



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2020

CORAM:

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P (MD) No.7926 of 2020

Jebamalai Raj @ Rajappa

...Petitioner/defacto complainant

Vs.

1.The Inspector of Police,
Koodalpudur Police Station,
Madurai City,
Madurai.

(Crime No.759 of 2019)

... 1st Respondent/Complainant

2.Carolin Shobana

3.Arockia Stella

4.Bastin Amalanathan

... 2, 3 & 4th Respondents/Petitioners

PRAYER: Criminal Original Petitions filed under Section 439(2) of Criminal Procedure Code, praying to cancel the bail granted in Cr.M.P.No.2023 of 2020, dated 22.04.2020 in Crime No.759 of 2019 on the file of the Principal District Judge, Madurai.

For Petitioner: Mr.K.Samidurai

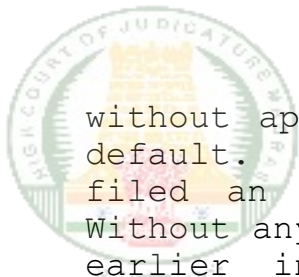
For R1 : Mr.K.R.Bharathi Kannan
Government Advocate (Crl.side)

For R2 - R4 : Mr.T.Kumar

O R D E R

This petition has been filed to cancel the bail granted in Cr.M.P.No.2023 of 2020, dated 22.04.2020 in Crime No.759 of 2019 on the file of the Principal District Judge, Madurai.

2.The learned counsel for the petitioner would submit that on the complaint lodged by the petitioner, the first respondent registered the FIR in Crime No.759 of 2019 for the offence under Sections 406 and 420 IPC., as against the respondents 2 to 4 herein. The allegation is that the respondents 2 to 4 borrowed a sum of Rs.35,38,750/- and thereafter, they failed to repay the amount. While pending investigation, the respondents 2 to 4 herein filed a petition for anticipatory bail before the learned Principal Sessions Judge, Madurai, in Crime No.759 of 2020. The learned Principal Sessions Judge, Madurai, by order dated 14.10.2019, granted interim anticipatory bail to the respondents 2 to 4 and directed the respondents 2 to 4 herein to pay a sum of Rs.5,00,000/- (Rupees Five lakhs only) each to the petitioner herein, by way of demand draft. Thereafter, the respondents 2 to 4 herein cleverly left the matter



without appearing before the Court and the same was dismissed for default. While that being so, again the respondents 2 to 4 herein filed an anticipatory bail petition in Cr.M.P.No.2023 of 2020. Without any change in circumstances and also without considering the earlier interim order passed by the same Court, the learned Principal District Judge, Madurai, granted anticipatory bail to the respondents 2 to 4, without imposing any conditions. When the respondents 2 to 4 disobeyed the order passed by the Principal District Judge, Madurai, directed them to pay Rs.5,00,000/- each to the defacto complainant, the learned Judge ought not to have granted anticipatory bail to the respondents 2 to 4 herein. Therefore, he sought for cancellation of anticipatory bail granted to the respondents 2 to 4 herein.

3.Per contra, the learned counsel for the respondents 2 to 4 herein submitted that this is the money transaction and all the allegations are civil in nature. The first respondent arrested the accused for an offence under Sections 406 and 420 IPC. According to the respondents 2 to 4 herein, already a major portion of the amount have been returned and even then, the petitioner herein collected exorbitant interest from the respondents 2 to 4. Therefore, they lodged the complaint and the same is under enquiry. He further submitted that the petitioner's wife has also filed a suit for recovery of money in O.S.145 of 2019 and it is also pending for trial on the file of the learned Vth Additional District Judge, Madurai. The respondents 2 to 4 have also filed a petition to quash the FIR before this Court in Crl.O.P(MD)No.2656 of 2020 by order, dated 14.02.2020. This Court passed an order, granting interim stay of entire further proceedings of the FIR, register in Crime No.759 of 2020. Therefore, the learned Principal District Judge, after gone through the entire fact and circumstances of the case, has rightly granted anticipatory bail to the respondents 2 to 4 herein and they have not suppressed any earlier orders.

4.The learned Government Advocate (Crl.side) appearing for the first respondent submitted that after granting anticipatory bail, investigation is still pending and about to complete the investigation and other conditions imposed by the learned District Judge, the respondents 2 to 4 duly complied with.

5.Heard the learned counsel appearing for the petitioner and respondents 2 to 4 and the learned Government Advocate (Crl.side) appearing for the first respondent.

6.The respondents 2 to 4 are arrayed as A1 to A4. On the complaint lodged by the first respondent the case has been registered in Crime No.759 of 2019 for the offence under Sections 406 and 420 IPC. The allegation is that the respondents 2 to 4 herein borrowed a sum of Rs.49,50,000/-. Thereafter, they repaid a sum of Rs.3 lakhs and remaining amount has to be repaid. Thereby, the petitioner herein. Pending investigation, the



respondents 2 to 4 approached the learned Principal District, Madurai, for anticipatory bail in Cr.M.P.No.5025 of 2019 and they were granted interim anticipatory bail on condition that they should pay a sum of Rs.5,00,000/- each, by way of demand draft to the petitioner herein. Thereafter, the respondents 2 to 4 herein challenged the FIR before this Court in Crl.O.P(MD)No.2656 of 2020 and by order dated 14.02.2020, this Court stayed all further proceedings of the FIR registered in Crime No.759 of 2019. It is also seen that the petitioner filed a suit for recovery of money in O.S.No.145 of 2019 and it is pending for trial on the file of the learned 5th Additional District Court, Madurai.

7.Considering the above facts and circumstances of the case, the learned Principal District Judge, Madurai, granted anticipatory bail to the respondents 2 to 4 herein on the following conditions:

'12.In the result, in the event of arrest or on their surrender before the Court concerned, the petitioners are ordered to be enlarged on anticipatory bail on their executing own bond for a sum of Rs.10,000/- each to the satisfaction of the Judicial Magistrate concerned subject to the following conditions:-

(i)After a period of 6 weeks, the petitioners should surrender before the Judicial Magistrate concerned and execute a fresh bond for Rs.10,000/- each with two sureties for like sum each to the satisfaction of Judicial Magistrate concerned.'

8.Accordingly, the respondents 2 to 4 herein executed the sureties and also complied with the conditions. The only ground raised by the petitioner is that when the learned principal District Judge, Madurai, granted interim anticipatory bail to the respondents 2 to 4 and directed them to pay a sum of Rs.5,00,000/- to the defacto complainant, the said factor was not considered at the time of granting anticipatory bail to the respondents 2 to 4 herein.

9.In view of the above discussions, the learned Principal District Judge, Madurai, after considering all other above circumstances granted anticipatory bail to the respondents 2 to 4 herein. Therefore, this Court find no merits in this petition to cancel the anticipatory bail granted to the respondents 2 to 4 herein.

10.Accordingly, the Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



vsd

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 District Judge,
Madurai.
- 2.The Judicial Magistrate No.IV,
Madurai.
- 3.The Chief Judicial Magistrate,
Madurai.
- 4.The Inspector of Police,
Koodalpudur Police Station,
Madurai City, Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K. SAMIDURAI, Advocate (SR-19275[F] dated 07/10/2020)

Crl.O.P(MD)No.7926 of 2020

06.10.2020

NS(CO)

NR (02/11/2020) 4P : 7C