



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
08.01.2018	11.01.2018

CORAM:

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THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.R.C. (MD) No. 912 of 2017
and
CrI.MP (MD) .No. 11161 of 2017

Manikandan : Petitioner/Accused No.1
Vs.

1.State, rep by,
The Inspector of Police,
Thiruvaiyaru Police Station,
Thanjavur District,
Crime No.58 of 2016. : First Respondent/Complainant

2.S.Prema : Second Respondent/Third party

PRAYER: Criminal Revision Case is filed under Section 397 r/w Section 401 of the Criminal Procedure Code praying to call for records in Cr.M.P.No.625 of 2017 in S.C.No.273 of 2016, pending on the file of the learned Sessions Judge, Mahalir Neethimandram, [Fast Track Mahila Court], Thanjavur, Thanjavur District and set aside the order dated 20.11.2017.

For Petitioner : Mr.A.Thiruvadikumar
For Respondent No.1 : Mr.M.Asokan
Government Advocate [Criminal Side]
For Respondent No.2 : Mr.S.Deenadhayalan

ORDER

The factual matrix of the case is as under:-

Nehru [PW-1] is having a Motorcycle stand in Thiruchottudurai. On 09.02.2016, one Rajaraman, [PW-12] and Govindaraj [PW-13] had parked their black colour Bajaj Discover Motorcycle in the said stand. On the direction of Govindaraj [PW-13], Manikandan [A-1] came to the stand on 12.02.2016, around 08.15 AM and wanted to take the bike. At that time, Balasubramanian [PW-3], the son of Nehru, [PW-1] demanded rent from Manikandan [A-1], on account of which, there was a quarrel between them. On seeing the quarrel, Mallika [D-1] and Suresh [D-2], who were running a provision store in the area, intervened on behalf of Balasubramanian [PW-3] and supported him. On account of this, again, on the same day, around 02.00 PM, when Nehru [PW-1] came to the stand, Manikandan [A-1] came there and picked up a motorcycle. On 13.02.2016, again, Mallika [D-1] and Suresh [D-2] came from their shop and supported Nehru. At that time, Manikandan [A-1] is said to have challenged them as to how they could come, ask money

and threaten him and further challenged that he will not allow them to do business in the village, as they are outsiders and that he will eliminate them.

2. On 12.02.2016, around 10.10 PM, Mallika [D-1] and Suresh [D-2], closed their provision store and were proceeding in a two wheeler, bearing Registration No.TN-68-B-0370. Manikandan [A-1] Karthik [A-2] decided to eliminate them and they took a Mahindra Van bearing Registration No.TN-46-H-4829 and Manikandan [A-1] drove the vehicle in the opposite direction of the route, by which the deceased were coming in their two wheeler. Manikandan [A-1] hit the duo and they died on the spot. A case in Crime No.58 of 2016 under Section 302 of the Indian Penal Code [two counts] was registered by the Inspector of Police, Thiruvaiyaru Police Station and thereafter, Manikandan [A-1] and Karthik [A-2] were arrested. Manikandan [A-1] was released on bail under Section 167(2) of the Code of Criminal Procedure for failure on the part of the prosecution to complete the investigation within a period of 90 days. After completing the investigation, the police have filed charge sheet, which is now pending trial in S.C.No.273 of 2016, before the Sessions Court, [Mahalir Court/Fast Track Court], Thanjavur, in which the charge under Section 302 of the Indian Penal Code [two counts] has been framed against Manikandan [A-1] and Karthick [A-2]. They pleaded not guilty to the charges.

3. In the memorandum of evidence, the prosecution have cited 31 witnesses. Nehru [PW-1] was examined on 21.06.2017 and he supported the case of the prosecution. Sakthivel [PW-5] was examined on 20.07.2017. He also supported the case of the prosecution. However, by 20.07.2017, the prosecution had examined 15 witnesses out of 31 witnesses, of whom, 10 witnesses had turned hostile and they have not supported the case of the prosecution. Therefore, Prema, the sister of both the deceased, suspecting that there is some foul play and since she was threatened by Manikandan [A-1], when she started to probe, filed an application in Cr.M.P.625 of 2017 in S.C.No.273 of 2016, for cancellation of bail granted to Manikandan [A-1], on the ground that Manikandan [A-1] is tampering with the evidences and is obstructing the case of the prosecution. The Trial Court conducted a summary enquiry by recording the statement of Prema on 20.07.2017 and the statements of Nehru [PW-1] in the main case and Sakthivel [PW-5] in the main case] on 21.07.2017. In their statements, all the three witnesses have stated that Manikandan [A-1] threatened them. Therefore, the Trial Court issued show cause notice to Manikandan [A-1] to show cause as to why the bail granted to him should not be cancelled.

4. Immediately, Manikandan [A-1] filed CrI.RC(MD).No.691 of 2017 challenging the said show cause notice, which was dismissed, by this Court, on 09.08.2017, with a direction to Manikandan [A-1] to appear before the Trial Court and give his explanation. The Trial Court heard Manikandan [A-1] and by the impugned order dated 20.11.2017, cancelled the bail, that has been granted to him by the learned Judicial Magistrate, Thiruvaiyaru, Thanjavur District, dated 18.05.2016 made in Cr.M.P.No.2696 of 2016, aggrieved by which, Manikandan [A-1] is before this Court.



5. At the time of admission, this Court, by order dated 08.12.2017, has granted stay of the order passed by the Trial Court, dated 20.11.2017, on account of which, Manikandan [A-1] has been enjoying the benefit of bail granted to him.

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6. Heard Mr.A.Thiruvadikumar, learned counsel appearing for Manikandan [A-1], Mr.M.Asokan, learned Government Advocate [Criminal Side] for the first respondent and Mr.S.Deenadhalayan, learned counsel appearing for Prema.

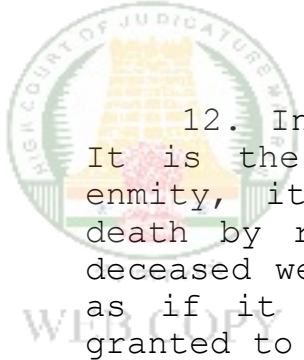
7. Mr.A.Thiruvadikumar, learned counsel, submitted that once bail has been granted, it should not be cancelled and he placed reliance on the Judgment of the Supreme Court in Mehboob Dawood Shaikh Vs. State of Maharashtra [2004 (2) SCC 362]. He further submitted that the Trial Court should have permitted Manikandan [A-1] to cross-examine Prema, Nehru and Sakthivel. He also submitted that Nehru was examined in the main case on 21.06.2017 and at that time, he did not say that he was threatened. Similarly, Sakthivel [PW-5] was examined in the main case on 20.07.2017, the date on which Prema submitted the petition for cancellation of bail before the Trial Court and at that time also, he did not say that he was threatened.

8. Mr.A.Thiruvadikumar, learned counsel further submitted that it was the prosecution witness, who is derailing the case, inasmuch as one Suganya, a junior of Public Prosecutor in-charge of the case, has given a complaint against one T.Ilavarasan, S/o.Thirunavukkarasu, [LW-8], one of the star witnesses for the prosecution, alleging that he misbehaved with her and on that complaint, First Information Report was registered in Crime No.258 of 2017, on 30.06.2017, under Section 294(b) of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 2002, against T.Ilavarasan and his examination has been dispensed with by the Public Prosecutor in S.C.No.273 of 2016.

9. Lastly, Mr.A.Thiruvadikumar, learned counsel, submitted that the prosecution had examined 15 witnesses, out of 31 witnesses and the rest of the witnesses are only officials witnesses, like post-mortem doctor, investigating officer, First Information Report Constable, etc. and therefore, undue prejudice would be caused to the accused, if bail is cancelled at this stage.

10. Per contra, Mr.S.Deenadhalayan, learned counsel appearing for Prema, submitted that out of 15 witnesses examined so far, 10 witnesses had turned hostile, which itself goes to prove that the petitioner is misusing his liberty.

11. This Court gave its anxious consideration to the rival submissions made by the learned counsel on either side.



12. In this case, two persons have lost their precious lives. It is the case of the prosecution that on account of previous enmity, it was Manikandan [A-1], who intentionally caused their death by ramming his van against the vehicle, in which both the deceased were coming during night hours, in order to make it appear as if it was a road accident. At the first instance, bail was granted to Manikandan [A-1] not on merits, but under Section 167(2)) of the Criminal Procedure Code on account of the failure on the part of the prosecution to complete the investigation and file final report within a period of 90 days.

13. In Abdul Basit @ Raju Vs. Abdul Kadir Chaudhary, [2014 (11) Scale 96], the Supreme Court very clearly held that the default bail can be cancelled, after the charge sheet is filed. The Supreme Court further held that the accused cannot claim any special right to remain on bail. If the investigation reveals that the accused has committed serious offence and charge sheet is filed, the bail granted under Section 167(2) of the Code of Criminal Procedure, could be cancelled on an application by the Prosecuting Agency. In this case, the prosecution should have taken steps to cancel the bail, after the charge sheet was filed and instead, the prosecution, for some reasons known to them, did not take any steps to cancel the bail. Prema, who is the sister of both the deceased, has not been cited as prosecution witness in the memo of evidence. As a close relative of the victims, she has been watching the proceedings. When one witness after the other was turning hostile, she smelt a rat and she has *locus standi* to move the application for cancellation of bail.

14. In State of U.P. v. Shambu Nath Singh [2001(4)SCC 667], the Supreme Court has held that the bail can be cancelled, if the accused adopts any dilatory tactics. In the Judgment relied upon by the petitioner in Mehboob's case [supra], the Supreme Court has held that on filmsy grounds, bail should not be cancelled. It is a trite that the parameter for grant of bail is different from the parameter for cancellation of bail. In this case, the Trial Judge examined Prema, Nehru and Sakthivel not as witnesses for the accused to cross-examine them, but, in order to satisfy himself as to whether there are *prima facie* materials to issue show cause notice to the accused for cancellation of bail. The Sessions Judge could have acted on the affidavit of Prema, but, instead, he went one step ahead by recording not only the sworn statement of Prema, but also the statements of Nehru [PW-1] and Sakthivel [PW-5].

15. The contention of the learned counsel for Manikandan [A-1] is that Nehru and Sakthivel, in their evidence in the main case, did not speak anything about the threat made by Manikandan [A-1]. This Court is of the view that merely because they had not stated anything about the threat made by Manikandan [A-1] in their evidence in the main case, it cannot be heard to say that they should be precluded from supporting the assertion of Prema that the accused is tampering with the evidences. In fact, Nehru and Sakthivel would have given evidence on the fact in issue, which are relevant to the charge and they would not have gathered the courage to speak about



the attempt made by Manikandan [A-1] to suborn the witnesses. In Panchanan Mishra Vs. Digambar Mishra and others, [AIR 2005 SCW 1103], the Supreme Court has held as under:-

"13. The object underlying the cancellation of bail is to protect the fair trail and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in heinous crime and if there is delay in such a case, the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses threatening the family members of the deceased victim and also create problems of law and order situation".

16. A very distinct feature in this case is that the junior of the Public Prosecutor in charge of the case, has lodged a complaint against one of the prime prosecution witnesses, by name, T. Ilavarasan. Thus, it is apparent that some sabotage is taking place in the Trial Court for derailing the trial.

17. In such view of the matter, this Court does not find any illegality or perversity in the order passed by the Trial Court cancelling the bail granted to Manikandan [A-1]. Hence, this Criminal Revision Case is dismissed. The police are directed to arrest Manikandan [A-1] and produce him before the Trial Court under Section 309 of the Criminal Procedure Code until the conclusion of the trial. The Trial Court is directed to expeditiously complete the trial, after Manikandan [A-1] is remanded to custody. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Inspector of Police,

Thiruvaiyaru Police Station, Thanjavur District,

2. The Sessions Judge, Mahalir Neethimandram,

[Fast Track Mahila Court], Thanjavur, Thanjavur District.

+One cc to Mr. A. Thiruvadi Kumar, Advocate, SR.No.41774

+One cc to Mr. S. Deenadhayalan, Advocate, SR.No.41977

NB

RL/5C/5P/JC/SAR1/12/1/2018

ORDER MADE IN

Cr1.R.C. (MD) No.912 of 2017

Dated:-

11.01.2018