



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighth day of October Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL ORIGINAL PETITION No.15509 of 2021

S.DHARANI

[PETITIONER / ACCUSED]

Vs

1 STATE REP BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
ERODE.
(CR NO.16/2021)

[RESPONDENT/COMPLAINANT]

2 NAVANEETHAKRISHNAN

[RESPONDENT/PETITIONER/ACCUSED-1]

Petition praying that in the circumstances stated therein the High Court will be pleased to cancel the anticipatory bail granted to the 2nd Respondent/1st Accused by the Learned Principle District and Sessions Judge, Erode in CRL.MP.NO.1205 of 2021 vide order dated 23.07.2021 and thus render justice.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.S.ASHOK KUMAR Advocate for the Petitioner and of MR.C.E.PRATAP Govt. Advocate (Crl. Side) for 1st Respondent and of MR.C.S.SARAVANAN Advocate for 2nd Respondent the court made the following order:-

The petitioner has filed this petition to cancel the anticipatory bail granted to the 2nd respondent by the learned Principle District and Sessions Judge, Erode in Crl.M.P.No.1205 of 2021 vide order dated 23.07.2021.

2. The case of the petitioner is that the 2nd respondent/A-1 made false promises to the petitioner herein that he will marry the petitioner and had sexual relationship on several occasions. Thereafter he refused to marry the petitioner and he also circulated the photographs through social media which were taken while they were loving each other. When the petitioner approached 2nd respondent with regard to the marriage, the 2nd respondent along with other accused persons threatened her with dire consequences. Hence the petitioner lodged a complaint before the law enforcing agency against the 2nd respondent.



3. The learned counsel for the petitioner submitted that the Trial court has granted anticipatory bail to the 2nd respondent vide order dated 23.07.2021 and the same has to be cancelled on the ground that the bail was granted without considering the gravity of the offence committed by the 2nd respondent, which requires interference of this Court. Therefore the present petition is filed before this Court to cancel the anticipatory bail granted to the 2nd respondent by the trial court in Crl.M.P.No.1205 of 2021 vide order dated 23.07.2021.

4. The learned counsel for the 2nd respondent submits that once the bail has been granted by the trial court, it should not be generally interfered into except when circumstances which have not been placed before the court are brought to its notice. It is the submission of the learned counsel that no such circumstance has been placed before the court to seek cancellation of bail and the petitioner having complying with the conditions imposed by the court below, the anticipatory bail granted shall not be interfered with.

5. The learned Government Advocate (Crl. side) appearing on behalf of the first respondent police submitted that investigation has been completed. In view of the serious allegation, the learned counsel requested this court to cancel the bail granted to the 2nd respondent.

6. Heard the learned counsel for the petitioner as well as the 2nd respondent and the learned Government Advocate and perused the materials available on record.

7. 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;



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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.

(Emphasis Supplied)

From the above, it is amply evident that even if there are no supervening circumstances, even then the courts are empowered to cancel the bail granted to the accused.



9. In the above backdrop, a perusal of the order passed by the trial court reveals that the trial court has granted anticipatory bail to the 2nd respondent on the grounds that the preliminary investigation has been completed and the co-accused was enlarged on bail. However the trial court has granted bail to the 2nd respondent mechanically without considering the gravity of the offence committed by the 2nd respondent.

10. It is trite that *bail is the norm and jail is exception*. However, it should not be lost sight of that while granting bail, the courts should weigh all the factors associated with the case while considering the bail application of the accused. However, the materials available on record reveal that the court below, on the grounds that the preliminary investigation was completed and the co-accused was enlarged on bail has enlarged the accused on bail, without considering the gravity of the offence alleged against the accused person.

11. It is the case of the petitioner / De-facto Complainant that the 2nd respondent/accused had been continuing with illicit relationship with some other person to the detriment of the petitioner and even while the bail application was filed before the trial court, the 2nd respondent was continuing with the said illicit relationship and is not even trying to correct himself which clearly shows that the accused was praying for grant of anticipatory bail only to continue the illicit relationship and not for the purpose of redeeming himself. However the court below, without considering the above aspects had granted anticipatory bail to the 2nd respondent on the aforesaid ground without discussing anything about the factual matrix and the order passed by the court below cannot be sustained.

12. The decision of the Hon'ble Supreme Court in the case of *Daulat Ram - Vs - State of Haryana (1995 (1) SCC 349)* comes to the aid of this Court, wherein the Hon'ble Supreme Court has held that once supervening circumstances are brought to the notice of the Court, then the Court is clothed with power to revisit the bail granted to an accused. In the case on hand, the non-application of mind on the part of the trial court while granting bail to the accused definitely is a supervening circumstance, which should weigh in the mind of this Court while dealing with the prayer of the petitioner for cancellation of the said bail. Taking into consideration the gravity of the offence, the court below ought not to have enlarged the accused on bail on the grounds that the preliminary investigation has been completed and the co-accused was enlarged on bail. The said grounds alone would not suffice to grant bail to the accused.



13. In the above circumstances, this Court has no hesitation in arriving at a conclusion that the trial Court erred in enlarging the second respondent/accused in bail. Accordingly the bail granted to the second respondent is cancelled and the first respondent police is directed to take immediate steps in accordance with law to arrest the second respondent. Accordingly, the order passed by the Principal Sessions Judge, Erode in C.M.P.No.1205 of 2021 dated 23.07.2021 is set aside and this Criminal Original Petition is allowed.

-sd/-
08/10/2021

This order, on being produced, be punctually observed and carried into execution by all concerned
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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
ERODE.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
ERODE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S.S.ASHOK KUMAR Advocate on payment of necessary
charges SR.NO.11323

CRL OP.15509/2021

Date :08/10/2021

CSK 02/11/2021