

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2021

C O R A M

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRL. O.P. NO. 6774 OF 2020
AND
CRL. M.P. NO. 3716 OF 2020**

State rep. by
The Inspector of Police (Crime),
D-1, Triplicane Police Station,
Chennai 600 002.

... Petitioner

- Vs -

1.Raja Hussain,
S/o.Mohammed Ali.

2.Mohammed Saifullah,
S/o.Raja Hussain.

3.Rahmathullah,
S/o.Saleem Basha.

4.Ashif Khan,
S/o.Abdul Maliq.

5.Mohammed Thoufiq,
S/o.Syed Mohammed.

... Respondents

Criminal Original Petition is filed under Section 439(ii) of Cr.P.C., to cancel
the bail order passed in Crl.M.P.No.6299 of 2020 dated 18.03.2020 by the

Principal Sessions Judge, Chennai.

For Petitioner : Ms. Kritika Kamal. P., GA (Crl. Side)

For Respondents : Mr.Mohamed Ansar

ORDER

This criminal original petition has been filed to cancel the bail granted to the respondents herein by an order dated 18.03.2020 passed in Crl.M.P.No.6299 of 2020 by the learned Principal Sessions Judge, Chennai.

2. The respondents herein were arrested on 11.03.2020 for the offence punishable under Sections 147, 148, 341, 294(b), 323, 427, 336, 363, 332, 307 and 506(ii) IPC and Section 3 of TNPPDL Act, in Crime No.138 of 2020. The respondents filed a bail petition before the learned Principal Sessions Judge, Chennai, in Crl. M.P. No.6299 of 2020. The Principal Sessions Judge, by an order dated 18.03.2020, granted bail to the respondents on certain conditions. Challenging the same, the petitioner herein has filed the present petition seeking to cancel the bail granted to the respondents/accused.

3. Learned Government Advocate (Crl. Side) appearing for the petitioner submits that many of the material facts, which were required for deciding

whether the respondents herein could be enlarged on bail were not placed brought to the notice of the court below when the matter of bail for the respondents herein was considered. It is further submitted by the learned Government Advocate that the antecedents of the respondents herein was not taken into consideration by the trial court while granting bail. It is the further submission of the learned Government Advocate that the trial court has granted bail to the accused merely on account of the injuries alleged to have been suffered by them, but has not taken into consideration the injuries sustained by the police personnel and also the act of the accused in damaging the vehicle of the police authorities. It is the further submission of the learned Government Advocate that the 1st respondent/A-1 is a notorious criminal and involved in 18 cases including one bomb blast case and one TADA case and he was in prison for more than 21 years. She further submitted that A2 is the son of A1 and A3 to A5 are henchmen and the offences are heinous in nature and if they are let out on bail, there is every likelihood of causing danger to the life of the defacto complainant in Crime No.138 of 2020. She further submitted that investigation is still pending and the statements u/s 164 Cr.P.C. are yet to be recorded from the defacto complainant and the victim.

4. The learned counsel for the respondents submitted that A1 suffered incarceration for more than 21 years in a case in which he stood acquitted and that there are no pending cases against A-1. It is further submitted that there are no pointed allegations against A-2 to A-5 and no materials have been placed by the petitioner herein to show that they had hampered the investigation in any manner.

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

6. Before proceeding to find out whether the bail granted to the accused is justified or not, it would be useful to have a bird's eye view of the proposition of law on the aspect of interference by the appellate court with the bail already granted to the accused.

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7. The Hon'ble Supreme Court, in the case of ***State of Kerala – Vs – Mahesh (2021 SCC OnLine SC 308)***, had occasion to consider the question relating to the power of the appellate court to interfere with the order of bail

granted by the lower court and dissecting on the various precedents on this issue, held as under :-

“16. It is well settled that though the power to grant bail under Section 439 of the Cr.P.C is discretionary, such discretion has to be exercised judiciously, as held by this Court in Ram Govind Upadhyay v. Sudarshan Singh reported in (2002) 3 SCC 598. Speaking for the Court, Umesh Chandra Banerjee, J. said:—

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be

noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

17. In Prasanta Kumar Sarkar v. Ashis Chatterjee reported in (2010) 14 SCC 496, D.K. Jain, J., speaking for a two-Judge Bench of this Court laid down the principles for examining the correctness of orders granting bail to an accused. This Court held:—

"9. ...It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

10. It is manifest that if the High Court does not

advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

18. In *Mahipal v. Rajesh Kumar* reported in (2020) 2 SCC 118, this Court held:—

“14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case

basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding."

19. The Respondent Accused relied on the judgments of this Court in *Sanjay Chandra v. Central Bureau of Investigation* reported in (2012) 1 SCC 40 and *Siddharam Satlingappa Mhetra v. State of Maharashtra* reported in (2011) 1 SCC 694, where this Court observed that seriousness of the charge is not test or factor while considering the application for bail.

20. In *Sanjay Chandra (supra)*, the accused were charged with economic offences of huge magnitude which could jeopardize the economy of the country. This Court held:—

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could

be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any

material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general."

21. In Siddharam Satlingappa Mhetra (supra) rendered in the context of the discretion to grant anticipatory bail under Section 438, this Court advocated the need to balance individual personal liberty with societal interest. This Court held:—

"84. Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important."

22. There is no straight jacket formula for grant or refusal of bail. Seriousness of the charge is undoubtedly one of the

relevant considerations while considering bail applications as held in *Sanjay Chandra (supra)* cited on behalf of the Respondent Accused. All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses.

* * * * *

29. In this Appeal the correctness of the impugned order of the High Court, in granting bail to the Respondent Accused is in question. The exercise of appellate jurisdiction to adjudge correctness of a bail order are not restricted by the principles for cancellation of bail. As held by this Court, speaking through Dr. D.Y. Chandrachud J. in *Mahipal v. Rajesh Kumar (supra)*:—

“16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion

in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], the accused was granted bail by the High Court [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031]. In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held: (Neeru Yadav case [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], SCC p. 513, para 12)

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category

and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.”

8. From the above, it is amply evident that the various aspects that required to be gone into by the Courts before granting bail has been adumbrated by the Hon'ble Supreme Court in the aforesaid decision. Keeping the principles laid down above, this Court would now proceed to analyse the case on hand.

9. It is the case of the petitioner herein that monetary transaction

between the defacto complainant and his friend with the accused had led to wordy altercation and in the aftermath of the aforesaid altercation, the accused kidnapped the friend of the defacto complainant resulting in the lodging of the case leading to the police authorities rescuing the friend of the defacto complainant. It is the case of the prosecution that at the time of rescue operation, the accused attacked the police party and there was retaliation by the police personnel in which the accused sustained injuries and the police authorities, including the Inspector of Police sustained injuries. Further, the vehicle of the police party was also damaged by the accused.

10. Even the case of the respondents/accused reveal that there was an altercation between the accused party and the defacto complainant and his friend in which the police intervened and beat the accused.

11. In the backdrop of the aforesaid scenario, a perusal of the order passed by the court below reveals that the court below, merely taking into consideration the remand report, which points to the injuries on the body of the accused, without any further discussion and also taking into consideration the fact that the accused have been in custody for eight days, has enlarged the

respondents/accused on bail.

12. This Court is at a loss to understand the manner in which the court below has granted bail to the accused. It has been time and again reiterated that the plurality of the offences and the offences alleged have to be taken into cumulative consideration with all associated material before granting bail. In the case on hand, the order of the court below granting bail to the accused deserves much to be said, but this Court is not inclined to dwell deep into the same as judicial propriety warrants this Court not to go beyond its purview to speak about the manner in which bail has been granted. When it is the case of the prosecution that A-1 is a notorious criminal and involved in very many grave cases and allegations made in the present case also being grave in nature, it was incumbent on the part of the court below to record reasons in support of its decision to grant bail. However, the order of the court below granting bail, though runs to four pages, except for certain facts, no reasons have been given, except for the marking the injuries from the remand report, while granting bail to the accused. Though it is said that bail is the norm and jail is exception, however, the gravity of the offence as also the antecedents of the accused should weigh in the mind of the court while granting bail. Further, it is the

pointed case of the petitioners herein that investigation is yet to be completed and that being the case, the allegations being grave in nature, more especially against A-1, and that the accused having been in custody only for a period of eight days, there was no warranting circumstance or any prima facie material, which necessitated the court below to grant bail to A-1.

13. For the reasons aforesaid, this Court is of the considered view that the scales of justice necessarily tilts in favour of the petitioner to cancel the bail granted to A-1/1st respondent herein, Viz.Raja Hussain. ***Accordingly, this petition insofar as the 1st respondent/A-1,-Raja Hussain is allowed. The petitioner herein/Inspector of Police, D-1, Triplicane Police Station, Chennai, is directed to take steps to secure the 1st respondent/A-1 in accordance with law.***

14. Insofar as respondents 2 to 5 are concerned, though the petitioner herein submits that A-2 is the son of A-1 and A-3 to A-5 are henchmen, who jointly attacked the defacto complainant and his son, however, except for the allegations and the charges against respondents 2 to 5, there are no concrete materials at the present point of time, which necessitates this Court to interfere with the order of bail passed by the learned Principal Sessions Judge, Chennai,

dated 18.03.2020 in Crl.M.P.No.6299 of 2020. **Accordingly, the present petition to cancel the bail with respect to respondents 2 to 5 herein is dismissed.**

15. In the result, the criminal original petition is allowed in part as above.

Consequently, connected miscellaneous petition is closed.

27.04.2021

Index : Yes / No

Internet : Yes

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To

1. The Principal Sessions Judge,
Chennai.

2.The Inspector of Police (Crime),
D-1, Triplicane Police Station,
Chennai 600 002.

3.The Public Prosecutor,
High Court, Madras.

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M.DHANDAPANI, J.

rm/GLN



CRL. O.P. NO.6774 OF 2020

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