

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.4328 of 2019

Ambika

... Petitioner

Vs.

1. State rep. by
The Inspector of Police,
Banavaram Police Station,
Banavaram,
Vellore District.
(Crime No.20 of 2019)

2. Jayabal

... Respondents

PRAYER:

Criminal Original Petition is filed under Section 439 (2) of the Code of Criminal Procedure, to cancel the bail order in CMP.No.71 of 2019 dated 22.01.2019 on the file of the Judicial Magistrate, Sholingar in Crime No.20 of 2019 on the file of the first respondent police.

For Petitioner : Mr.G.Mohanakrishnan

For R1 : M/s.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking for cancellation of bail granted in favour of the second respondent in CMP.No.71 of 2019 dated 22.01.2019 on the file of the Judicial Magistrate, Sholingar.

2. The respondent police had registered an FIR against the second respondent for the offence under Sections 294 (b), 324, 506 (ii) IPC on 13.01.2019. The second respondent was arrested and remanded to judicial custody on the same day. Initially, the second respondent filed a bail petition and when it came up for hearing before the Court below on 21.01.2019, it was specifically informed before the Court below that the victim is yet to be discharged from the hospital. The Court below after

taking into consideration of the facts and circumstances of the case and also the fact that the victim has not been discharged from the hospital, passed an order dated 21.01.2019 dismissing the bail petition.

3. Immediately thereafter another bail petition was filed by the second respondent and notice was ordered returnable by 23.01.2019. Curiously, the bail petition was taken up for hearing on 22.01.2019 itself and on that day the very same respondent police gave an instruction as if the victim has been discharged. The Court below by an order dated 22.01.2019 i.e., within one day after dismissing the earlier petition, had granted bail to the second respondent.

4. The learned counsel for the petitioner submitted that a fraud has been played by the second respondent in active connivance with the police. He further submitted that the victim sustained grievous head injuries in this case and on a petition filed before this Court seeking for alteration of the FIR, the respondent police has altered the FIR and have added the offence under Section 307 IPC. He further submitted that the victim was discharged after a long treatment in the hospital. Therefore, he submitted that the order passed by the Court below clearly reflects non-application of mind and the same has been obtained by playing fraud on the Court. The second respondent has been served notice and there is no representation for the second respondent. The name of the second respondent has also been printed in the cause list.

5. It is clear from the records that the second respondent has hoodwinked the Court below and has obtained an order of bail. The first bail petition was dismissed on 21.01.2019, after taking into consideration the gravity of the offence and also of the fact that the victim was not discharged from the hospital. Immediately thereafter another bail petition is filed in which notice is ordered to the police and the case was posted on 23.01.2019. Curiously, the case gets listed on 22.01.2019 and the very same respondent police come before the Court and make an endorsement that the victim has been discharged. It is a clear case of fraud played on the Court and unfortunately the Court below even without realizing that it had dismissed the earlier bail petition which is one day prior to the passing of the order, proceeded to grant bail to the second respondent without any application of mind.

6. Supervening circumstances in this case is the fraud that was played by the second respondent in obtaining bail with the active connivance of the first respondent police. In view of the above, this Court is satisfied that the bail granted by the

Court below in favour of the second respondent requires interference and accordingly the bail granted by the Court below is hereby cancelled. The respondent police is directed to immediately secure the second respondent to proceed against him in accordance with law.

In the result, Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dh

To

1. The Judicial Magistrate,
Sholingar.
2. -Do Thro The Chief Judicial Magistrate,
Vellore.
3. The Inspector of Police,
Banavaram Police Station,
Banavaram, Vellore District.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Mohanakrishnan, Advocate, S.R.No.32612

Cr1.O.P.No.4328 of 2019

VD(CO)
CS/15/04/2019

सत्यमेव जयते

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