



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated : 10.06.2020

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PRESENT

The HON'BLE MR.JUSTICE G.R.SWAMINATHAN

Crl RC(MD)No.366 of 2020

and

Crl MP(MD)No.3137 of 2020

Ashik Mohamed @ Al-Ashik ... Petitioner / Respondent

Vs.

The State through
Inspector of Police,
Dindigul Taluk P.S.,
Dindigul District.
(Crime No.691 of 2019)

...Respondent / Petitioner

PRAYER :- This Criminal Revision Case has been filed under Section 397 r/w.401 of Criminal Procedure Code, to call for the records pertaining to the order in Cr.MP No.453 of 2020 on the file of the learned Principal Sessions Judge, Dindigul dated 03.03.2020 and set aside the same.

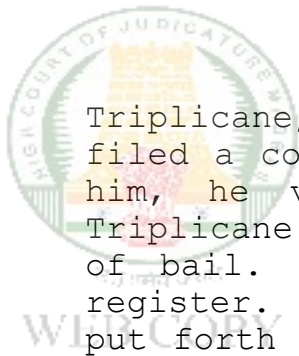
For petitioner : Ms.C.Tamil Malar

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.side)

ORDER

Heard the learned counsel on either side.

2.The petitioner is figuring as an accused in Crime No.691 of 2019 on the file of the respondent police for the offences under Sections 294(b), 307 IPC @ 120 (B), 294(b), 324, 307 of IPC and Section 4(b) of the Explosives Substances Act and 25(1)(A) of the Arms Act, 1959. He was granted bail by the learned Principal Sessions Judge, Dindigul in Crl MP No.3230 of 2019 on 09.01.2020. He was directed to appear before the Station House Officer, Triplicane, (Chennai) Police Station daily twice at 10.00 A.M and 05.00 P.M until further orders. The respondent herein applied for cancellation of the said bail order on the ground that the petitioner failed to appear before the Station House Officer,



Triplicane, from 13.02.2020 till 17.02.2020. The petitioner herein filed a counter controverting the said allegation. According to him, he very much appeared before the Station House Officer, Triplicane on the dates mentioned in the petition for cancellation of bail. But, he was not permitted to sign in the attendance register. The learned Sessions Judge disbelieved the explanation put forth by the petitioner herein and by the impugned order dated 03.03.2020 in Crl MP No.453 of 2020 cancelled the earlier order granting bail. Challenging the same, this revision petition has been filed.

3.Shri.A.Robinson, the learned Government Advocate (crl.side) at the outset questioned the very maintainability of this revision case. Responding to the said challenge, the learned counsel appearing for the petitioner drew my attention to the order dated 12.09.2016 in Crl.RC No.611 of 2016 wherein a learned Judge of this Court had not only entertained but also allowed the revision petition filed by an accused for setting aside the order cancelling the bail.

4.The learned counsel for the petitioner in my view is not correct in projecting the order dated 12.09.2016 in Crl.RC No.611 of 2016. An earlier case law can be pressed into service as a precedent only if a proposition can be culled out therefrom as its *ratio decidendi*. In the order relied on by the petitioner's counsel, the issue of maintainability was not raised or gone into. Merely because the criminal revision case was entertained on an earlier occasion against an order cancelling bail, it would not constitute a precedent to be followed. The said order does not contain any ratio and therefore, has no precedential value.

5.On the other hand, as rightly pointed out by the learned Government Counsel for the respondent, there is a direct decision of the Madras High Court on the point in ***Chitra Sankaranarayanan Vs. State (1995 1 MLJ Crl.216)***. It was authoritatively laid down that an order of cancellation of bail is only an interlocutory order and in view of the bar under Section 397(2) of Cr.PC, criminal revision against the same is not maintainable. Of course, in ***Abdul Nasser Madani vs State Of Tamil Nadu*** (2000 Crl.LJ 1258), there is a reference to *Chitra Sankaranarayanan vs. State*). In ***Maya Venkatesan vs. State*** (2007 Crl.LJ 4744), it was again reiterated that a criminal revision would not lie against an order cancelling bail. In fact, the learned Judge relied on an earlier decision reported in ***1980 1 MLJ Crl. 375 (Somaram v. Jewantharaj Lunia and Anr)***.

6.Therefore, I have to necessarily sustain the preliminary objection raised by the learned Government Counsel (crl.side). The next question that arises for my consideration is as to whether I should summarily dismiss the revision case as not maintainable



leaving it to the petitioner to file a fresh criminal original petition under Section 482 of Cr.PC. I am of the view that instead of doing so, I can invoke my inherent powers to see if the order passed by the learned Sessions Judge, Dindigul is liable to be interfered with or not.

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7.The allegation of the respondent is that the petitioner herein did not appear before the SHO, Triplicane for five days from 13.02.2020. The stand of the petitioner is that he had to appear before the Jurisdictional Magistrate No.2, Dindigul on 14.02.2020 and 17.02.2020 and that on the other dates mentioned in the petition, he had appeared before the police station, but, he was refused permission to sign in the attendance register. The learned Sessions Judge rightly found that the version projected by the petitioner cannot be believed. If the petitioner was refused permission on 13.02.2020 to sign in the register, he could have very well lodged a complaint before the superior officers. The cancellation of bail petition came to be filed only on 24.02.2020. Only in the counter filed on 02.03.2020, the petitioner has come out with the "refusal theory". I therefore, concur with the finding given by the learned Sessions Judge in this regard.

8.The further question is whether on the ground of non compliance of the conditions imposed in the bail order, the bail granted to the petitioner has to be cancelled as a consequence. As held in ***Prapbakaran vs. State (2010 (1) CTC 585)***, mere failure to comply with the condition to appear either before the court or the police in absence of any willfulness on the part of the accused would not amount to a breach under Section 446 of Cr.PC. There has to be an animus on the part of the accused not to abide by or comply with the terms and conditions of the bond. In the case on hand, it is seen that the petitioner/accused has been appearing before the SHO, Triplicane (Chennai) Police Station even after 17.02.2020 and right up to the date of passing of the impugned order. This clearly shows that the petitioner did not have any animus to commit breach of the conditions of bail bond. While the story projected by the petitioner cannot be true, it is quite possible that he had some reason. The fact remains that the petitioner had appeared before the SHO, Triplicane (Chennai) Police Station from 18.02.2020 onwards. The subsequent conduct of the petitioner is a relevant consideration. The issue of cancellation cannot be decided on the basis of the breach alone. The prior and subsequent conduct of the accused are relevant considerations and they have to be taken into account. Only then, animus element can be discerned. In this case, the learned Sessions Judge failed to take into account the subsequent conduct. This vitiates the impugned order and renders it vulnerable.

9.In this view of the matter, exercising my inherent powers, I set aside order dated 03.03.2020 made in Cr.MP No.453 of 2020 on the



that the petitioner will continue to honor the bail condition from 19.06.2020 onwards. It is of course open to the petitioner herein to move the learned Sessions Judge for modification or relaxation.

10. This criminal revision case is allowed on these terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

Note : The Registrar (Judicial) is directed to instruct the concerned staff not to number the criminal revision cases filed against the orders pertaining bail (granting or refusing or cancelling).

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Sessions Judge, Dindigul.
2. The Inspector of Police, Dindigul Taluk Police Station, Dindigul District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
4. The Registrar Judicial, Madurai Bench of Madras High Court, Madurai.

Copy To: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

**Crl RC(MD)No.366 of 2020
and**

Crl MP(MD)No.3137 of 2020

Date : 10/06/2020

AP(17/06/2020) 4P 7C

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