



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

Thursday, the Twelfth day of March Two Thousand Twenty

PRESENT

The Hon`ble Dr.Justice G.JAYACHANDRAN

CRL MP(MD) No.2178 of 2020

IN

CRL OP(MD) No.32 of 2017

MANIVEL AMMAL

... PETITIONER/INTERVENER/
DEFACTO COMPLAINANT

Vs

1 THE SUPERINTENDENT OF POLICE,
OFFICE OF THE SUPERITENDENT OF POLICE,
SIVAGANGAI DISTRICT. ... 1st RESPONDENT/COMPLAINANT

2 THE INSPECTOR OF POLICE,
SIVAGANGAI TOWN POLICE STATOIN,
SIVAGANGAI TALUK,
SIVAGANGAI DISTRICT.
(CR NO.659/2016) ... 2nd RESPONDENT/COMPLAINANT

3 V.SEKAR, ... 3rd RESPONDENT/ACCUSED

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to order the Accused to deposit to the amount of remaining Rs.5,00,000/- as order passed by this Honourable Court in CrI.O.P. (MD) NO.32 of 2017, dated 09/10/2017 and also directed to the Respondent, Sivagangai Town Police to file the Charge Sheet.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.ELIZABETH GEETHA, Advocate for the petitioner and of MR.S.CHANDRASEKAR, Additional Public prosecutor for R1 & R2 and of MR.S.BALAJI, Advocate for R3, the court made the following order:-

Reserved on : 05.03.2020
Delivered on : 12.03.2020

The petitioner herein is the de-facto complainant in Crime No.659 of 2016, on the file of Sivagangai Town Police Station, Sivagangai District.

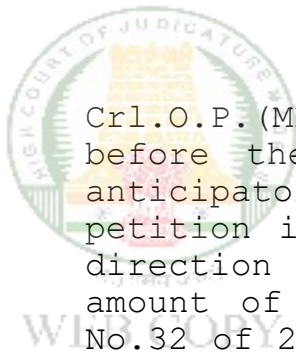
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2. According to the petitioner/de-facto complainant, the property belonging to her and her two relatives, were sold through the third respondent/accused by executing a Power of Attorney in his favour. After selling the property, the third respondent failed to pay the balance sale proceed to the tune of Rs.7,00,000/-. Two cheques given by him were bounced on its presentation. Therefore, a complaint was given against the third respondent on 09.02.2015 to the respondent police, but the same was not registered. Hence, she resorted to petition under Section 156(3) Cr.P.C. before the learned Judicial Magistrate No.I, Sivagangai, seeking a direction to register an F.I.R. based on the complaint dated 09.02.2015. The learned Magistrate found that cognizable offence is made out in the complaint and directed the respondents 1 and 2 to register an F.I.R. against the third respondent. Accordingly, the complaint was registered under Sections 406, 468, 471, 420, 294(b) and 506(i) IPC, in Crime No.659 of 2016.

3. The third respondent filed anticipatory bail petition before this Court in Crl.O.P.(MD)No.18277 of 2016. The de-facto complainant intervened in the anticipatory bail petition. The third respondent withdrew the said anticipatory bail petition. Again, the third respondent filed second anticipatory bail petition in Crl.O.P.(MD)No.32 of 2017 before this Court, in which also, the de-facto complainant intervened. This Court after hearing the third respondent and the petitioner, granted anticipatory bail to the third respondent on condition that he should deposit a sum of Rs.7,00,000/- in Crime No.659 of 2016. The third respondent sought modification of the above order, but the same was dismissed by this Court on 27.11.2017, vide Crl.M.P.(MD)No.10576 of 2017. The time for depositing Rs.7,00,000/- was extended by 21 days. The third respondent did not comply with the said condition. Therefore, a contempt notice was issued by the petitioner herein to him on 06.04.2018, for not obeying the condition imposed by this Court on 09.10.2017, despite extension of time, vide order dated 27.11.2017. No reply was sent by the third respondent to the contempt notice. However, he preferred third anticipatory bail petition viz., Crl.O.P.(MD)No.6792 of 2018, suppressing the prior order of this Court passed in Crl.O.P.(MD)No.32 of 2017. Crl.O.P.(MD)No.6792 of 2018 was allowed without adverting to the contempt notice and the objection made by the petitioner against granting anticipatory bail to the third respondent/accused for the second time. In the order passed in Crl.O.P.(MD)No.6792 of 2018, this Court directed the third respondent/accused to deposit a sum of Rs.2,00,000/-, which is contrary to the earlier order of this Court, directing to deposit Rs.7,00,000/-.

4. Contending that the third anticipatory bail petition suppressing the conditional order passed in the second anticipatory bail petition, is impermissible in law. If the third respondent/accused was aggrieved by the condition imposed in



Crl.O.P.(MD)No.32 of 2017, he should have preferred further appeal before the Hon'ble Supreme Court and he cannot file the third anticipatory bail petition before this Court. Hence, the present petition is filed by the petitioner/de-facto complainant seeking a direction to the third respondent/accused to deposit the remaining amount of Rs.5,00,000/- as ordered by this Court in Crl.O.P.(MD) No.32 of 2017 and also a direction to the respondent police to file the final report.

5.The learned counsel appearing for the third respondent/accused would submit that the order in the third anticipatory bail petition was passed only after considering the order passed in the second anticipatory bail petition viz., Crl.O.P.(MD)No.32 of 2017 and there was no suppression of fact as alleged.

6.On going through the records, this Court finds that the third respondent, who is the accused in Crime No.659 of 2016, has first filed Crl.O.P.(MD)No.18277 of 2016 and the same was withdrawn as not-pressed. The second anticipatory bail petition viz., Crl.O.P.(MD)No.32 of 2017 was allowed on 09.10.2017, on the following conditions:-

''(i) the petitioner is directed to deposit a sum of Rs.7,00,000/- (Rupees Seven lakhs only) to the credit of Crime No.659 of 2017 before the learned Judicial Magistrate No.I, Sivagangai, on or before 30.11.2017 without prejudice his rights facing the trial before the lower Court. On such deposit, the learned Magistrate shall entertain the sureties furnished by the petitioner.

(ii) the petitioner shall report before the respondent police as and when required for interrogation;

(iii) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(iv) the petitioner shall not commit any offence while on bail;

(v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law and the bail granted stands cancelled automatically.''

7.The third respondent/accused has filed a petition for modification of the above condition, in Crl.M.P.(MD)No.10576 of 2017. This Court disposed the said modification application, vide order dated 27.11.2017, with the following observation:-

'' 2. This Court, while granting anticipatory bail to the petitioner in Crl.O.P.No.32 of 2017, 09.10.2017, imposed a condition that he should deposit a sum of Rs.7,00,000/- in Crime No.659 of



2017. Aggrieved by the same, since the petitioner is not able to arrange the money, he filed the present petition stating that he is ready to deposit the title deed before the lower Court instead of paying the said sum.

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3. The said submission is not acceptable one. The petitioner cannot act, contrary to his own admission, while granting anticipatory bail.

4. The learned counsel appearing for the petitioner would submit that the time may be granted to deposit the said amount.

5. In view of the above said submission, this petition is dismissed. However, the time is granted to the petitioner only 21 days from the date of receipt of a copy of this order and this court directs the petitioner to deposit the said amount and comply the condition imposed in Crime No.659 of 2017 before the learned Judicial Magistrate No.I, Sivagangai.''

8. With this order, legally speaking, the matter has reached finality. The third respondent/accused ought to have either complied the condition or should have approached the appellate Court for modification of the condition. In the anticipatory bail order, it has been specifically stated that any breach of the conditions, the learned Magistrate is entitled to take appropriate action against the third respondent [accused] in accordance with law and the bail granted stands cancelled automatically. Despite the specific observation, the third respondent had audacity to file another anticipatory bail petition stating the entire facts of earlier anticipatory bail petition and expressing his inability to deposit Rs.7,00,000/- within the stipulated time, applied afresh for anticipatory bail, expressing his readiness to produce substantial surety. The Registry has numbered the anticipatory bail petition, which in the opinion of this Court, is improper and not maintainable. In the said anticipatory bail petition, this Court has granted anticipatory bail afresh on condition to deposit Rs.2,00,000/- contrary to the earlier condition to deposit Rs.7,00,000/-. The order of this Court passed in the third anticipatory bail petition viz., Crl.O.P.(MD)No.6792 of 2018, dated 26.06.2018, reads as below:-

''The petitioner apprehends arrest at the hands of the respondent Police for the offences under Section 406, 468, 471, 420, 294(b) and 506 (i) of I.P.C. in Crime No.659 of 2016.



2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the respondent.

3.The learned counsel appearing for the petitioner submits that the case is essentially civil in nature and to show his bona fide, he would deposit a sum of Rs.2,00,000/- to the credit of Crime No.659 of 2016 on the file of the Inspector of Police Station, Sivagangai, Sivagangai District.

4.The learned counsel for the petitioner submits that the petitioner would deposit a sum of Rs.2,00,000/- on or before 15.07.2018 before the concerned Judicial Magistrate. If the amount is not so deposited, this order would stand cancelled automatically.

5.Considering the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance before the learned Judicial Magistrate No.I, Sivagangai, Sivagangai District and on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further condition that the petitioner shall appear before the respondent police as and when required for interrogation. The petitioner shall comply with the conditions stipulated under Section 438 Cr.P.C. scrupulously.

6.The petitioner shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready, failing which, the petition for anticipatory bail shall stand dismissed.''

9.In this order, this Court nowhere finds that whether the order passed by this Court in the earlier anticipatory bail petition viz., Crl.O.P.(MD)No.32 of 2017 was taken into consideration or not. In any event, pursuant to the said order, the third respondent has deposited Rs.2,00,000/- and the same has also been permitted to be withdrawn by the petitioner herein/de-facto complainant.

10.After withdrawing the money, now the petitioner has filed this petition to direct the third respondent/accused to deposit the balance sum of Rs.5,00,000/- as per the order passed by this Court



11. In the opinion of this Court, the order passed in Crl.O.P. (MD)No.32 of 2017, dated 09.10.2017, is superseded by the subsequent anticipatory bail order passed in Crl.O.P.(MD)No.6792 of 2018, dated 26.06.2018. Whether the subsequent bail petition after relief granted is maintainable is a question, which the third respondent and the present petitioner should have raised when the anticipatory bail petition was considered in Crl.O.P.(MD)No.6792 of 2018 or if the petitioner was aggrieved by the order, she should have approached the higher forum. She cannot try to revive the superseded order through this petition. Hence, this petition is dismissed. The first respondent is directed to file final report by the end of this month, for the trial to be commenced at the earliest.

sd/-
12/03/2020

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/ /2020

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

TO

- 1 THE JUDICIAL MAGISTRATE NO.I, SIVAGANGAI
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, SIVAGANGAI DISTRICT
3. THE SUPERINTENDENT OF POLICE,
OFFICE OF THE SUPERITENDENT OF POLICE, SIVAGANGAI DISTRICT.
- 4 THE INSPECTOR OF POLICE,
SIVAGANGAI TOWN POLICE STATOIN,
SIVAGANGAI TALUK, SIVAGANGAI DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.M.ELIZABETH GEETHA, Advocate (SR-5157[I] dated 12/03/2020)

+1cc to MR.S.BALAJI, Advocate in SR.No. 11346[f]

ORDER
IN
CRL MP(MD) No.2178 of 2020
IN
CRL OP(MD) No.32 of 2017
Date :12/03/2020

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