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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.06.2019

Delivered on : 15.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.O.P. (MD) .No.6679 of 2019

and

Crl.M.P. (MD) No.4497 of 2019

Tmt.B.Kanchana

: Petitioner

Versus

1.Tmt.A.Rajeswari

2.K.T.Alagappan

3.T.A.Niran

4.State of Tamil Nadu,

rep. by its Inspector of Police,
DCB, Madurai.

(Crime No.5 of 2019).

: Respondents

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in Crl.M.P.No.1663 of 2019 in Crime No.5 of 2019 on the file of the Inspector of Police, District Crime Branch, Madurai, dated 25.04.2019 and set aside the same.

For Petitioner

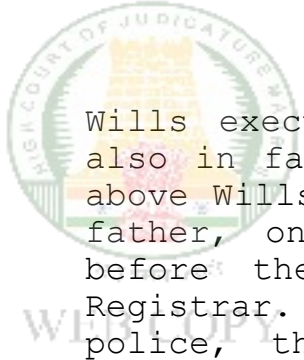
: Mr.K.P.S.Palanivel Rajan

ORDER

This Criminal Original Petition has been filed challenging the order passed by the learned Principal Sessions Judge, Madurai, granting anticipatory bail to the respondents 1 to 3 herein.

2. The case of the petitioner is as follows:

The petitioner and the first respondent herein are sisters. Their father was suffering from cancer and he was admitted in the Apollo Hospitals, Madurai, from 11.12.2016 for treatment. At that time, the respondents 1 to 3 took their father to the District Registrar Office, Y.Othakadai, Madurai, on 28.12.2016 and got three



Wills executed in favour of the first and third respondents, and also in favour of the mother of the petitioner herein. Since the above Wills have been obtained fraudulently, after the death of her father, on 10.01.2017, the petitioner has preferred a complaint before the Director General of Police and also the District Registrar. When the petitioner's complaint was not registered by the police, the petitioner filed a petition before this Court in CrI.O.P.(MD)No.13372 of 2017 under Section 482 of the Code of Criminal Procedure, seeking a direction to register a complaint, and this Court, by order dated 28.09.2017 in CrI.O.P.(MD)No.13372 of 2017, directed the respondent police to register a complaint and investigate the same in accordance with law. Challenging the said order, the respondents 1 to 3 herein have filed a Special Leave Petition before the Hon'ble Supreme Court in S.L.P.No.8146 of 2017. The Hon'ble Supreme Court, by order dated 01.03.2019, disposed of the Special Leave Petition, however, the Hon'ble Supreme Court directed the police not to take any coercive steps against the respondents 1 to 3 herein for two weeks from 01.03.2019. Thereafter, the respondents 1 to 3 filed an anticipatory bail application before the Principal Sessions Court, Madurai, and the Court below also granted anticipatory bail to them.

3. The further case of the petitioner is that, the order passed by this Court in CrI.O.P.(MD)No.13372 of 2017 has merged with the order passed by the Hon'ble Supreme Court and hence, the respondents 1 to 3 should necessarily surrender before the Hon'ble Supreme Court and obtain a bail. The learned Principal Sessions Judge, Madurai, has no jurisdiction to entertain the anticipatory bail application and grant advance bail to them. In the above circumstances, challenging the same, the present petition has been filed.

4. Mr.K.P.S.Palanivel Rajan, learned counsel appearing for the petitioner would vehemently contend that, the order passed by the Hon'ble Supreme Court, directing the respondent police not to take any coercive steps for a period of two weeks would amount to granting interim anticipatory bail under Section 438 of the Code of Criminal Procedure. Hence, the respondents 1 to 3 seeking anticipatory bail should necessarily surrender before the Hon'ble Supreme Court and seek for bail and they cannot file a petition before the Sessions Court under Section 438 of the Code of Criminal Procedure, and the learned Sessions Judge ought not to have entertained the anticipatory bail application and granted advance bail. The only remedy available to the respondents 1 to 3 is to approach the Hon'ble Supreme Court and seek anticipatory bail. Hence, the very order passed by the learned Sessions Judge is without jurisdiction and on that ground, the order is liable to be set aside. In support of his contention, the learned counsel relied upon the following judgments:

(i) State of Telangana v. Habib Abdullah Jeelani [2017(2) SCC (Cri) 142].
<https://hcservices.ecourts.gov.in/hcservices/>

(ii) Rukmani Mahato v. State of Jharkhand [2018(1) SCC (Cri)



(iii) **Satpal Singh v. State of Punjab [2018(13) SCC 813].**

5. I have considered the submissions made by the learned counsel appearing for the petitioner and also perused the records carefully.

6. The instant petition has been filed challenging the order granting anticipatory bail to the respondents 1 to 3 herein mainly, on the ground that, earlier in the Special Leave Petition filed by the respondents 1 to 3 herein, the Hon'ble Supreme Court has passed an order, directing the fourth respondent police not to take any coercive steps including arrest of the respondents 1 to 3 herein for a period of two weeks from 01.03.2019, and the above order is amount to granting interim anticipatory bail to the respondents 1 to 3 herein. If the respondents 1 to 3 want any further order, they can only approach the Hon'ble Supreme Court seeking for appropriate remedy and they cannot file a separate anticipatory bail petition before the learned Principal Sessions Judge, Madurai. Hence, the order granting anticipatory bail by the learned Sessions Judge is without jurisdiction and on the ground, the order impugned herein is liable to be set aside.

7. Before appreciating the arguments advanced on behalf of the petitioner, it is useful to refer to the order passed by the Hon'ble Supreme Court in S.L.P.No.8146 of 2017, which is as follows:

"It is pertinent to note that the Petitioner No.1 in this case is a lady and the dispute relates to property. In case the Police wants to arrest her, they must give an advance notice to her.

However, no coercive steps including arrest be taken against the petitioners for a period of two weeks from today."

8. On a careful reading of the order passed by the Hon'ble Supreme Court, it could be seen that while disposing of the Special Leave Petition, challenging the order passed by this Court in Crl.O.P.(MD)No.13372 of 2017, the Hon'ble Supreme Court, considering the fact that the first petitioner therein is a lady and also the dispute relates to property, directed that if the police wants to arrest the first petitioner therein, they should give an advance notice to her and also directed the police not to take any coercive steps including arrest against the petitioners therein for a period of two weeks from 01.03.2019. The above relief has been given by the Hon'ble Supreme Court only as an interim protection from arrest, enabling the petitioners therein to approach the concerned Court to file a necessary application seeking bail. At any rate, it cannot be considered as an order passed under Section 438 of the Code of Criminal Procedure granting interim anticipatory bail.

9. So far as the judgments relied upon by the petitioner to

support her contention are concerned,

(i) In **State of Telangana v. Habib Abdullah Jeelani [2017 (2) SCC (Cri) 142]**, the matter relates to quashing of First Information Report, wherein the High Court, while disposing of the application filed under Section 482 of the Code of Criminal Procedure, issued a direction to the Investigating Agency not to arrest the accused persons. The Hon'ble Supreme Court has held that such direction amounts to an order under Section 438 of the Code of Criminal Procedure and further, held that such kind of orders should not be passed. That judgment is not factually helping the petitioner's case.

(ii). Coming to another judgment referred to by the learned counsel for the petitioner in **Rukmani Mahato v. State of Jharkhand [2018(1) SCC (Cri) 828]**, it is a case where the Hon'ble Supreme Court granted interim anticipatory bail. Thereafter, the accused surrendered before the Trial Court and obtained a regular bail. In the above circumstances, the Hon'ble Supreme Court has held that when any interim anticipatory bail is granted by higher Courts, there can be no occasion for the accused to appear and surrender before the Trial Court and seek regular bail. But, in the instant case, the Hon'ble Supreme Court did not grant any interim anticipatory bail and the Hon'ble Supreme Court only restrained the respondent police from taking any coercive steps against the accused person for a period of two weeks. Hence, the aforesaid judgment relied upon by the petitioner is also not applicable to the facts of this case.

(iii). In **Satpal Singh v. State of Punjab [2018(13) SCC 813]**, the High Court earlier granted interim anticipatory bail to the co-accused and based on that order, the accused had surrendered before the Sessions Court and they were released on regular bail. In the meantime, final order has also been passed in the anticipatory bail application. In the above circumstances, the Hon'ble Supreme Court has held that the Sessions Court, without taking note of the final order passed by the High Court, ought not to have released the accused on regular bail and that judgment is also factually not applicable to this case.

10. In the above circumstances, the interim protection given in favour of the respondents 1 to 3 herein would not amount to granting of interim anticipatory bail. Hence, the contention of the learned counsel appearing for the petitioner cannot be countenanced.

11. The learned counsel appearing for the petitioner did not advance any argument on merits of the order impugned herein. However, if at all the petitioner has any grievance over the granting of anticipatory bail to the respondents 1 to 3, it is always open to her to take appropriate legal remedy either to approach the concerned Court to file a petition to cancel the bail or challenge the same in the manner known to law and she cannot file a petition under Section 482 of the Code of Criminal Procedure to



set aside the order. In the above circumstances, I find no merit in the petition and the petition is liable to be dismissed. Accordingly, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Inspector of Police,
District Crime Branch,
Madurai.

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

+1cc to Mr.K.P.S.PALANIVELRAJAN, Advocate, SR.No.75284

Cr1.O.P. (MD) .No.6679 of 2019
15.07.2019

SML

KK/SAR/16.07.2019/5P-4C