



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.2342 of 2020

&

Crl.M.P.No.1470 of 2020

K. Anand

..Petitioner

Vs.

The Inspector of Police,
Perumbumalai Police Station,
Dharmapuri District.

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Crl.M.P.No.580 of 2019 dated 22.11.2019 on the file of Learned Sessions Judge, Fast Track Mahila Court, Dharmapuri District, and set aside the same.

For Petitioner : M/s. K. Balu

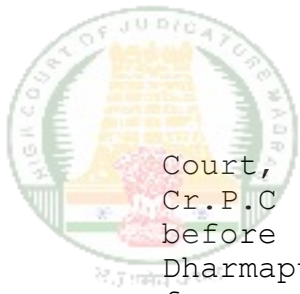
For respondent : Mr. C.E. Pratap,
Government Advocate
(Criminal side)

O R D E R

The Petitioner was implicated for the offence Under Section 516 of the POCSO Act and Sections 9 & 10 of the Child Marriage Prohibition Act in Cr.No.94 of 2019 on the file of Inspector of Police, Perumbalai Police Station, Dharmapuri District.

2) The petitioner was arrested and remanded to judicial custody on 10.06.2019 by the Judicial Magistrate, Pennagaram. The petitioner had filed Bail Application in Crl.M.P.No.442 of 2019 before the Sessions Judge, Fast Track Mahila Court, Dharmapuri and the same was dismissed on 07.08.2019. Thereafter the petitioner had filed bail application in Crl.O.P.No.22478 of 2019 before the High Court of Madras.

3) During the pendency of the petition before this



Court, the petitioner had filed an application u/s 167(2) of Cr.P.C in CrI.M.P.No.580 of 2019 seeking grant of statutory bail before the Sessions Judge of Fast Track of Mahila Court, Dharmapuri. Since the accused had been under judicial custody for more than 90 days, the statutory bail was granted to the petitioner by the Fast Track Mahila Court on 24.09.2021.

4) When the matter in CrI.O.P.No.22478 of 2019 was taken up for hearing before this Court, this Court noticing that statutory bail had been granted pending this petition called for explanation as to how the bail has been granted to the accused in Cr.M.P.580 of 2019 on 24.09.2019. The notice was issued by the trial court to the petitioner seeking reply. Thereafter the petitioner filed a reply before the Trial Court stating that it was his parents who had filed the application through the learned counsel in the lower court and the same has not been brought to the knowledge of the petitioner.

5) The Sessions Judge, Fast Track Mahila Court on coming to know about the pendency of the bail application before this Court, suo motu cancelled the bail order passed in CrI.M.P.No.580 of 2019, after giving an opportunity to the accused. Challenging the said order, cancelling bail, the present petition has been filed before this Court.

6) The learned counsel for the petitioner submitted that the parents of the petitioner has inadvertently not brought to the notice of the Trial Court about the pendency of application before this court and the Trial Court has granted bail on the ground that the respondent/complainant has not filed final report u/s 167(2) of Cr.P.C within the prescribed period.

7) It is the further submission of the learned counsel for the petitioner that the filing of the bail petition before this Court by the petitioner was not within the knowledge of his parents and likewise the filing of the statutory bail application by his parents was not brought to the knowledge of the petitioner, which had resulted in the non-disclosure of the petitions pending before the respective courts. The act of the petitioner in not disclosing the bail petition before the lower court is neither wilful nor wanton, which fact, though placed before the trial court, the court below did not consider the same in proper perspective and had cancelled bail. It is the submission of the learned counsel for the petitioner that the petitioner had not misused any of the bail provisions and had abide the conditions imposed by the Court below and, therefore, there being no supervening circumstance, this Court may set aside the order of cancellation of bail.

8) This Court gave its anxious consideration to the



submission advanced by the learned counsel for the petitioner and also perused the materials available on record.

9) It is not in dispute that the initial application for bail before the lower court was dismissed, which resulted in the filing of the petition before this Court in CrI.O.P. No.22478 of 2019 seeking bail. However, pending bail, the parents of the petitioner had sought for statutory bail for the petitioner u/s 167 (2) Cr.P.C., in which the learned counsel therein had not disclosed about the pendency of the bail application before this Court. However, the court below, considering the fact that final report had not been filed beyond the period of 90 days, granted statutory bail to the petitioner herein.

10) When the petition for bail was taken up by this Court, it was brought to the knowledge of this Court that statutory bail was granted, which was not revealed in the petition before this Court, necessitating this Court to call for a report, which resulted in the cancellation of bail by the court below by taking suo motu action.

11) It is evident from the order passed by the court below that on a suo motu action taken by the trial court calling upon the petitioner for explanation, the petitioner had submitted that he was not aware of the filing of the statutory bail by his parents and, therefore, pleaded that the said error may be excused. However, the trial court had proceeded to cancel the bail.

12) It is not the case of the respondents that the petitioner had not complied with the bail conditions imposed by the court below. It is also not the case of the respondents that there are supervening circumstances, as enumerated by the Hon'ble Supreme Court, which necessitates cancellation of bail. True it is that the petitioner had filed bail petition before this Court on the dismissal of the bail petition before the trial court. The petitioner had been under incarceration and, therefore, the non-filing of the final report by the investigating agency resulted in the parents of the petitioner seeking statutory bail for the petitioner by filing necessary petition. The learned counsel, who had filed the petition for statutory bail ought to have brought to the knowledge of the court below that petition for bail is pending before this Court. However, the learned counsel had not disclosed the said fact before the court below resulting in a situation, as pointed to above.

13) It is trite that bail is the norm and jail is exception. The non-filing of the final report resulted in grant of bail to the petitioner, that too statutory bail due to the attitude on



the part of the investigating agency in not filing the final report. Even during bail, the petitioner is not said to have not complied with any of the bail conditions necessitating its cancellation. The fact remains that the learned counsel who filed the bail application had not disclosed the fact about the pendency of the bail petition before this Court while filing petition for statutory bail. The mistake committed by the learned counsel ought not to be put against the petitioner by making him suffer incarceration, as it would be against the settled canons of criminal jurisprudence.

14) For the reasons aforesaid, this Court is of the considered view that the mistake committed by the counsel should not result in the deprivation of the rights guaranteed to an individual and, therefore, the order passed by the court below deserves to be set aside and the bail granted to the petitioner should stand revived.

15) Accordingly, this criminal original petition is allowed setting aside the order passed in Crl.M.P.No.580 of 2019 on 22.11.2019 and the petitioner is ordered to be released on bail, as granted to him in Crl.M.P.No.580 of 2019 vide order dated 24.09.2019. The petitioner shall comply with all the conditions as imposed by the trial court. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gln/nhs

To

- 1) The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri District.
 - 2) The Inspector of Police,
Perumbumalai Police Station,
Dharmapuri District.
 - 3) The Public Prosecutor,
High Court of Madras, Chennai-104.
- +1cc to Mr.K.Balu, Advocate, S.R.No.44073

Crl.O.P.No.2342 of 2020 &
Crl.M.P. No.1470 of 2020

RGN(CO)
RGA(27/09/2021)