

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.13786 of 2020

K.DEIVARANI
W/o.Kumar

.... Petitioner

Vs.

1.The State rep. by
The Inspector of Police
E.5, Sholavaram Police Station
Thiruvallur District
(Crime No.2662 of 2020)

...1st Respondent/Complainant

2. JAYAPPAUL @ JAYAPALAN
S/o.Muthan

3. DASS @ PALAYADASS
S/o.Muthan

.... Respondents 2 & 3 / Accused

PRAYER: Criminal Original Petition is filed under Section 439 (2) r/w. 482 of Criminal Procedure Code to cancel the anticipatory bail order in Crl.O.P.No.12100 of 2020 passed by this Hon'ble Court on 13.08.2020.

For Petitioner

: Mr.P.Bharath

For Respondent-1

: Mr.C.Iyyappa Raj

Additional Public Prosecutor

For Respondents 2 & 3

: Mr.D.Gopikrishnan

ORDER

(The case has been heard through video conference)

This Criminal Original Petition has been filed by the petitioner/ defacto complainant seeking to cancel the anticipatory bail granted to the respondents 2 and 3 vide Crl.O.P.No.12100 of 200 dated 13.08.2020.

2. It is the case of the petitioner /defacto complainant that on the complaint given by her, a case in Crime No.2662

of 2020 was registered against the respondents 2 and 3 and others for offence under Sections 147, 294(b), 448, 427, 506 (ii) read with Section 4 of TNPWH Act. The allegation as per the defacto complainant is that on 16.06.2020, the respondents 2 and 3 along with other accused trespassed into her house and questioned the whereabouts of her son who had one side love affair with the 2nd respondent's sister's daughter and subsequently damaged the household articles and also attacked her by legs and further, they have threatened her with dire consequences. During the course of investigation, it was found that severe damage had been caused to the household articles and thereby, the case was altered to one under Section 3 TNPPDL Act. Thereafter, the respondents 2 and 3 had approached the Principal District and Sessions Court, Thiruvallur, seeking for anticipatory bail by filing O.L.B.P. No.1402 of 2020. While the same was pending before the Thiruvallur Court, suppressing the pendency of the application before the lower Court, the respondents 2 and 3 have approached this Court by filing CrI.O.P.No.12100 of 2020 and have obtained anticipatory bail. Hence, the present petition has been filed seeking to cancel the anticipatory bail granted to the respondents 2 and 3 in CrI.O.P.No.12100 of 2020 dated 13.08.2020 on the ground of suppression of facts.

3. The learned Counsel for the petitioner / defacto complainant would submit that the respondents 2 and 3 had approached the Principal District and Sessions Court, Thiruvallur, seeking anticipatory bail and while the petition was pending before the lower Court, suppressing the same, the respondents 2 and 3 had filed another petition before this Court in CrI.O.P.No.12100 of 2020 stating that no other petition was pending before the lower Court and that they have also managed to obtain anticipatory bail before this Court on 03.08.2020. He would submit that this is the case where the respondents 2 and 3 along with others, have ransacked the entire house of the petitioner/defacto complainant and caused damages to the household articles and that a two wheeler was also damaged. The respondent police have assessed the value of damage as Rs.2 lakhs. Hence, he prays to cancel the anticipatory bail granted to the respondents 2 and 3.

4. The first respondent police have filed a status report stating that the respondents 2 and 3 had filed an application for anticipatory bail in O.L.B.P.No.1402 of 2020 before the Principal District and Sessions Court, Thiruvallur. While so, the petitioner/defacto complainant had also filed an intervening application in O.L.B.P.No.1463 of 2020 dated 07.08.2020 and while the petitions were pending before the lower Court, the respondents 2 and 3, suppressing the pendency

of the anticipatory bail application before the lower Court, have approached this Court and obtained anticipatory bail. He would submit that due to Corona Pandemic situation prevailing at the relevant time, the respondent police were unable to give proper instruction to the Public Prosecutor's Office over phone and the mistake is inadvertent and it had happened due to lack of proper communication. Further, it has been stated that the damage suffered by the defacto complainant has been assessed as Rs.2 lakhs.

5. The learned Additional Public Prosecutor appearing for the 1st respondent would submit that due to Covid situation, the cases were taken up through video conferencing and the instructions were also taken over phone and due to inadvertent mistake, the respondent police were unable to give proper instructions to the Public Prosecutor.

6. The respondents 2 and 3 have filed a counter. The crux of the counter is that they had instructed their Counsel to file an application before the District and Sessions Court and while the petition was pending before the lower Court, without proper communication and without any instructions from the respondents 2 and 3, another petition had been filed before this Court. The respondents 2 and 3 have also filed an affidavit before this Court stating that the incident had happened on account of domestic dispute between two families who are living closer by and there is also a case and case in counter and further the respondents 2 and 3 have stated that without prejudice to their defence and contention, they are prepared to pay an amount of Rs.50,000/- each to the petitioner/defacto complainant and that they have already drawn two separate demand drafts (Nos.358895 and 377801 dated 01.02.2021) in favour of the defacto complainant K.Deivarani drawn at State Bank of India, Royapuram Branch.

7. The learned Counsel for the respondents 2 and 3 would submit that due to the Pandemic situation, there was some miscommunication and without proper instructions, petitions were filed before both the Courts. He would submit that the mistake is not willful and it is out of inadvertence.

8. Heard the learned Counsels.

9. It is submitted by the learned Counsel for the respondents 2 and 3 that during Covid pandemic, there was some miscommunication between the Counsels and the respondents 2 and 3 and without their instructions, the petition had been filed before this Court seeking for anticipatory bail while another application was pending before the Principal District

and Sessions Court, Thiruvallur and that the mistake is inadvertent and it is not willful or wanton. It is also stated that the respondents 2 and 3 are prepared to pay Rs.50,000/- each, to the defacto complainant without prejudice to their defence and contention.

10. In view of the above facts and submissions, the respondents 2 and 3 are directed to immediately hand over the demand drafts Nos.358895 and 377801 dated 01.02.2021 drawn in favour of the defacto complainant K.Deivarani, at State Bank of India, Royapuram Branch each for sum of Rs.50,000/-, to the learned counsel for the petitioner/defacto complainant. It is made clear that the payment by way of demand draft will not cause any prejudice to the respondents 2 and 3 during trial. It is also made clear merely because the respondents 2 and 3 pay the above said amount, it would not amount to admission of their guilt.

11. With the above observation, this Criminal Original Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ksa-2

To

1. The Inspector of Police
E.5, Sholavaram Police Station
Thiruvallur District

2. The Public Prosecutor
High Court of Madras,
Chennai 600 104.

JP-II(CO)
CSR: 09.03.2021

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