

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Ninth day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL ORIGINAL PETITION No.6795 of 2019

LOGANATHAN.R

[PETITIONER / DEFACTO COMPLAINANT]

Vs

1 SADIQBASHA

[RESPONDENT / ACCUSED]

2 THE STATE REP BY ITS, [RESPONDENT / DEJURE COMPLAINANT]
THE INSPECTOR OF POLICE,
PATTABIRAM POLICE STATION,
CHENNAI
CR.NO.800 OF 2017.

Petition praying that in the circumstances stated therein the High Court will be pleased to cancel the bail granted to A-1 Sadiq Basha on Criminal Original Petition No.15476 of 2017 on 07.08.2017 in Crime No.800 of 2017 now pending adjudication in case Sessions Case No.128 of 2017 on the files of the learned Principal District Judge, Thiruvallur

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.J.SRINIVASAN Advocate for the petitioner and of M/S.G.MOHANA KRISHNAN Advocate on behalf of the 1st Respondent and of PUBLIC PROSECUTOR on behalf of the 2nd Respondent the court made the following order:-

The petitioner is the de facto complainant in crime No.800 of 2017. It is the case of the petitioner that Sadik Basha (A1) had kidnapped the petitioner's daughter on 19.06.2017, with an intention of marrying her against her will. Therefore, on his complaint, the police registered a case in crime No.800 of 2017 for the offences under Sections 366, 506(II), 452, 365, 343 r/w 34 and 109 IPC against Sadik Basha (A1) and others and secured the victim girl. Sadik Basha (A1) was arrested and was released on bail in CrI.O.P.No.15476 of 2017 on 07.08.2017. After completing the investigation, the police filed final report and the case is now pending trial in S.C.No.128 of 2017 before the Mahila Court (sessions level), Tiruvallur. While that being so, the petitioner has filed the present petition for cancellation of bail that was granted to Sadik Basha (A1) on the ground that he is continuing to threaten the witnesses and is preventing the witnesses from deposing against him before the trial Court.

2. Notice was ordered on Sadik Basha (A1) and his counsel entered appearance and refuted the allegations. In the affidavit filed by the petitioner in support of the cancellation of the bail petition, serious allegations have been made against the Public Prosecutor in charge of the case before the trial Court. Therefore, this Court ordered notice on the Public Prosecutor of the trial Court to respond to the allegations made in the affidavit by the petitioner. The Public Prosecutor of the trial Court appeared before this Court and filed her counter affidavit dated 18.07.2019 refuting the allegations. This Court carefully perused the entire case records.

3. Mr. Mohanakrishnan, learned counsel appearing for Sadik Basha (A1) submitted that the trial is not progressing because, some other accused are absconding and that the petitioner was not at all responsible for the delay in the conduct of the trial. He further contended that the petitioner has been attending the trial Court regularly.

4. This Court gave its anxious consideration to the submissions made at the bar.

5. This Court is deliberately not alluding to the allegations and counter allegations that have been made by the parties in their affidavits and counter affidavits. Suffice it to note that smooth conduct of the trial in the Mahila Court may not be possible. It will subserve the interests of justice, if the case is transferred from the file of the Mahila Court, Tiruvallur to the Court of Principal District and Sessions Judge, Tiruvallur. Both Courts are located near to each other and hence, no prejudice will be caused to any party. As regards the plea for cancelling the bail of Sadik Basha (A1), this Court is of the view that the materials available at present are not sufficient to cancel the bail.

6. In view of the aforesaid discussion, the plea for cancellation of bail of Sadik Basha (A1) cannot be entertained for the present. The case in S.C.No.128 of 2017 is transferred from the file of the Mahila Court, Tiruvallur to the Court of Principal District and Sessions Judge, Tiruvallur. The Mahila Judge is directed to transmit the records and properties to the Court of the Principal District Judge, Tiruvallur within two weeks from the date of receipt of a copy of this order. The Mahila Judge shall bind over the accused to appear before the Principal District Judge, Tiruvallur on a particular date. The Principal District Judge, Tiruvallur is directed to provide sufficient protection to the prosecution witnesses to ensure that they give evidence without fear. If the accused adopt any dilatory tactics, it is open to the trial Court to cancel their bail and remand them to custody as laid down by the Supreme Court in *State of U.P. Vs. Shambhu Nath Singh [JT 2001 (4) SC 319]*. Though bail has been granted by this Court, as held by the Supreme Court in *P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]*, the trial Court can cancel the bail, if situation warrants. If the accused who is on bail absconds, a fresh FIR shall be registered against him under Section 229-A IPC.

This Criminal Original Petition stands dismissed in the above terms.

-sd/-
09/08/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.II, THIRUVALLUR.

2 THE CHIEF JUDICIAL MAGISTRATE,
THIRUVALLUR [FOR INFORMATION]

3 THE MAHILA COURT,
THIRUVALLUR.

4 THE PRINCIPAL DISTRICT JUDGE,
THIRUVALLUR.

5 THE OFFICER INCHARGE,
SUB-JAIL, THIRUVALLUR.

6 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS

7 THE INSPECTOR OF POLICE,
PATTABIRAM POLICE STATION,
CHENNAI

+1CC to M/S.J.SRINIVASAN Advocate on payment of necessary
charges SR NO.15031

CRL OP.6795/2019

Date :09/08/2019

MK:27/08/2019