



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Sixth day of November Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.16157 of 2018

C.SELVAM

... PETITIONER /
INTERVENER AS DEFACTO-COMPLAINANT
Vs

1. THE STATE THRO'
THE INSPECTOR OF POLICE,
APPANTHIRUPPATHY POLICE STATION,
MADURAI DISTRICT.
CRIME NO.163 OF 2018 ... 1st RESPONDENT/ RESPONDENT

2. K.THILAGAVATHY

3. J.JAYAPRABHU ... RESPONDENTS 2& 3 / PETITIONERS

For Petitioner : MR.R.GOWRISHANKAR Advocate

For Respondent : MR.K.SUYAMBULINGA BHARATHI,
Govt. Advocate (Crl. Side) for R1
MR.R.SANTHANAM, for R2 & R3

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The Petitioner / Defacto Complainant has filed this Criminal Original Petition, to cancel the anticipatory bail granted to respondents 2 & 3 herein / A1 & A6 in Crl.M.P.No.3494 of 2018, by the learned Principal Sessions Judge, Madurai, on 21.08.2018, in Crime No.163 of 2018, registered on the file of the respondent Police, for the offences punishable under Sections 120(b), 406, 420, 419, 468, 471 and 506(i) of IPC.

2. Mr.R.Gowrishankar, the learned counsel appearing for the
<https://hcservices.ecourts.gov.in/hcservices/>
Petitioner / Defacto Complainant would submit that totally there
are six accused in this case. The defacto complainant used to



engage A6, who is an electrician. A6 introduced A1 to the defacto complainant, as his relative and on their request, the defacto complainant gave Rs.5,00,000/-, as hand loan to A1. Further, A1 had informed that her uncle / A4 is having house property, at Pasumpon Street, Thiruppalai, Madurai and A4 is ready to mortgage the house property for the said loan, as surety. A2, who is working in the Army, is the husband of A1, also called over phone and made the same request. Based on which, the defacto complainant had given hand loan to A1 subject to the proposed mortgage of the property by A1's uncle and Aunt viz., A4 & A5. On 14.03.2017, the said house property has been mortgaged in the name of the defacto complainant's mother, vide Document No.822/2017. The accused herein, in conspiracy with each other, had fabricated Aadhar Card, name of the original owners, photograph and had executed the said mortgage fraudulently. Since A2 insisted for return of original documents, the documents were handed over by the petitioner. Thereafter, a complaint was lodged by the defacto complainant to the first respondent Police. During pendency of the complaint, the respondents 2 and 3 had filed an application for anticipatory bail in CrI.O.P.(MD)No.11981 of 2018 and CrI.O.P(MD)No.11962 of 2018. This Court was not inclined to grant the relief and both the petitions were withdrawn. This is at the stage of preliminary enquiry, when the case was not registered. Thereafter, the complaint of the defacto complainant was registered in Crime No.163 of 2018, for the offences under Sections 120(b), 406, 420, 419, 460, 471 and 506(i) IPC. Suppressing the anticipatory bail petition, which were dismissed as withdrawn on 30.07.2018, the respondents 2 and 3 herein had filed anticipatory bail petition before the Principal Sessions Court, Madurai in Cr.M.P.No.3494 of 2018 and the same was allowed vide order, dated 21.08.2018, without any condition. Further, A2 & A6 after moving the High Court should not have moved an anticipatory bail application before the Sessions Court and the Sessions Court should not have entertain the anticipatory bail, if on an earlier occasion it was dismissed by the High Court. In support of his contention, the learned counsel has



filed a typed set containing the copies of mortgaged deed, earlier anticipatory bail application filed before this Court, FIR, anticipatory bail order granted by the Sessions Court and the orders of this court in cancelling the bail orders obtained in similar cases.

3. Mr.K.Suyambulinga Bharathi, the learned Government Advocate (crl.side) appearing for the 1st respondent, on instructions, would submit that the Public Prosecutor before the Sessions Court had vehemently opposed the bail application putting forth the entire facts of the case and also made submission that investigation is in progress and without considering the merits of the case, the Sessions Judge had granted anticipatory bail to A2 & A6.

4. Mr.R.Santhanam, the learned counsel appearing for respondents 2 and 3 / A2 & A6 filed a counter and submitted that the petitioner / defacto complainant is a moneylender, who had been making false allegation and extracting exorbitant interest and had been creating documents to suit the demands. The defacto complainant's forcible demand was resisted by the respondents 2 and 3, which was not liked by the petitioner and hence, a false case has been registered against them. The respondents 2 and 3 were called upon for enquiry by the Oomachikulam Police Station and at the instance of the petitioner, the police exerted undue pressure to settle the unreasonable claims of the petitioner and unable to bear the pressure, the respondents 2 and 3 had moved for anticipatory bail in CrI.O.P.No.11981 of 2018 & CrI.O.P.No.11962 of 2018 and latter withdrawn the same. Thereafter, the petitioner had filed a complaint before Appanthiruppathy Police Station, who had registered the case in Crime No.163 of 2018. The petitioner has been doing forum shopping in choosing the investigation agency one after another and now claims as the respondents 2 and 3 had obtained anticipatory bail, suppressing the facts. Further, the entire money borrowed from the petitioner has been repaid. The petitioner without returning the papers and unfilled cheque, has filed the



present false complaint against them.

5. It could be seen in paragraph 6 of the impugned / lower court order wherein it has been categorically stated as follows:-

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"6. While I perused the the case on hands, the first petitioner is the woman. The rest of the petitioner is a person who called himself as attestor. In fact, the case is registered as per the direction of the Hon'ble High Court of Judicature. The 1st petitioner said that she would be co-operated with the investigation agency as per the direction of the Hon'ble High Court. It is also disclosed by the petitioner, as well as the prosecution that the petitioner and other person made a petition for anticipatory bail before the Hon'ble High Court of Judicature. The copy of the petitions are placed before this court which are disclosed that the petitioners were approached the Hon'ble High Court of Judicature in respect of Omachikulam Police Station nor for Appanthirupathi Police Station. Now the petition on had is pertaining to Appanthirupathy police station....."

Considering all these facts, the Sessions Court had granted anticipatory bail in favour of respondents 2 and 3 and there has been no suppression made by them.

6. Grant of bail is one thing and cancellation thereof is quite another. The petition for cancellation of bail is to be entertained only in an extraordinary circumstance wherein, any material suppression have been made and the bail order has been obtained by playing deception and fraud. In this case, the respondent Police for the earlier petition is Oomachikulam Police station with crime number not known and latter petition is Appanthiruppathy Police Station in Crime No.163 of 2018. The respondent Police are different. The Sessions Court had considered this aspect and granted anticipatory bail. In view of the same, this Court feels



that there is no suppression or deception adopted by respondents 2 and 3. Hence, this petition is dismissed.

sd/-
26/11/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE PRINCIPAL SESSIONS JUDGE, MADURAI
 2. THE INSPECTOR OF POLICE
APPANTHIRUPPATHY POLICE STATION,
MADURAI DISTRICT
 3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
- +1. CC to MR.D.SASIKUMAR Advocate SR.No.22265

ORDER
IN
CRL OP(MD) No.16157 of 2018
Date :26/11/2018

MK/PN/SAR 1/30.11.2018/5P/5C