senior Counsel appearing for the petitioner would suggest that the first respondent is engaged in sand mining and that the defacto complainant is literally living in fear, but, there is no material to show that the first respondent is engaged in any such activities. The materials on record particularly the photographs would clearly show that the compound wall of the defacto complainant's principal was badly damaged. According to the learned Senior counsel appearing for the petitioner, the value of damage would be more than Rs.1,50,000/-. In this case, the specific allegation of the defacto complainant is that heavy machinery like poclain has been deployed to cause damage. The property in question clearly stands in the name of the principal of the defacto complainant. In fact, the first respondent appears to have instituted a civil suit claiming the pathway right in O.S.No.215 of 2017, on the file of the District Munsif, Pattukottai on 15.11.2017. The learned senior counsel appearing for the petitioner submits that the suit proceedings have since been stayed by order, dated 27.03.2018 made in C.M.P(MD).No.2781 of 2018 in C.R.P.(MD).No. 635 of 2018.

12. When this Court or Sessions Court considers an application for grant of anticipatory bail, the material fact to be seen is whether there is any registration of previous cases against the accused. In other words, the antecedents of the petitioner seeking anticipatory bail is always a relevant factor. In this case, it is beyond dispute that the first petitioner is shown as A1 / prasanna in Crime No.40 of 2017, on the file of the fourth respondent. This aspect of the matter was not brought to the attention of the Court below.

13. There is nothing on record to show that the Sessions Court was aware of this fact. This Court went through the petition filed



by the first respondent herein before the Sessions Court. The petitioner has also not made any reference to his implication as Al in Crime No.40 of 2017. What aggravates the situation is that the first respondent had committed the act of mischief and trespass on the very same property, even after grant of anticipatory bail as already pointed out. He had once again committed trespass on 16.11.2017.

14. Taking note of all these aspects, this Court is of the view that the order granting anticipatory bail in favour of the first respondent by the Sessions Court is liable to be cancelled. Accordingly, this Criminal Original Petition is allowed, as regards the first respondent alone. In respect of respondent Nos. 2 and 3, this Criminal Original Petition stands dismissed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District & Sessions Judge,
Thanjavur.
2. The Judicial Magistrate, Pattukkottai.
3. The Inspector of Police,
Sethubavachathiram Police Station,
Thanjavur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 2 CC TO Mr.M.SENTHILKUMAR, ADVOCATE IN SR No. 60647
+ 4 CC TO Mr.NIRANJAN S.KUMAR, ADVOCATE IN SR No. 60726

CP/TRP
TE/SV/SAR-1 : 24/04/2018 : 5P/11C

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10.04.2018