



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

Date : 25/10/2019

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL MP(MD). No.7620 of 2019

in

CRL OP(MD). No.20769 of 2018

WEB COPY

P. Murugesan,
S/o.(Late) Pooludaiyar,
Door No. 11-12-13/1,
Muniyandi Kovil Street,
S.Alangulam Madurai..

... Petitioner/Petitioner

Vs

1. S.Meera

2. T. Saravanan,

3.State represented through
The Inspector of Police,
Koodalpudur Police Station,
Madurai.

... Respondents/Respondents

For Petitioner : M/s. T.C.S. Thillainayagam,
Advocate.

For Respondents: Mr.A.Robinson,
Govt. Advocate (Crl.Side) for R3
: Mr.S.Thangaraj for R1 and R2

PRAYER :-

Petition filed under Section 482 of CrPC to recall the order dated 21.03.2019 which was passed in Crl. O.P. (MD) No. 20769 of 2018 and pass such further or other orders.

PRAYER IN CRL OP(MD)20769 of 2018:

Petition filed under Section 493(2) of CrPC to cancel the Anticipatory bail in Cr MP No.6802 of 2017, dated 26.6.2018 on the file of the Principal Sessions Court, Madurai.

ORDER : The Court Made the following order :-

The learned counsel appearing for the accused submitted that Crl.M.P.(MD)No.7620 of 2019 is not maintainable because of the bar under Section 362 of Cr.P.C.

2.Though the prayer has been worded as if the petitioner is asking for recall of the order earlier made, in substance, the petitioner only wants this Court to take action against the accused for not having honoured the solemn undertaking given before this Court. In this case, there is no substance in the contention raised by



the learned counsel appearing for the accused.

3.The defacto complainant came before this Court for cancelling the anticipatory bail granted to the accused. CrI.O.P.(MD)No.20769 of 2018, was closed by recording the undertaking of the accused. When the accused have willfully and deliberately breached the undertaking given before this Court, the defacto complainant cannot be left remediless. Even though CrI.M.P.(MD)No.7620 of 2019 has been filed as a petition for recall, I would treat it as treat as a fresh petition for cancellation of anticipatory bail. Section 439 (2) of Cr.P.C. enables the High Court or Court of Sessions to direct that any person who has been released on bail under Chapter 33 be arrested and committed to custody.

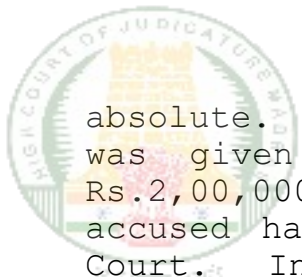
4.The respondents 1 and 2 are the accused in Crime No.1088 of 2017, on the file of the Inspector of Police, Koodalpudur Police Station, for the offences under Sections 406 and 420 of I.P.C. They were granted interim anticipatory bail by the learned Principal Sessions Judge, Madurai on 13.12.2017 and the same was made absolute later. It was challenged by the petitioner herein, who is the defacto complainant in CrI.O.P.(MD)No.20769 of 2018. Since the respondents 1 and 2 did not appear before this Court, NBW was issued against them. They later appeared and through their counsel submitted that they are ready to repay a sum Rs.2,00,000/-. In view of the giving of such an undertaking, this Court by order dated 21.03.2019, closed the said petition and recalled the NBW by directing them to deposit a sum Rs.2,00,000/- within a period of eight weeks from the date of receipt of a copy of the order. It was made clear that in the event of failure on the part of the respondents 1 and 2 to do so, it was open to the law enforcing the agency to proceed with the matter in accordance with law.

5.Contending that the direction given by this Court has not been complied with, the defacto complainant has filed CrI.M.P.(MD) No.7620 of 2019, for recall of the said order.

6.When the matter was taken up for hearing on 23.09.2019, the learned counsel appearing for the respondents 1 and 2 submitted that a final opportunity can be given. Therefore, the matter was listed today and it was made clear that if no demand draft for a sum of Rs.2,00,000/- is forthcoming, further orders will be passed.

7.Today, when the matter was listed for hearing, the learned counsel appearing for the respondents 1 and 2 submitted that the accused needed further time.

8.The accused were originally granted interim anticipatory bail in order to facilitate settlement of the issue through mediation. In the mediation, there was no resolution of the issues. Thereafter



absolute. When it was challenged before this Court, an undertaking was given that the respondents 1 and 2 will pay a sum of Rs.2,00,000/-. Even though a full seven months had elapsed, the accused have not complied with the undertaking given before this Court. In these circumstances, this Court is left with no other option but to cancel to the anticipatory bail granted to the accused in Crl.M.P.No.6802 of 2017, dated 26.06.2018, on the file of the learned Principal Sessions Judge, Madurai.

9.The accused in this case were granted anticipatory bail earlier. In as much as the undertaking given by this Court has not been complied with, I have to necessarily invoke the power under Section 439(2) of Cr.P.C. Therefore, the third respondent is respondent is directed to arrest and commit the first and second accused to custody without any delay. Crl.M.P.(MD)No.7620 of 2019 is allowed on these terms.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar(CS)

TO

1.The Principal Sessions Judge,
Madurai.

2.The Inspector of Police,
Koodalpudur Police Station,
Madurai.

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

+1 cc Mr.C.VAKEESWARAN ,Advocate, SR.No. 18514

+1 cc Mr.S.THANGARAJ ,Advocate, SR.No. 18529

ORDER

in

CRL MP(MD) No.7620 of 2019

in

CRL OP(MD). No.20769 of 2018

Date : 25/10/2019

KK/SAR/31.10.2019/3P-6C/