

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4533 of 2019 and
Crl.M.P.No.2715 of 2019

1.K.V.Sayan
2.Manoj

...Petitioners

-Vs-

State; represented by:
The Inspector of Police,
Kotagiri Police Station,
Kotagiri, The Nilgiris.

...Respondent

Prayer:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order in Crl.M.P.No.53 of 2019 in S.C.No.2 of 2018, dated 08.02.2019 on the file of the Sessions Judge, The Nilgiris, Udhagamandalam.

For Petitioners : Mr.N.R.Elango, Senior Counsel
For Mr.G.Prabakaran

For Respondent : Mr.A.Natarajan, Senior Counsel
Public Prosecutor
Assisted by:
Mr.Mohamed Riyaz,
Additional Public Prosecutor

सत्यमेव जयते
O R D E R

The Criminal Original Petition is filed by the petitioners to set aside the order in Crl.M.P.No.53 of 2019 in S.C.No.2 of 2018, dated 08.02.2019 passed by the learned Sessions Judge, The Nilgiris, Udhagamandalam District.

2. Mr.N.R.Elango, learned Senior Counsel appearing for the petitioners submits that the petitioners are arrayed as accused A1 & A2 respectively in S.C.No.2 of 2018 which was taken cognizance for the alleged offences under Sections 120(B), 147, 148, 149, 447, 449, 458, 324, 342, 395 r/w Sections 396 & 397 and 302 IPC. There are 11 accused in this case and after the

death of the deceased C.Kanagaraj-A1 in a road accident, the petitioners are arrayed as accused A1 and A2. In fact, the first petitioner was involved in a road accident where his wife, children and his friend died and he also sustained grievous injuries. The said accident took place on 29.04.2017 and he was admitted in a Hospital at Coimbatore and thereafter, he was arrested and remanded to judicial custody on 06.06.2017 and he was enlarged on bail by an order in Crl.M.P.No.1881 of 2017, dated 11.09.2017 passed by the learned Judicial Magistrate, Kotagiri, under Section 167 (2) of CrPC. Thereafter, the conditions imposed on the first petitioner were also modified by the order in Crl.Rc.No.9 of 2017, dated 20.11.2017 passed by the learned Sessions Judge, Udhagamandalam District.

3. As far as the second petitioner is concerned, he was arrested and remanded to judicial custody on 01.05.2017 and thereafter, he was enlarged on bail by an order in Crl.M.P.No.941 of 2017, dated 15.12.2017 passed by the learned Sessions Judge, The Nilgiris, Udhagamandalam District. Further, the learned senior counsel for the petitioners submits that on 11.01.2019 one Mathew Samuel, an investigative journalist, released a documentary containing interviews of the petitioners regarding the circumstances of the alleged occurrence in S.C.No.2 of 2018 and this documentary was widely circulated in visual and social media. In the said interview, the petitioners stated that Thiru.Edappadi K. Palaniswamy, the present Chief Minister of Tamil Nadu engaged the deceased accused C.Kanagaraj-A1, to loot the house of the former Chief Minister of Tamil Nadu Late.Selvi Jayalalitha, at Kodanadu Estate and he in turn recruited the petitioners to commit the said offence. The deceased C.Kanagaraj-A1 informed that the dacoity was being committed at the behest of Thiru.Edappadi K.Palaniswami and that he had already made arrangements for the dacoity took place and that he would protect them and pay money for committing the offence. Further, the learned counsel would submit that in the interview, the present Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami stated before the press that for the interviews given by the petitioners strict action would be taken. After the publication of the said documentary, the CCB Team-I, Chennai, has registered a case in Crime No.21 of 2019 against the petitioners and 5 others for the offences under Sections 153A, 505(1)(b), 505(1)(c) and 505(2) r/w Section 120 (B) IPC alleging that the visual and social media with false and provocative contents and the interviews with the malicious intention targeted the present Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami, former Chief Minister of Tamil Nadu late.Selvi.J.Jayalalitha and other Ministers and it was uploaded with a malafide intention and the same would lead to riots and disharmony in Society. In fact, the petitioners were arrested by the CCB Team-I on 14.01.2019 at New Delhi and they

were produced before the learned Chief Metropolitan Magistrate, Egmore, Chennai-8, for remand. But their remand was rejected on the ground that the arrest was illegal due to non-compliance of the direction issued by this Court and there was no sufficient material to justify the remand and the offences which were registered as against the petitioners were not made out. The learned senior counsel further submits that the present Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami has also filed a suit in C.S.No.82 of 2019 before this Court claiming damages and also seeking for an injunction as against the petitioners for making further statements against him and other Ministers. This Court by an order dated 23.01.2019 granted interim injunction against the petitioners and it is pending. In fact, the petitioners have also challenged the FIR registered in Crime No.21 of 2019 before this Court in CrI.O.P.No.2003 of 2019 and this Court granted stay of all further proceedings and it is pending. In the meanwhile, the respondent has filed a petition for cancellation of bail granted to the petitioners before the Trial Court and the same was allowed and the bail granted to the petitioners was cancelled by the order impugned.

4. The learned senior counsel further submits that the bail granted cannot be cancelled unless or otherwise overwhelming and supervening circumstances exist so as to compel the judicial mind of the Court that it would be no longer conducive to hold a fair trial without cancelling the bail of the accused. The learned senior counsel further submits that the petitioners did not make any comment with any of the witnesses provocative to the trial in S.C.No.2 of 2018 and they never approached any of the witnesses and never intimidated them. Now, the respondent has completed the enquiry and also filed a final report and committed for trial. Therefore, there is no question of tampering or hampering the evidence. The circumstances averred to cancel the bail granted to the petitioners are with malafide intention and it is under the directions of the present Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami, the petition for cancellation of bail was filed to escape the Hon'ble Chief Minister of Tamil Nadu from the clutches of law. The learned senior counsel further submits that the first petitioner had filed a petition on 02.02.2019 under Section 164 of CrPC., to record his statement before the Trial Court. It is legally admissible evidence and the Trial Court concluded that the statements of the petitioners had created alarm in the minds of the society, inspite of the fact that this Court concluded that the statements of the petitioners did not come within the ambit of any such offence and at most, affected the reputation of the present Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami. The learned Counsel further submits that the bail granted to the petitioners was cancelled only on account of

the freedom of speech expressed by them and it violates their right under Article 19(1)(a) of the Constitution of India. The petition filed by the first petitioner under Section 164 of CrPC., was returned for some defects. In fact, the statement made by the petitioners regarding the involvement of the present Chief Minister of Tamil Nadu Thiru.Edappadi K. Palaniswami is direct evidence under Section 60 of the Indian Evidence Act and it is admissible in law by virtue of Section 10 of the Indian Evidence Act. Further, he submits that L.W.22 does not allege in her complaint that she was subjected to any kind of direct or indirect threat or intimidation not to depose in the trial or to favour the accused. In fact, interview does not refer to the names as alleged and she has not named the petitioners in her statement recorded under Section 161 of CrPC. Further, he submits that the trial Trial Court while cancelling the bail did not even peruse the documentary or the written transcripts of interview given by the petitioners. Therefore, he prayed to set aside the order of cancellation of bail to the petitioners.

5. Per contra, the learned Public Prosecutor filed a counter and contended that the petitioners are arrayed as A1 & A2 in S.C.No.2 of 2018 for the offences under Sections 120(B), 147, 148, 149, 447, 449, 458, 324, 342, 395 r/w Sections 396 & 397 and 302 IPC. After 22 months of the occurrence, the petitioners conspired with one Mr.Mathew Samuel and others and fabricated a new dimension to the prosecution case in S.C.No.2 of 2018 through an interview circulated on Social Media through a press meet held at New Delhi on 11.01.2019. The said act of the petitioners is clear abuse of the liberty granted to them in the bail, abetting trial by media, by interfering with the administration of justice. The trial by media influences the public opinion, version of the witnesses by thrusting the media's opinion, developing sympathy for the accused or victim besides the Presiding Officers, being influenced as judges, and they will be unconsciously influenced in the delicate task of administering justice. The publication of an interview amount to interfering with the administration of justice. Further, the learned Public Prosecutor would contend that the cancellation of bail order is a final one and as against which only a revision is maintainable, and as per the provision under Section 482 of CrPC., this petition is not maintainable and it can be invoked only in the event of no other alternative remedy available. Further, he would contend that after taking cognizance in S.C.No.2 of 2018, the accused persons did not even attend the Court regularly with an intention to prolong the case even at the stage of framing of charges itself and it is pending for more than one year. Further, contended that the petitioners are the prime accused in this case and they along with 9 others have committed serious crime in Kodanadu Estate Bungalow and the Watchman was also murdered by them. The petitioners have

already involved in the criminal cases and in fact, the second petitioner already involved in the murder case pertaining to the Crime No.961 of 2016 on the file of Puthukkadu Police Station. Therefore, the petitioners are habitual offenders. One Mr.Mathew Samuel who claims to be the CEO of Narada New Portal [Online Magazine], is a person popularly known to be a blackmailer. He involved in honey trap case by using a journalist women by name Angel Abraham for sexually inducing former Kerala Chief Secretary and the conversation between Angel Abraham and Mathew Samuel reveals the 'modus operandi' for blackmailing the Chief Secretary of Kerala. The NDTV news article dated April 17, 2017, denotes another case of extortion for Rs.5 crores by the said Mathew Samuel. Therefore, the antecedents of the said Mathew Samuel and the petitioners had clearly established that they are blackmailers and the persons of criminal background. Though the petitioners and the said Mathew Samuel conspired together and concocted a new version to the occurrence dated 23.04.2017 at Kodanadu Estate Bungalow, connecting the Hon'ble Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami, as though he is interested in removing certain documents from Kodanadu Estate Bungalow with the aid of one deceased C.Kanagaraj who arrayed as first accused, the entire interview, is baseless and inadmissible in law as per Section 60 of the Indian Evidence Act and it reveals that the concerned accused are noway having any connection with the Hon'ble Chief Minister of Tamil Nadu. Now, the murder case in S.C.No.2 of 2018 is at the stage of framing of charges. At this juncture, the said Mathew Samuel had introduced new theory through the interview in the press conference at New Delhi on 11.01.2019 and released the video. As per the interview, the petitioners had stated that they do not know the Hon'ble Chief Minister of Tamil Nadu and they did not meet him and also did not speak to him at any point of time. It further reveals that the deceased C.Kanagaraj-A1 in S.C.No.2 of 2018 informed them that they will get money if some documents available in the Kodanadu Estate Bungalow are taken and handed over to the Hon'ble Chief Minister of Tamil Nadu. This conversation between the petitioners and the said C.Kanagaraj-A1 is "hearsay in nature" and inadmissible as per Section 60 of the Indian Evidence Act. Therefore, only with a malafide intention and to distract the entire proceedings, the interview was given by the petitioners and it is nothing but blackmailing and diverting the root of the trial. Therefore, the Trial Court has rightly cancelled their bail and concluded that the interview is clear interference with the administration of justice and it would defeat the entire criminal justice delivery system. It was also considered by this Court in the suit filed by the Hon'ble Chief Minister of Tamil Nadu in C.S.No.82 of 2019, which granted interim injunction restraining the petitioners from giving national interview. After the interview, L.W.22-Tmt.Santha

lodged a complaint and registered a case in Crime No.63 of 2019 as against the petitioners. Further L.W.24 - Pradeesh @ Pradeep Kumar, was waylaid by some persons and threatened with dire consequences if he deposes before the concerned Court and therefore, he also filed another complaint. The said complaint was registered in Crime No.71 of 2019. Therefore, the bail granted to the petitioners was rightly cancelled. The learned Public Prosecutor would further contend that the petitioners have stated in their bail petition that they are innocent and they are no way connected with the alleged occurrence of murder case, whereas in the interview said that the murder of the watchman in the Kodanadu Estate Bungalow was committed by them along with other accused persons. It shows that the petitioners made false statements and also misrepresented before the Trial Court and as such their bail was rightly cancelled. In this regard, the learned Public Prosecutor has relied upon the decision of the Hon'ble Supreme Court in:

(i) M.P.Lohia and Ors v. State of West Bengal and Ors, 2005 (1) ACR 656 (SC);

(ii) Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd., and Ors, AIR 1989 SC 190,

(iii) Mohit and Ors v. State of U.P. and Ors, AIR 2013 SC 2248,

(iv) CBI, Hyderabad v. Subramani Gopalakrishnan and Ors, 2011 (3) JCC 1823.

(v) Abdul Basit v. Abdul kadir Choudhary, 2015 (3) SCJ 542.

(vi) State of Maharashtra v. Rajendra Jawanmal Gandhi, AIR 1997 SC 3986.

(vii) State (Delhi Administration) v. Sanjay Gandhi, AIR 1978 SC 961.

(viii) Jogendra Nahak and Ors v. State of Orissa and Ors, AIR 1999 SC 2565;

6. Heard Mr.N.R.Elango, learned Senior Counsel appearing for the petitioners and Mr.A.Natarajan, learned Public Prosecutor for the respondent.

7. The petitioners are arrayed as A1 and A2 for the offences under Sections 120(B), 147, 148, 149, 447, 449, 458, 324, 342, 395 read with Sections 396 and 397 and 302 IPC in S.C.No.2 of 2018 on the file of the Sessions Judge, The Nilgiris, Udthagamandalam District.

8. The petitioners along with other co-accused persons have been charged for the above said offences for the occurrence took place on 23.04.2017, thereby they committed the

dacoity and murder in the house of the former Chief Minister of Tamil Nadu late.Selvi.J.Jayalalitha at Kodanadu Estate Bungalow. The 1st petitioner met with a road accident in which his wife, children and his friend died and he also sustained grievous injuries. Thereafter, he was arrested on 06.06.2017 and was released on bail in Crl.M.P.No.1881 of 2017, on default bail under Section 167(2) of Criminal Procedure Code in Crl.M.P.No.1881 of 2017. The second petitioner was arrested and remanded to judicial custody on 01.05.2017 and was released on bail in Crl.M.P.No.941 of 2017 by an order dated 15.12.2017.

9. The respondent police have completed the investigation and filed charge sheet on 15.09.2017 for the offences under Sections 120(B), 147, 148, 149, 447, 449, 458, 324, 342, 395 read with Sections 396 & 397 and 302 IPC before the learned Judicial Magistrate, Kotagiri. Thereafter, it was committed to the Court of Sessions, the learned District Court of Sessions, The Nilgiris, Udhagamandalam and was taken cognizance in S.C.No.2 of 2018. It is also seen that the accused persons did not attend the Court regularly and it is pending for framing of charges for the past one year.

10. After a period of one year on 11.01.2019, one Mr.Mathew Samuel, an investigative journalist, released a documentary containing interview of the petitioners regarding the circumstances of the occurrence took place in the Kodanadu Estate Bungalow. In the said interview, the petitioners stated that the present Hon'ble Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami, has engaged the deceased C.Kanagaraj-A1 to loot in the house of the former Chief Minister of Tamil Nadu late.Selvi.J.Jayalalitha at Kodanadu Estate Bungalow and he in turn engaged the petitioners and others to commit dacoity at the behest of the present Hon'ble Chief Minister of Tamil Nadu. He also made arrangements for the dacoity took place and assured that he would protect them and pay money for committing the offence.

11. It reveals that the petitioners have introduced a new story through the interview in the press conference at New Delhi on 11.01.2019 and also released the video alleging that the present Hon'ble Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami, interested in removing certain documents from Kodanadu Estate Bungalow and instructed the deceased C.Kanagaraj-A1. The deceased C.Kanagaraj-A1 had informed them that he will get money after handing over the documents to the Hon'ble Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami. Though the statements made by the petitioners are inadmissible in evidence, it amounts to direct interference with the administration of justice when the trial is pending. Further, this interview was given by the petitioners after more

than one year from the date of filing of charge sheet. Till today there is no explanation from the petitioners about the purpose for which the interview was given by them. Admittedly, it is "hearsay evidence" by the petitioners and after 22 months from the date of occurrence without even approaching the Court of law, the petitioners opted the media and press and it creates doubt in respect of the relationship between the petitioners and an investigative journalist Mr.Mathew Samuel. It is also seen that the said Mathew Samuel is facing so many cases in respect of blackmailing the VIPs for ransom by sexually inducing them with women. It is also seen from the interview that the entire allegations are bald and vague without any material to prove the said allegations. The said interview was given by the petitioners only to misdirect with intention to deviate the Trial Court and also to tarnish the name of the present Hon'ble Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami.

12. After the interview, there is a threat for the list witnesses L.W.22-Tmt.Santha and she lodged a complaint before the Inspector of Police, B-1 Ooty Town Central Police Station, Udhagamandalam District and registered a case in Crime No.63 of 2019. The allegations are that the petitioners at the time of occurrence had stayed in Raja Lodge owned by L.W.22-Tmt.Santha and after the interview, unidentified persons have come to the Raja Lodge and enquired about the murder case, interviewed and also made her to fear. The another witness L.W.24-Pradeed @ Pradeep Kumar, has also lodged a complaint before the same Police Station and registered in Crime No.71 of 2019 with the allegation that unidentified persons have threatened him not to depose in the murder case against the petitioners and also tried to attack him when he escaped from the attack, and due to which they damaged his entire bike. Further, the interview and the press release would change the minds of the witnesses and also one way of threat to other witnesses. Since they stated that the offences committed only on the instruction of the present Hon'ble Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami, it would affect and the mind of the witnesses which ultimately result in defeat of entire judicial system. The previous antecedences of the petitioners are also very bad since they involved in so many cases. In respect of the first accused is concerned, he also involved in the Crime No.425 of 2017 on the file of Inspector of Police, Palacode, South Traffic Police Station. In respect of the second petitioner is concerned several cases are pending against him in the State of Kerala and including one murder case in Crime No.961 of 2016 on the file of Puthukkadu Police Station in the State of Kerala. As such, they are habitual offenders and their intention is very clear that only to distract the minds of the Trial Court and to make the other witnesses to fear.

13. Further, the learned Public Prosecutor has rightly pointed out that if at all the petitioners want to reveal something, they would have approached the Court by way of filing an appropriate petition and could have made statements and revealed the truth immediately after the occurrence. Admittedly, the interview was given by the petitioners after a period of 22 months from the date of occurrence and it shows that the intention of the petitioners is only to spoil the entire criminal justice delivery system.

14. In this regard, the learned Public Prosecutor relied upon the decision of the Hon'ble Supreme Court, reported in 2005 (1) ACR 656 (SC), in M.P.Lohia and Ors v. State of West Bengal and Ors., In paragraph 10 of the said judgment, it has been observed as follows:

10. Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interest of justice. The death of Chandni took place on 28th February, 2002 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High Court of Calcutta on 13.02.2004 and special leave petition was pending before this Court. Even then an article has appeared in a magazine called 'Saga' titled "Doomed by Dowry" written by one Kakoli Poddar based on her interview of the family of the deceased. Giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that this type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who was responsible for the said article against indulging in such trial by media when the issue is subjudiced. However, to prevent any further issue being raised in this regard, we treat this matter as closed and hope that the other concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice.

The Hon'ble Supreme Court of India held that the publication of the Article in magazine based on interview is certainly interfering with the administration of justice.

In Reliance Petrochemicals Ltd., v. Proprietors of Indian Express Newspapers, Bombay Pvt., Ltd., and Ors, reported in AIR 1989 SC 190, In paragraph 23 of the said judgment, it has been observed as follows:

"23. There, however, Lord Scarman emphasised that the due administration of justice should not, at all, be hampered. Lord Denning in the Court of Appeal referred to Borrie and Lowe, The Law of Contempt (1973) and mentioned that professionally trained Judges are not easily influenced by publications. This is a point which was emphasised before us also. Lord Denning referred to the question whether there was contempt of court by the B.B.C. He emphasised that there was no accused. The House of Lords, however, in appeal held that valuation court is not a court where the concept of contempt of court would apply. But it did make observations that such broadcasting or publication might affect a Judge. Viscount Dilhorne at page 335 of the report observed as follows:

It is sometimes asserted that no judge will be influenced in his judgment by anything said by the media and consequently that the need to prevent the publication of matter prejudicial to the hearing of a case only exists where the decision rests with laymen. This claim to judicial superiority over human frailty is one that I find some difficulty in accepting. Every holder of a judicial office does his utmost not to let his mind be affected by what he has seen or heard or read outside the court and he will not knowingly let himself be influenced in any way by the media, nor in my view will any layman experienced in the discharge of judicial duties. Nevertheless it should, I think, be recognised that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. As Lord Denning M.R. said the stream of justice must be kept clean and pure. It is the law, and it remains the law until it is changed by Parliament that the publication of matter likely to prejudice the hearing of a case before a court of law will constitute a contempt of court punishable by fine or imprisonment or both."

In Mohit and Ors v. State of U.P. and Ors., reported in AIR 2013 SC 2248, In paragraph 21 of the said judgment, it has been observed as follows:

"21. In the instant case as noticed above, when the complainant's application under Section 319 of Code of Criminal Procedure was rejected for the second time, he moved the High Court challenging the said order under Section 482 of Code of Criminal Procedure on the ground that the Sessions Court had not correctly appreciated the facts of the case and the evidence brought on record. The complainant wanted the High Court to set aside the order after holding that the evidence brought on record is sufficient for coming to the conclusion that the appellants were also involved in the commission of the offence."

The Hon'ble Supreme Court of India held while cancelling the bail, very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted.

In State of Maharashtra v. Rajendra Jawanmal Gandhi, reported in AIR 1997 SC 3986. In paragraph 38 of the said judgment, it has been observed as follows:

(vi). 38. We agree with the High Court that a great harm had been caused to the girl by unnecessary publicity and taking out morcha by the public. Even the case had to be transferred from Kolhapur to Satara under the orders of this Court. There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and he is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law. While imposing sentence of fine and directing payment of whole or certain portion of it to the person aggrieved, the Court has also to go into the question of damage caused to the victim and even to her family. As a matter of fact the crime is not only against the victim it is against the whole society as well. Since late,

there has been spurt in crimes relating to sexual offences.

The Hon'ble Supreme Court of India has held a trial by press, electronic media or public agitation is the very antithesis of Rule of law. It can very well lead to miscarriage of justice.

In State of (Delhi Administration) v. Sanjay Gandhi, reported in AIR 1978 SC 961. In Case Note:(i) of the said judgment, it has been observed as follows:

"The cancellation of bail under Section 120B, 201, 409 and 435 IPC, 1860, Sections 83, 100, 161, 164, 306, 306(5), 437 and 439 (2) CrPC, 1973 and Sections 3, 27 and 101 to 103 of Indian Evidence Act, 1872, cancellation of bail can by and large be permitted only if it is no longer conducive to fair trial to allow accused to retain freedom during trial, fact that prosecution witnesses have turned hostile cannot by itself justify that accused has won them over, prosecution witnesses turning hostile must be shown to bear casual connection with subjective involvement therein of respondent, without such proof bail once granted cannot be cancelled on supposition that accused has won them over, incidental matters in criminal cases like issue of cancellation of bail not to be proved beyond reasonable doubt, in such incidental matters in criminal cases standard of proof has to be given by preponderance of probabilities, prosecution can establish its case in application for cancellation of bail by showing on preponderance of probabilities that accused has attempted to tamper or tampered with witnesses, power to take back in custody an accused who is on bail has to be exercised with due care and circumspection, such power can be exercised where by preponderance of probabilities it is clear that accused is interfering with course of justice by tampering with witnesses."

15. The learned Public Prosecutor has also relied upon the decision of the Hon'ble Supreme Court in Jogendra Nahak and Ors. v. State of Orissa and Ors. reported in AIR 1999 SC 2565. In paragraphs 24 to 26 of the said judgment, it has been observed as follows:

24. On the other hand, if door is opened to such persons to get in and if the Magistrates are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the Magistrate courts for the purpose of creating record in advance for the purpose of helping the culprits. In the present case, one of the arguments advanced by accused for grant of bail to them was based on the statements of the four appellants recorded by the Magistrate under Section 164 of the Code. It is not part of the investigation to open up such a vista nor can such step be deemed necessary for the administration of justice.

25. Thus, on a consideration of various aspects, we are disinclined to interpret Section 164(1) of the Code as empowering a magistrate to record the statement of a person unsponsored by the investigating agency. The High Court has rightly disallowed the statements of the four appellants to remain on record in this case. Of course, the said course will be without prejudice to their evidence being adduced during trial, if any of the parties requires it.

26. The last contention that the High Court should not have mulcted the appellant with costs, as they approached the court in view of the legal position set by the Orissa High Court on earlier occasions. Cost was ordered in the discretion of the High Court, and it is not proper for us to interfere with such a discretion.

16. The learned District Judge has rightly returned the petition filed under Section 164(1) of Criminal Procedure Code to record the petitioners' statements. The interview through media and press release certainly amounts to interference with the due administration of justice. The above judgments cited by the learned Public Prosecutor are squarely applicable to the facts of this case. In respect of the petition filed under Section 164 of CrPC., before the Trial Court is concerned, admittedly, the said petition was filed after the interview namely on 11.01.2019. The said petition was filed only on 02.02.2019 and it was returned by the Court below for the reason that corrections in para Nos. 17 and 18 of the affidavit to be

attested, pages stated to be in the affidavit and the Non-Bailable-Warrant is pending against the first accused. It is seen from the petition that the first petitioner/A1 only filed the said petition that too after the interview through media and press.

17. Though it was returned for certain compliance, it is liable to be rejected for the reason that after completion of investigation and after filing of charge sheet, it is filed. The sessions case in S.C.No.2 of 2018 is pending for framing of charges. All the accused are not appeared before the Trial Court and the first accused after Section 317 CrPC., petition filed and invited Non-Bailable-Warrant and subsequently it was recalled. It is also seen that after the interview, the case has been registered as against the petitioner in Crime No.21 of 2019 by the CCB Team-I, Chennai, for the offence under Section 153A, 505(1)(b), 505(1)(c) and 505(2) IPC.

18. Though the said First Information Report was stayed by this Court, it is no way connected with the cancellation of bail to the petitioners. It is also seen that the present Hon'ble Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami in his personal capacity filed a suit before this Court in C.S.No.82 of 2019 in which in O.A.No.86 of 2019, this Court restrained the petitioners not to give press release and not to speak in the press by an order dated 23.01.2019. It is also nothing to do with the cancellation of bail to the petitioners. Therefore, the Court below has rightly concluded that the interview through media and press of the petitioners would disturb the mind of the witnesses and it amounts to clear case of misusing of liberty given to the petitioners. It would also amount to tampering and hampering the evidences and witnesses when the sessions case in S.C.No.2 of 2018 is pending for trial. As such, the order of impugned in this petition does not warrant any interference by this Court, and this Court finds no infirmity or illegality in the order passed by the Court below.

19. In view of the above discussions, the Criminal Original Petition is dismissed. Consequently, connected Crl.M.P.No.2715 of 2019 is also closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Inspector of Police,
Kotagiri Police Station, Kotagiri, The Nilgiris.
2. The Session Judge,
Nilgiri.
3. The Judicial Magistrate,
Kothagiri.
4. The Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Prabakaran, Advocate, S.R.No.20783

CrI.O.P.No.4533 of 2019

KS (CO)
CS/08/04/2019



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