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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.6497 OF 2019

Anu @ Sashikala

... Petitioner

.Vs.

1. The State of Tamil Nadu,
Rep. by the Inspector of Police,
Central Crime Branch-I, Team No.IV,
Vepery, Chennai.
2. S.Shajahan @ S.S.Chakravarthy,
3. Srinivasan Ramamoorthy,
4. Nelson,
5. Lalgudi N.Illayaraja,
6. Kanal Kannan @ Kannan Velpandian,
7. A.Shakthivel,
8. T.Selvaraj @ Selvam.

(Respondents 3 to 8 were impleaded as party
respondents vide order of this Court dated
17.04.2021 by in Crl.MP.Nos.10735 to 10740 of 2019)

...Respondents

PRAYER:

Criminal Original Petition is filed under Section 439(ii) of Cr.P.C., to cancel the bail in Crl.O.P.No.26652 of 2018 in Crime No.405 of 2018 passed by this Hon'ble Court dated 11.12.2018 and pass orders.



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For Petitioner : Mr.L.Infant Dinesh
For R1 : Ms.Kritika Kamal
Government Advocate (Crl.side)
For R2 : MR.A.Abdual Hameed
(for AAV Partners)
For R3 to R6 : Mr.Raj Thilak E.
For R7 and R8 : Mr.Abdul Saleem

O R D E R

This criminal original petition has been filed to cancel the bail granted by this Court to the 2nd respondent by an order dated 11.12.2018 passed in Crl.O.P.No.26652 of 2018.

2.The case of the prosecution is that the complainant is the partner of M/s.Magic Rays, a film distributing firm. The 2nd respondent produced a film named "Vaaluu" and he entered into an agreement dated 29.05.2013 with the defacto complainant assigning the rights of the theatre distribution and exploitation of the said movie in the territory of the State of Tamil Nadu, Puducherry, Kerala and Karnataka for a period in perpetuity for the agreed consideration of Rs.10,00,00,000/-. In this regard, a dispute arose in respect of assigned rights of theatre release of the film. As such the defacto complainant filed a suit against the petitioner in C.S.No.541 of 2015 before this Court for the relief of permanent injunction. In the said suit, they amicably settled the issues and entered into a Copyright Assignment Agreement dated 01.08.2015, and the said agreement form part and parcel of the judgment and decree in C.S.No.541 of 2015. As per the said agreement, the petitioner agreed to repay a sum of Rs.7,45,00,000/- by giving exclusive theatre right of distribution, exhibition and exploitation of another movie currently being produced by him in the name "Vettai Mannan" for the State of Tamil Nadu, failing which the petitioner has to repay the said sum of Rs.7,45,00,000/- with interest. Even after completion of three years from the year 2015, the petitioner did not even commence the production of the film named "Vettaimannan". Therefore, he cheated the defacto complainant to the tune of Rs.7,45,00,000/-. When questioned the same, the petitioner threatened him with dire consequences. Hence, the complaint.

3.The learned counsel for the petitioner/defacto complainant would submit that this Court had granted anticipatory bail to the accused/R2 on the ground that he completed 80% of the movie



by relying upon the materials and other documents placed before the Court. He further submitted that those documents and materials are forged one and infact he has not completed 80% of the movie and hence he seeks for cancellation of the anticipatory bail granted to the 2nd respondent.

4.The learned counsel for the second respondent would submit that already this Court considered the issues and granted anticipatory bail on certain conditions. It cannot be cancelled unless the petitioner file any materials to prove that the materials placed before the court is a forged one and it has a separate cause of action and it should be worked out in the manner known to law. Therefore, he seeks for dismissal of this petition.

5.The learned Government Advocate appearing on behalf of the 1st respondent Police submitted that the petitioner has complied with the conditions.

6. The order passed by this Court on 11.12.2018 in Crl. O.P. No.26652/18 reveals that while granting anticipatory bail, while certain conditions were imposed by this Court, the Court had also recorded a finding that on the materials placed before it, it is seen that 80% of the movie had been completed and, therefore, in that backdrop, keeping in mind the agreement entered into between the defacto complainant and the 2nd respondent/accused, anticipatory bail was granted to the 2nd respondent/accused. However, now the present petition has been filed averring change of circumstance, in that the movie had not at all commenced and, therefore, the bail granted to the 2nd respondent should be cancelled.

7. As pointed out by the learned counsel for the 2nd respondent, though such a ground has been raised by the petitioner, however, no materials has been placed before this Court to sustain the said ground. It is the stand of the petitioner that forged documents have been placed to satisfy the Court for obtaining bail. However, the petition is bereft of particulars as to how the said documents are alleged to be forged and the materials which point to the said documents being forged documents. Mere averment cannot partake the character of proof and more so when the petitioner seeks to cancel the bail granted to the 2nd respondent, this Court is ordained with the task of satisfying itself that a fraudulent act had been perpetrated on this Court to obtain bail.

8. Further, when there has been a finding rendered by this Court, it is the duty of the petitioner to satisfy this Court that the said finding was on the basis of documents, which are untrue. Mere assertion by the petitioner that documents are



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forged on the basis of which bail has been granted would not be suffice to cancel the bail granted to the 2nd respondent. There should be deliberate non-compliance of the conditions stipulated and/or fraudulent act perpetrated before this Court for cancellation of bail and in the above circumstances, there being no deliberate non-compliance with the order passed by this Court, nor any material to show that fraud has been perpetrated on this Court, the prayer of the petitioner herein for cancellation of bail does not merit acceptance.

9. It is to be pointed out at this juncture that it has been the ratio laid down in a catena of decisions that unless and until substantive materials are placed to show that the bail obtained was through fraudulent means and that the conditions imposed by the court have not been complied with, on mere ipse dixit, the Courts shall not invoke its power to cancel the bail. The conditions for cancellation of bail are more stringent than the conditions for grant of bail, as has been laid down by the courts and in the present case, on mere assertions, the petitioner seeks to have the bail granted to the petitioner cancelled without placing the requisite materials to substantiate his submissions. Such being the case, this Court is not inclined to grant the prayer as sought for by the petitioner.

10. For the reasons aforesaid, this application for cancellation of bail is liable to be dismissed and, accordingly, the same is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Central Crime Branch-I, Team No.IV,
Vepery, Chennai.
2. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.6497 of 2019

SMI (CO)
CS/25/10/2021