



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.03.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P. (MD)No.1129 of 2020

K. Ravichandran

... Petitioner

vs.

1. The State Rep.by
The Inspector of Police
District Crime Branch
Sivagangai District

2. K.Shanmuga Sundaram

... Respondents

PRAYER: Criminal Petition filed under Section 439(2) of Cr.P.C., to cancel the bail which was granted to the second respondent in Crl.M.P.No.15039 of 2019 dated 07.01.2020 by the learned Judicial Magistrate No.II (FAC) Sivagangai.

For Petitioner	:	Mr.G.R. Satish
For Respondents	:	Mr.S.Chandrasekar
No.1		Additional Public Prosecutor
No.2	:	Mr.V.S.Kumaraguru

ORDER

This Criminal Original Petition has been filed to cancel the bail which was granted to the second respondent in Crl.M.P.No.15039 of 2019 dated 07.01.2020 by the learned Judicial Magistrate No.II (FAC) Sivagangai.

2. As per the First Information Report, the petitioner herein who is the defacto complainant has entrusted the Management of his Company ACCE Distributors to the second respondent. The company was dealing with Hindustan Lever products. The petitioner has invested huge money in the business believing and trusting the second respondent. When the petitioner found that the company accounts revealed loss, despite periodical investment of capital by him, he demanded the second respondent to furnish stock details and statement of accounts. The second respondent failed to furnish those details and only thereafter he realized that for his investment of Rs.1.31 Crores a sales turn over of Rs.3.52 Crores, the business should have incurred profit of Rs. 1.67 Crores. However, the second respondent, who is the Manager has shown only profit of Rs.16 lakhs. Having come to know that the second respondent has siphoned off money and a complaint has been given against him and others. The second respondent was arrested by the respondent police on



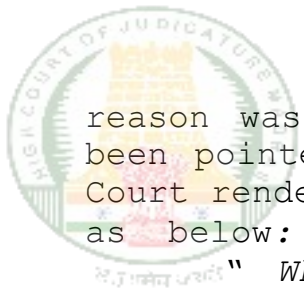
10.12.2019. When he moved the learned Judicial Magistrate, Sivagangai for bail on 18.12.2019, the learned Magistrate had dismissed the same on the ground that the ramification of the offence has to be investigated at depth and if the petitioner is released on bail, there is possibility of tampering the witnesses and also for abscondance. Thereafter, the second respondent has again moved the learned Judicial Magistrate for bail in Crl.M.P.No. 15039 of 2019, wherein the learned Magistrate has granted bail on condition that the second respondent/accused should execute a bond for a sum of Rs.10,000/- along with two sureties each for a like sum to the satisfaction of the Court and to report before the respondent police daily at 10.30 a.m until further orders. Now, the defacto complainant is before this Court to cancel the bail order on the ground that between the order passed in the first bail petition refusing bail on 18.12.2019 and the order passed on 07.01.2020 granting bail there was no change in circumstances and no co-operation by the second respondent for investigation and no reason assigned by the learned Judicial Magistrate for granting bail, which he refused 20 days ago.

3. The learned counsel appearing for the petitioner/defacto complainant relying upon the order of the Honourable Supreme Court rendered in the ***State of Tamil Nadu -Vs- S.A.Raja*** would submit that in a case of grave crime, after dismissing the first bail petition, second bail petition can be filed and there is no *res judicata* for bail application, but repeated filing of bail application without there being any change in circumstances and granting bail without assigning any reason and change in circumstance would lead to bad precedents.

4. In this case, this Court finds that the second respondent himself has earlier admitted misappropriation of funds and given a letter which he now refracts. The other accused who were also enlarged on bail have given statements implicating the second respondent. In any event, as per bail condition, the accused participated in the enquiry and there is no breach of bail condition and other co-accused have come forward to furnish details, whereas though the second respondent is reporting before the respondent police, he has not co-operated with the enquiry/investigation.

5. The learned Additional Public Prosecutor would submit that so far investigation reveals huge investment and expenditure made by the second respondent disproportionate to his salary, which probablies the complaint of misappropriation. It is also seen from the investigation so far done that the second respondent had started similar business in partnership and he has also invested in immovable properties.

6. Precisely for the said reason, the learned Judicial Magistrate, while dismissing the first bail petition on 18.12.2019 ~~has recorded the reason and~~ unfortunately, while granting bail, no



reason was assigned and no change in facts and circumstances has been pointed out, following the judgment of the Honourable Supreme Court rendered in the **State of Tamil Nadu -Vs- S.A.Raja**, which reads as below:

" When there was no change of circumstances, the learned Judge may not have granted bail to the respondent. In the Order passed on 1.4.2005, the learned Single Judge had stated that the respondent herein was likely to influence the witnesses. That order was challenged before this Court and this Court declined to interfere with that order. Within a short period, the impugned Order was passed without adverting to any of the points dealt with by the learned Single Judge who declined to grant bail to the respondent.

When a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

There are strong allegations against the respondent but we do not propose to advert to any of the evidence collected against him. Though the respondent's name was not mentioned in the FIR, it is alleged that he is one of the conspirators and he had a motive to do away with one of the deceased persons.

7. Hence, the petition for cancellation of bail is allowed. The respondent police is directed to secure the second respondent and remand him to prison.

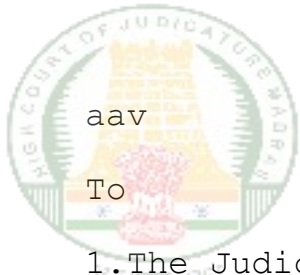
Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)



1.The Judicial Magistrate No.II (FAC) Sivagangai

2. The Inspector of Police
District Crime Branch
Sivagangai District

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

+1cc to Mr.G.R.Satish, Advocate Sr No.5113

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