



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2019

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.1678 of 2019

S.V.S.V.S.Mohan

... Petitioner/Intervener

-Vs-

- 1.The Inspector of Police,
Central Crime Branch,
Madurai City, Madurai District. ...1st Respondent/ Respondent
- 2.Mathavan ... 2nd Respondent/Petitioner

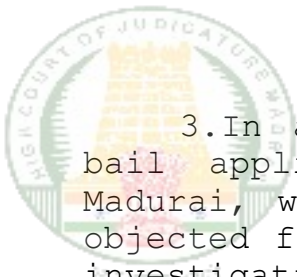
PRAYER: Criminal Original Petition is filed under Section 439(2) r/w 482 of the Code of Criminal Procedure, to set aside the order and cancel the bail granted in Cr.M.P.No.2897/2018 on the file of the Judicial Magistrate No.I, Madurai on 04.12.2018.

For Petitioner: Mr.N.Ananthapadmanaban,
for M/s.APN Law Associates.
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl. Side).
For R2 : Mr.C.Arul Vadivel Alias Sekar

ORDER

This petition is filed to cancel the bail granted in Cr.M.P.No.2897 of 2018 on the file of the Judicial Magistrate No.I, Madurai on 04.12.2018.

2.The case of the prosecution is that the defacto complainant is the account holder in HDFC Bank, Madurai Main Branch, in which the petitioner is working as Personnel Banking Authorizer for a period of 2015-2017, having full control over the banking operations of the Branch and has to report to the Manager, who was also incharge of the branch, whenever the Manager of the bank was not there and he is the second level officer of the said branch. In the meantime, this petitioner was transferred to Rajapalayam Branch as a Branch Manager on 08.04.2017. Subsequent to his transfer, on 15.06.2017, the Madurai Main Branch received a complaint from one of its customer about misappropriation of funds to the tune of Rs.20,00,000/- made in his account. The In-house enquiry conducted by the Branch reveal that there was a huge misappropriation of funds to the tune of more than one crore, in which the defacto complainant / petitioner herein also an account holder and in his account by using his cheque book and forging his signature transferred huge amount to other bank accounts to the tune of Rs.94,30,510/-.



3. In an earlier occasion, the second respondent herein filed bail application before the learned Judicial Magistrate No.I, Madurai, wherein the learned Additional Public Prosecutor strongly objected for release of the petitioner on bail and argued that the investigation is pending in the preliminary stage and there is no change of circumstances. However, the learned Judicial Magistrate No.I, Madurai, had allowed the bail application and granted bail, even the other accused was not arrested by the Law Enforcing Agency.

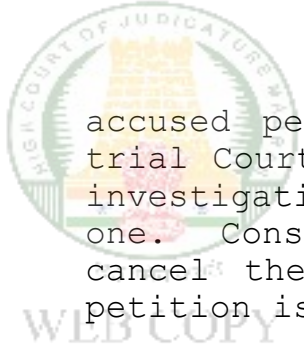
4. In an earlier occasion, one of the accused person has approached this Court in Crl.O.P.(MD)No.19639 of 2018, seeking anticipatory bail. However, this Court, by its order dated 03.01.2019, dismissed the same. The trial Court without change of circumstances considering the gravity of offence committed by the petitioner, simply has recorded as the part of the investigation is over and granted bail by imposing simple conditions.

5. The learned counsel for the petitioner / defacto complainant would submit that though the learned Additional Public Prosecutor vehemently opposed to grant bail and reported that no change of circumstances and investigation is in preliminary stage, the trial Court recorded as if part investigation is over and granted bail, which is unsustainable one.

6. Per contra, the learned counsel for the second respondent would submit that the petitioner is the Manager and he did not commit any offence as alleged by the prosecution. Considering the period of incarceration and considering the fact that the part of investigation is over, the trial Court granted bail. Once bail granted cannot cancel in routine manner, unless there was overwhelming circumstance. In support of his contention, he relied upon the decision rendered in the case of **Dolat Ram and others Vs. State of Haryana** reported in **(1995) 1 SCC 349**.

7. The learned Additional Public Prosecutor appearing for the first respondent would submit that the second respondent has not only cheated the petitioner but also cheated several persons, when he was working as Personnel Banking Authorizer and even today, investigation is pending and main accused is not yet secured.

8. This Court well aware that normally, the Appellate Court should not interfere with the bail granted by the Lower Court, unless there is overwhelming circumstance required for interfering the bail granted by the Lower Court. In the present case, though the second respondent is working as Personnel Banking Authorizer and whenever the bank Manager is not available, he has to take a decision in favour of the bank and customers, misusing the official position, he allegedly misappropriated a sum of more than one crore and in respect of this petitioner is concerned, to the tune of Rs.94,30,510/-. The trial Court also recorded that part of investigation is over. Even today, co-accused is not yet secured and investigation is in preliminary stage and unless they secure the



accused persons, there will not be a proper investigation. The trial Court considering the irrelevant materials that as if part of investigation is completed, has granted bail, which is unsustainable one. Considering the overwhelming circumstances, I am inclined to cancel the bail granted by the trial Court. Accordingly, this petition is allowed.

Sd/-

Assistant Registrar(cs-I)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Madurai.

2.The Inspector of Police,
Central Crime Branch,
Madurai City, Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.N.Ananthapadmanaban,Advocate, SR.No.53036

Cr1.O.P.(MD)No.1678 of 2019
11.03.2019

SP/12.03.2019/ 3P/5C