



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.10.2021
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.8388 of 2018
and
Crl.M.P.No.2722 of 2019

The Assistant Commissioner,
Customs and Prosecution Unit,
New Customs House,
Meenambakkam,
Chennai-600027.

.. Petitioner

Vs.

1. F. Ubaithullah,

2. The State rep. by
The Inspector of Police,
S2, Airport Police Station,
St. Thomas Mount, Chennai.

.. Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., to cancel the Anticipatory bail granted vide order dated 09.02.2018 in Crl.O.P.No.26942 of 2017, in favour of the 1st respondent/Petitioner/Accused herein, namely Mr.F.Ubaithullah, in Crime No.345 of 2017 on the file of the 2nd respondent.

For Petitioners : Mr.P.Vishnu
For Respondents : Mr.C.E.Pratap,
Government Advocate (Crl.Side)

O R D E R

The petitioner has filed this petition seeking to cancel the Anticipatory bail granted vide order dated 09.02.2018 in Crl.O.P.No.26942 of 2017, in favour of the 1st respondent/Petitioner/Accused herein, namely Mr.F.Ubaithullah, in Crime No.345 of 2017 on the file of the 2nd respondent.

2. It is the case of the petitioner that while he was discharging his duty as Customs Officer and checking the baggages belonging to the 1st respondent/accused herein, the accused person had prevented the petitioner from discharging his duty, due to which a wordy quarrel arose between the petitioner and the accused which resulted in the registration of FIR.



3. The learned counsel for the petitioner submits that this Court had granted anticipatory bail to the 1st respondent/accused herein in Crl.O.P.No.26942 of 2017 on the sole ground that there are no previous cases pending against the accused person which has to be reconsidered. He further submits that the accused is a habitual offender and has been engaged in smuggling activities and has been detained under COFEPOSA Act. However suppressing the previous cases pending against him, the accused moved anticipatory bail petition and had obtained favourable orders. Further, the signature of the accused in the affidavit filed in support of Anticipatory Bail petition is also not genuine and therefore on these grounds the bail granted to the accused needs to be reconsidered and recalled.

4. Learned counsel appearing for the accused/respondent submitted that the petitioner had in no way suppressed any materials relating to the previous cases against him. Nowhere had the accused stated that there were no previous cases against him. It is further submitted by the learned counsel for the petitioner that, in fact, the learned counsel for the respondent, who represented the matter on the day when bail was granted had made a categorical statement that no previous case is pending against the petitioner.

5. It is the further submission of the learned counsel for the accused that the previous cases, which are being projected in aid of cancellation of the present anticipatory bail pertains to the year 1990's at which point of time, the petitioner was detained under the COFEPOSA Act. However, the present bail petition relates to an offence in the year 2014 for which anticipatory bail petition was moved in the year 2017 and anticipatory bail had been granted on 09.02.2018 and for cancelling the said anticipatory bail, the present petition has been moved by the petitioner in the year 2018. Further, it is the submission of the learned counsel for the accused that no cases between the time the accused obtained bail and the present day has been pointed out by the petitioner and in such circumstances, no supervening circumstances arise, as postulated by the Hon'ble Supreme Court in Daulat Ram - Vs - State of Haryana (1995 (1) SCC 349). Accordingly, he prays for dismissal of this petition.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. This Court is oblivious of the decision of the Hon'ble Supreme Court in the case of Dolat Ram's case (supra), wherein



it has been clearly held that bail, once granted, the same shall not be cancelled unless supervening circumstances are brought to the notice of the Court.

Section 439 (2) of Cr.P.C. clothes the Court with the power to deal with issue relating to cancellation of bail. The Supreme Court has enumerated the following supervening factors that justify cancellation of bail :-

- i) Interference or attempt to interfere with the due course of administration of justice;
- ii) Evasion or attempt to evade the due course of justice;
- iii) Abuse of the concession granted to the accused;
- iv) Possibility of the accused absconding;
- v) Likelihood of/actual misuse of bail;
- vi) Likelihood of the accused tampering with the evidence or threatening witnesses;
- vii) Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.

8. The courts should be more rigid in its examination of violation and proof of violation in matters relating to cancellation of bail. Various decisions of the Hon'ble Apex Court vests the courts with power and discretion to cancel bail even when there are no supervening circumstances and broadly classified, they could be brought under the following heads :-

- i) Where the court granting bail ignores relevant material and takes into account irrelevant material of substantial nature and not trivial nature;
- ii) Where the court granting bail overlooks the position of the accused qua the victim especially if the accused is in some position of authority such as a policeman and there is prima facie, a misuse of position and power, including over the victim.
- iii) Where the court granting bail ignores the past criminal record and conduct of the accused while granting bail;
- iv) Where bail has been granted on untenable grounds;
- v) Where the order granting bail suffers from serious infirmities resulting in miscarriage of justice;
- vi) Where the grant of bail was not appropriate in the first place, given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified;
- vii) When the order granting bail is apparently whimsical, capricious and perverse in the facts of



the given case.

9. In the above scenario, keeping the ratio laid down by the Hon'ble Supreme Court relating to cancellation of bail in mind, this Court would now proceed to analyse whether the anticipatory bail granted to the petitioner, based on the materials placed before the Court by the petitioner and the respondent, reveals any sinister motive on the part of the petitioner while seeking bail.

10. A bare perusal of the materials available on record, more so, the submission of the learned counsel for the petitioner at the time of granting bail, a categorical recording has been made by this Court that no previous case is pending against the accused. Further, it is to be pointed out that the accused had not made any mention about no previous case pending against him. Taking into consideration the stand of the learned counsel for the petitioner herein, this Court, considering all the other materials had granted anticipatory bail to the accused. Therefore, by no stretch of imagination, could it be said that the accused had suppressed about the previous cases pending against him. The lacunae on the part of the learned counsel for the petitioner herein in not making proper submission before the Court cannot be put against the accused and claim that there is suppression of material facts.

11. Further, it transpires from the materials available on record, more especially the affidavit filed by the petitioner in support of the petition seeking cancellation of bail, that the petitioner was detained under the COFEPOSA Act and the said previous case has not been placed before this Court by the petitioner, which is said to be a suppression.

12. In this backdrop, a perusal of the affidavit filed by the petitioner in the present petition clearly shows that with regard to certain illegal activities, the accused was detained under the COFEPOSA Act in the year 1994 and 1999. Barring that, an averment has been made that the accused has been continuing the said illegal activity, but no material whatsoever has been placed before this Court to substantiate the said allegation. Further, no material has been placed before this Court to show as to what happened to the said detention orders passed against the accused.



13. The accused, as alleged, may have involved in certain illegal acts, which necessitated his detention, but his continued involvement in such acts should be placed before the Court when a petition canvassing cancellation of bail granted is filed. The previous acts are said to have been perpetrated in the year 1994 and 1999 and more than a decade and a half thereafter, the present case has been filed against the accused. Though it is alleged that the accused had involved himself continuously in illegal acts even after the said order of detention, but no substantive materials in this regard has been placed to substantiate the said contention. Merely allegation without any material cannot be the basis to cancel the bail granted to the accused.

14. In Daulat Ram's case (supra), as pointed out above, the Hon'ble Apex Court has cautioned the High Court's from interfering with the bail already granted in the absence of any supervening circumstances being established before the Court. It is to be kept in mind that bail is the norm and jail is exception and unless and until supervening circumstances are pointed out, which have been established before this Court, the Courts shall not interfere with the bail granted to the accused.

15. As pointed out above, the circumstances pointed out by the petitioner are mere allegations without any materials and there is no suppression on the part of the accused. Further, the misrepresentation on the part of the petitioner's counsel cannot be put against the accused when bail was granted and in such view of the matter, this Court is of the considered view that no supervening circumstances have been established to cancel the bail granted to the petitioner.

16. For the reasons aforesaid, no case has been made out for cancellation of bail granted to the petitioner and, accordingly, this petition is dismissed. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

NHS



To,

1. The Inspector of Police,
S2, Airport Police Station,
St. Thomas Mount, Chennai.

2. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.8388 of 2018
&

CrI.M.P.No.2722 of 2019

PCH(CO)
A.SK(01.12.2021)