



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2020

PRESENT

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.1631 of 2020

The Inspector of Police,
City Crime Branch,
Tirunelveli.

... Petitioner / Respondent
/Complainant

Daniel Sundar

... Respondent
/Petitioner / Accused No.1

Prayer : Criminal Original Petition is filed under Section 438 (2) of the Criminal Procedure Code, to cancel the anticipatory bail granted to the respondent in Crl. M.P No.213 of 2020 on the file of the learned Principal Sessions Judge, Tirunelveli.

For petitioner	: Mr.A.Robinson, Government Advocate (crl.side)
For Respondent	: Mr.D.Selvan, Advocate
For intervenor	: Mr.H.Lakshmi Shankar

ORDER

Crime No.1 of 2020 on the file of the Inspector of Police, City Crime Branch, Tirunelveli was registered for the offences under Sections 406, 408 of IPC and Sections 43(b), 43(i), 66 & 72 (A) of the Information Technology Act. The defacto complainant is the Managing Director of Don Publication Private Limited, Tirunelveli. One Daniel Sundar, the employee of the defacto complainant was named as the first accused. The rival publisher has been named as the second accused. The FIR was registered on 02.01.2020. The substance of the FIR is that the defacto complainant is publishing books and guides for students for the last 12 years. The defacto complainant is in possession of relevant material to show that one of their employees, namely, Daniel Sundar, CTP Machine Operator had joined hands with the rival publisher/A2 and passed on several sensitive and confidential information causing serious loss to the complainant in the market.

2.A1 Daniel Sundar filed Cr.MP No.213 of 2020 before the learned Principal Sessions Judge, Tirunelveli seeking anticipatory bail. The anticipatory bail petition came up for hearing before the



Sessions Court on 09.01.2020. The learned Public Prosecutor had submitted that the petitioner is not having any other case pending against him. Thereupon, anticipatory bail was granted by the court below. The court below assigned the following reason for grant of anticipatory bail :

WEB COPY *"Both sides heard. Considering the nature of allegations and also the admission of the prosecution that this petitioner has no other cases pending against him, this Court is inclined to grant anticipatory bail to the petitioner herein subject to the following conditions :"*

Usual condition to report before the Investigation Officer was incorporated in the impugned order. The same is under challenge before this Court. This Court issued notice to the respondent.

3.The learned counsel appearing for the respondent/A1 submitted that the Sessions Court as well as the High Court exercise concurrent jurisdiction in the matter of grant of anticipatory bail and that therefore, it is not proper for this Court to set aside the impugned order. He would further contend that the first accused has complied with the conditions imposed by the court below and that therefore, there is no justification in cancelling the same as it has not been shown that the accused did not comply with the condition, or that he misused the liberty granted to him by the court below.

4.The learned Government Advocate (crl.side), pointed out that this petition for cancellation has not been filed by citing any subsequent development. The case of the prosecution is that the anticipatory bail could not have been granted in the first instance. The Hon'ble Supreme Court would make a distinction between cancelling the bail or anticipatory bail by citing the subsequent conduct of the accused and those cases where the relief of bail or anticipatory bail could not have been given in the first instance.

5.The Hon'ble Supreme Court in a recent decision made in Criminal Appeal No.1843 to 1847 of 2019 and etc., held as follows :

"23.Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both



liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty bound to explain the basis on which they have arrived at a conclusion.

24. In *Kalyan Chandra Sarkar v. Rajesh Ranjan* MANU/SC/0214/2004 : (2004) 7 SCC 528, a two judge Bench of this Court was required to assess the correctness of a decision of a High Court enlarging the Accused on bail. Justice Santosh Hegde, speaking for the Court, discussed the law on the grant of bail in non-bailable offences and held:

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted particularly where the Accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind."

6.This is a case in which the employer of the respondent/A1 has directly alleged that A1 has been hand in glove with a business rival. The respondent in a handwritten letter addressed to his employer admitted that the second accused used to contact him over mobile and ask him to part with useful market information. The first accused had admitted that he used to pass on such information through pen drive and through e-mail. In fact, the e-mail details have also been furnished in the letter of the accused. It is also seen that A1 had been in receipt of periodical monthly payments. In fact, on one occasion, the first accused had received remittance through his bank account. It appears that in the bank account of the first accused, remittance was made in the name of A2 on 02.04.2019. The complainant appears to have furnished all such material to the Investigation Officer. In order to verify the same, interrogation of the accused is absolutely necessary and imperative.

7.Serious allegation of breach of trust has been made. The respondent/A1 was the CTP machine operator and he was in possession of all the data. He oversaw the process of conversion from soft copy to hard copy. Therefore, when such serious allegations have been made against the respondent herein, anticipatory bail could not have been granted at all. In any event, no reasons had been assigned by the court below for grant of anticipatory bail. The Hon'ble Supreme Court in the aforesaid decision has specifically held that where an order refusing or granting bail does not furnish



the reasons that inform the decision, there is a presumption of non-application of mind which may require the intervention of this Court.

8.In this case, the court below chose to go by the submissions of the prosecution that the first accused did not have any other case pending against him. This is an utterly irrelevant consideration for grant of anticipatory bail. The court below ought to have seen as to whether this was a fit case for grant of anticipatory bail. The court below ought to have applied the yardstick as to whether the custodial interrogation of the respondent herein was necessary or not. Instead of applying the relevant parameters of law, the court below has chosen to misdirect itself in law and granted relief to the respondent herein.

9.I, therefore, cancel the anticipatory bail granted to the first accused. Accordingly, the order impugned in this criminal original petition stands set aside. This criminal original petition stands allowed.

sd/-
07/02/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE PRINCIPAL SESSIONS JUDGE, TIRUNELVELI.

2 THE INSPECTOR OF POLICE,
CITY CRIME BRANCH, TIRUNELVELI.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-2726[I] dated 10/02/2020)

+1CC TO Mr.T.SELVAN, Advocate, Sr No.5356

ORDER
IN
CRL OP(MD) No.1631 of 2020
Date :07/02/2020

MS/PN/SAR-1/11.02.2020/4P.6C