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

Date on which reserved : 01/07/2019

Date on which reserved : 12/07/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL MP(MD) . Nos.3696 and 5069 of 2019
in

Crl.O.P. (MD) .No.3126/2019

Crl.M.P. (MD) .No.3696 of 2019:

The State rep. By
The Inspector of Police,
Melur Police Station,
Madurai District
(Crime No.121/2019)

.... Petitioner/Respondent

vs

1.Bose
2.Duraipandi
3.Ramachandran
4.Periyasamy

... Respondents/Petitioners

PETITION FOR CANCELLATION OF ANTICIPATORY BAIL

PRAYER :-

To accept this affidavit and cancel the anticipatory bail granted by this Court in Crl.OP(MD)No.3126 of 2019 dated 04.03.2019 in favour of the respondents herein.

For Petitioner : M/s.Anantha Devi,
Government Advocate (Crl.Side)

For Respondents :Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu, Advocate

CRL MP(MD) . No.5069 of 2019:

1.Bose
2.Duraipandi
3.Ramachandran
4.Periyasamy

... Petitioners/Accused

Vs

State rep. by
The Inspector of Police,
Melur Police Station, Madurai District,
Crime No.121/2019.

... Respondent/
Respondent/Complainant



For Petitioner : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu, Advocate
For Respondent : Ms.Anantha Devi,
Government Advocate (Crl.Side)

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PETITION FOR RELAXATION OF THE CONDITION:

PRAYER :-

To relax the condition imposed in Crl.OP(MD)No.3126 of 2019 dated 04.03.2019.

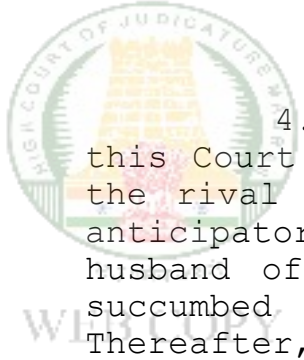
COMMON ORDER : The Court made the following order :-

Crl.M.P.(MD).No.3696/2019 has been filed by the Inspector of Police, Melur Police Station, Madurai District to cancel the anticipatory bail granted by this Court to the respondent/accused persons 1 to 4 in Crl.O.P.(MD).No.3126/2019, dated 04.03.2019.

Crl.M.P.(MD).No.5069/2019 has been filed by petitioners in Crl.O.P.(MD).No.3126/2019 to relax the condition imposed in Crl.OP(MD)No.3126 of 2019 dated 04.03.2019

2.One Thirumathi.Ayyammal had lodged a complaint on 23.02.2019 stating that there was a dispute between her family and the accused persons with regard to a vacant site admeasuring 4½ cents situated adjacent to her house. On 21.02.2019 at about 9.00 a.m, the defacto complainant and her family members laid a stone in the said vacant site. At that time, accused Nos.1 & 2 came there and questioned the defacto complainant about laying of stone and abused the defacto complainant and her husband Katta Periya Karuppan with filthy language. Accused No.2 attacked the said Katta Periya Karuppan with a stick on his hip. Accused No.2 attacked the defacto complainant with a stick on her hand. Accused Nos.3 and 4 also attacked the said Katta Periya Karuppan with hands on his body. Further, they criminally intimidated them. Subsequently, the defacto complainant and her husband were taken to Government Hospital, Melur and after providing first aid, they were taken to Government Hospital, Madurai and were admitted there as inpatients.

3.On receipt of the intimation from the Government Hospital, Madurai, Mr.P.Sikkandhar, Grade-I Police Station attached to the Melur Police Station went to the said hospital and obtained statement from the defacto complainant and came back to the police station and registered in CSR.No.174/2019 and placed before the Sub Inspector of Police. The Sub Inspector of Police on 23.02.2019, after verifying the said statement has registered an F.I.R in Cr.No.121/2019 under Sections 294(b), 323, 506(i) I.P.C and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 (TNPHW Act) against accused Nos.1 to 4.



4. Accused Nos.1 to 4 filed CrI.O.P.(MD).No.3126/2019 before this Court seeking anticipatory bail. This Court, after considering the rival submissions, by the order dated 04.03.2019, has granted anticipatory bail to the accused Nos.1 to 4. Subsequently, the husband of the defacto complainant namely Katta Periya Karuppan succumbed to his injuries on 08.03.2019 at about 6.30 p.m. Thereafter, the petitioner herein has altered the Sections into 294 (b), 323, 302 and 506(ii) I.P.C r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

5. The petitioner herein has filed the present petition on 11.04.2019 to cancel the anticipatory bail, which was granted to the respondents herein/accused Nos.1 to 4 in CrI.O.P.(MD).No.3126/2019 on the ground that after granting anticipatory bail in CrI.O.P.(MD).No.3126 of 2019, the injured namely Katta Periya Karuppan died on 08.03.2019 and Sections have been altered into 294(b), 323, 302 and 506(ii) I.P.C r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and the custodial interrogation of the accused is necessary for recovery of material objects.

6. Notice was issued to the respondents/accused Nos.1 to 4 and after receipt of the notice, they entered their appearance and opposed this petition.

7. The learned Government Advocate (CrI.Side) has submitted that originally, the case was registered under Sections 294(b), 323, 506(i) I.P.C and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and based on the said F.I.R, the accused Nos.1 to 4 have moved this Court by filing CrI.O.P.(MD).No.3126/2019, seeking anticipatory bail under Section 438 Cr.P.C. She further submitted that this Court, considering the rival submissions, has granted anticipatory bail to the accused Nos.1 to 4 by the order dated 04.03.2019. She further submitted that after granting anticipatory bail to the accused Nos.1 to 4, the injured succumbed to his injuries and hence, the sections were altered into 294(b), 323, 302 and 506(ii) I.P.C r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and hence the custodial interrogation of the accused are absolutely necessary for recovery of material objects and therefore, she prayed to cancel the anticipatory bail, which was granted to the accused Nos.1 to 4 by this Court in CrI.O.P.(MD).No.3126/2019, dated 04.03.2019.

8. In support of the aforesaid contentions, the learned Government Advocate (CrI.Side) has relied upon the decision in **Pradeep Ram Vs State of Jharkand and another (CrI.A.Nos.816-817/2019) arising out of SLP(CrI.)Nos.0051-10052/2018**, dated 01.07.2019.

9. Per contra, the learned Senior Counsel for the respondents/accused 1 to 4 has submitted that when the respondents moved CrI.O.P.(MD).Nos.3126/2019, seeking anticipatory bail, the



learned Government Advocate (Crl.Side) has submitted that though the injured person is still in the hospital as inpatient, he is taking treatment for other ailments and considering the said submissions, this Court has granted anticipatory bail to the respondents/accused persons. He further submitted that as per the F.I.R and post-mortem certificate, no external injuries noted on the body of the deceased Katta Periya Karuppan and only on dissection, it was noted surgical removal of spleen. He further submitted that as per the F.I.R, A-2 alone attacked the deceased with a stick that too on the hip. But it is not stated in the F.I.R that the accused persons have attacked the deceased on the stomach and therefore, the alleged removal of spleen would not have been due to the alleged attack made by the accused persons. He further submitted that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted. He further submitted that it is settled that the parameters of accepting the bail are distinct from the parameters of cancelling the bail already granted. He further submitted that when a person has been arrested on account of the allegations made in the F.I.R and released on bail, the position will not change simply by adding a section of non-bailable nor the Police can rearrest him. He further submitted that cancellation of bail can be ordered only in the case of interference or attempt to interfere with the due course of administration of justice or the concession of bail granted to the respondent has been abused in any manner. But in this case, it is not the case of the prosecution that the respondents have made any attempt to interfere with administration of justice. He further submitted that custodial interrogation of the respondents is not necessary and therefore, he prayed to dismiss the petition.

10.The learned Senior Counsel for the respondents, in support of his contentions, relied upon the following decisions:

i) **Pooja Vs State of Rajasthan and another (S.B.Criminal Miscellaneous Bail Cancellation Application NO.1618/2009)**, on the file of the Rajasthan High Court at Jaipur Bench, dated 10.08.2009.

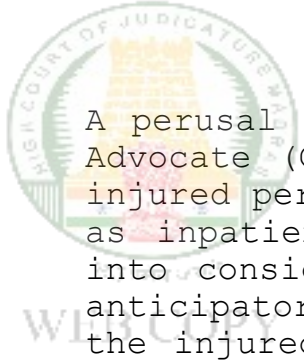
ii) **Gheesa and others Vs. State of Rajasthan, 1988 WLN 457**

iii) **Jeri Cheriyan Vs State of Kerala [2019] KLT 183.**

iv) **Savitri Agarwal and others Vs State of Maharashtra and another (2003) 3 Supreme Court Cases (Cri) 683**

v) **Prahlad Singh Bhati Vs NCT, Delhi and another (2001) 4 Supreme Court Cases 280.**

11.Originally, the F.I.R was registered on 23.02.2019 under Sections 294(b), 323, 506(i) I.P.C and Section 4 of TNPHW Act, 2002. The respondents herein have filed Crl.O.P.(MD).No.3126/2019, seeking anticipatory bail under Section 438 Cr.P.C. This Court has granted anticipatory bail to the respondents by the order dated 04.03.2019.



A perusal of the aforesaid order shows that the learned Government Advocate (Crl.Side) appearing for the State has submitted that the injured person is still in the hospital and though he is in hospital as inpatient, he is taking treatment for other ailments. Taking into consideration of the aforesaid facts, this Court has granted anticipatory bail to the respondents. Subsequently, on 08.03.2019, the injured namely Katta Periya Karuppan succumbed to his injuries and hence, the case was altered into under Sections 294(b), 323, 302 and 506(ii) I.P.C r/w Section 4 of TNPHW Act, 2002.

12.In the post-mortem certificate, the doctor has opined that the deceased would appear to have died of blunt injury in the abdomen and its complications thereof. So, it is clear that the said Katta Periya Karuppan would have died due to the attack made on his abdomen. Further, the case history also would show that a surgery was performed and spleen was removed. It is well-settled that admission is not a conclusive proof. So, when the post mortem certificate shows that the deceased would have died due to blunt injury on the abdomen, merely because the learned Government Advocate (Crl.Side) has admitted before the Court that when Crl.O.P. (MD).No.3126/2019 came up for hearing, the said Katta Periya Karuppan was taking treatment as inpatient for some other ailments may not have any bearing.

13.In the recent decision in **Pradeep Ram Vs State of Jharkand and another (cited supra)**, the Honourable Supreme Court in paragraph No.29 has held as follows:

"29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437 (5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.



(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail."

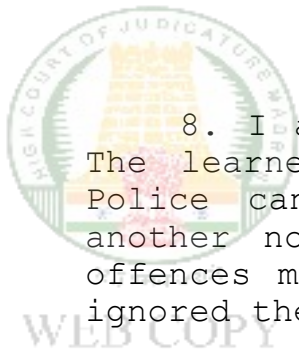
14. From the aforesaid decision, it is clear that after grant of bail to an accused, further cognizable and non-bailable offences are added, the accused can surrender and apply for bail for newly added cognizable and non-bailable offences. It is also clear that the investigating agency can seek order from the Court under Section 437(5) or 439(2) of Cr.P.C for arrest of accused or his custody. It is also clear that the Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C, can direct for taking into custody of the accused, who had been already on bail after cancellation of bail. In this case, after adding of Section 302 I.P.C, the respondents/accused Nos.1 to 4 have not surrendered before the Court and applied for bail for newly added cognizable and non-bailable offence. The investigating agency has filed the present application seeking to cancel the anticipatory bail, which was granted to the respondents in CrI.O.P.(MD).NO.3126/2019, dated 04.03.2019 on the ground that Section 302 I.P.C has been added and the custodial interrogation of the accused is absolutely necessary. In view of the aforesaid decision, the investigating agency is entitled to arrest the accused persons for custodial interrogation.

15. In **Pooja Vs State of Rajasthan and another** (cited supra) in paragraph No.5, the Rajasthan High Court has observed as follows:

"5. Now, it is very settled that the parameters of accepting the bail are altogether distinct from the parameters of cancelling the bail already granted. The respondent has not abused the liberty of his bail. The petitioner has not quoted any instance to prove that the respondent tampered with or endeavoured to tamper with any witness, posed any threat to the petitioner, tried to hide himself or hampered the investigation or the trial of the case, as such, the petition deserves to be dismissed."

16. In **Gheesa and others Vs. State of Rajasthan**, (cited supra), in paragraph No.7 and 8, the Rajasthan High Court has observed as follows:

"7. This very question has been decided in *Motilal and Ors. v. The State of Rajasthan* 1987 RCC 347. It has been categorically held that when a person has been arrested on account of allegations made in the FIR and released on bail, the position will not change simply by adding a new section of non-bailable offence nor the Police can re-arrest him."



8. I am in respectful agreement with this view as seen above. The learned Chief Judicial Magistrate when he observed that the Police cannot arrest an accused, already released on bail, if another non bailable offence has been added to the list of the offences made out on the basis of facts in the FIR has completely ignored the provisions of Section 437(5) and 429(2), Cr.PC."

17. In **Jeri Cheriyan Vs State of Kerala** (cited supra), in paragraph NO.15, the Kerala High Court has observed as follows:

"15. Thus, there cannot be any doubt that the learned Magistrate was justified in issuing summons to the petitioner to apply its mind afresh and to consider whether, he can be permitted to be on bail even in the changed circumstances. In that view of the matter, the learned Magistrate cannot be faulted for issuing a direction to the petitioner to appear before the Court below. However, the court below will not be justified in cancelling the bail already granted to the petitioner unless there are supervening circumstances as detailed above. The court below shall bear in mind that cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no conducive to a fair trial to allow the accused to retain his freedom during the trial. A bail once granted cannot be cancelled on the off chance or on mere suppositions. When a request is made, the prosecution, can establish its case by showing on a preponderance of probabilities, and not beyond reasonable doubt, that the accused has attempted to tamper or has tampered with its witnesses, or has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice. The power to take back in custody an accused, who has been enlarged on bail, has to be exercised, with care and circumspection but the power, though of an extraordinary nature, is meant to be exercised in appropriate cases."

18. In **Savitri Agarwal and others Vs State of Maharashtra and another** (cited supra), the Honourable Supreme Court in paragraph NO.30 has observed as follows:

"In **Dolat Ram & Ors. Vs. State of Haryana**, while dealing with a similar situation where the High Court had cancelled the anticipatory bail granted by the Sessions Judge in a dowry death case, this Court had observed that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail had to be considered or dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted, which, in our



opinion, were missing in the instant case. Nothing was brought to our notice from which it could be inferred that the appellants have not co-operated in the investigations or have, in any manner, abused the concession of bail granted to them. As a (1995) 1 SCC 349 matter of fact, Mr. Naphade, learned senior counsel representing the State, stated that after grant of anticipatory bail to the appellants, no investigation in the case has been conducted."

19. In this case as already pointed out that the respondents/accused Nos.1 to 4 obtained anticipatory bail only for the offences punishable under Sections 294(b), 323, 506(i) I.P.C and Section 4 of TNPHW Act. But, subsequently, the injured succumbed to his injuries and hence, Section 302 I.P.C has been added which is cognizable and non-bailable offence. Therefore, in view of the recent decision of the Honourable Supreme Court in **Pradeep Ram Vs State of Jharkand and another (cited supra)**, the investigating agency is entitled to seek order from the Court under Section 437(5) or 439(2) of Cr.P.C for arrest of accused or their custody.

20. In **Prahlad Singh Bhati Vs NCT, Delhi and another** (cited supra) also the Honourable Supreme Court in paragraph No.9 has held as follows:-

"In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498A, 306 and 406 IPC. The Magistrate committed a irregularity by holding that "I do not agree with the submission made by the Learned Prosecutor in as much as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent/accused the grant of bail, the Magistrate adopted a wrong approach to confer him



the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail."

21. From the aforesaid decision also, it is clear that with the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Therefore, the aforesaid decision will not help the case of the respondents. On the contrary, it supports the case of the petitioner/prosecution.

22. For the aforesaid reasons, CrI.M.P.(MD).No.3696/2019 petition is allowed. The anticipatory bail which was granted to the respondents in CrI.O.P.(MD).NO.3126/2019 is cancelled. It is open to the investigating agency to arrest the accused persons. In view of the order passed in CrI.M.P.(MD).No.3696/2019, CrI.M.P.(MD).No.5069 of 2019 is dismissed.

sd/-

12/07/2019

/ TRUE COPY /

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

TO

- 1 THE JUDICIAL MAGISTRATE,
MELUR, MADURAI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
- 3 THE INSPECTOR OF POLICE,
MELUR POLICE STATION,
MADURAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.K.PRABHU, Advocate SR.No. 75125

ORDER

IN

CrI MP (MD) . Nos.3696 and
5069 of 2019

IN

CrI.O.P.(MD).No.3126/2019

Date :12/07/2019