

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Ninth day of September Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL ORIGINAL PETITION No.14515 of 2021

P.MURUGESAN

[PETITIONER / ACCUSED]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
DHARAPURAM POLICE STATION,
THIRUPPUR DISTRICT.
CRIME NO.1075 OF 2021.

[RESPONDENT]

This petition having been posted this day for being mentioned pursuant to the order of this Court dated 23/08/2021 and made herein and in the presence of M/S. E.KANNADASAN Advocate for the Petitioner and of PUBLIC PROSECUTOR on behalf of the Respondent, the Court made the following order:..

This petition is listed today under the caption "For Clarification" at the instance of the Court.

2. Vide order dated 23.8.2021, this Court had granted anticipatory bail to the petitioner on certain conditions. Pursuant to the said order, a letter has been received from the learned Subordinate Judge, Dharapuram, detailing certain aspects, which were not available/placed before the the Court at the time when this Court had considered the petition for grant of anticipatory bail. In view of the changed circumstances, as is evident from the letter of the learned Subordinate Judge, Dharapuram, the present petition is taken up again for consideration.

3. The case, as projected by the prosecution is that the petitioner is a practicing Advocate, who was the counsel on record for the claimant in MCOP No.911/2011 on the file of the learned Subordinate Judge, Dharapuram, in which an award for a sum of Rs.3,78,000/- was passed in favour of the claimants therein. The

complaint emanated on the allegation that the petitioner had misappropriated the claim amount by causing impersonation of the claimants by some other persons.

4. When the case was taken up by this Court on 23.8.2021, it was pleaded on behalf of the petitioner that he has not committed any offence and that the misappropriation has been caused by his clerk and that to show his bona fide, the petitioner has made good the loss by depositing the entire amount.

5. Curiously, for the said stand taken by the petitioner, on instructions from the respondent, the learned Government Advocate also submitted that the petitioner has repaid the entire amount misappropriated and, therefore, he has no serious objection to the grant of anticipatory bail.

6. In furtherance to the said submissions and the stand taken by the respective parties, this Court, vide order dated 23.8.21, had granted anticipatory bail to the petitioner with certain conditions. It is to be pointed out that pursuant to the grant of anticipatory bail, a letter has been addressed to the Registry by the learned Subordinate Judge, Dharapuram, in which it has been brought to the notice of this Court that the facts of the case by the petitioner has been totally misrepresented and that it is not a case in isolation in which the petitioner had misappropriated the amount of the claimants, but had indulged in such acts in more than 10 cases, the details of which have been tabulated by the learned Subordinate Judge in his communication dated 29.08.2021, which have been identified on the basis of the directions issued by the Division Bench of this Court in *Suo Motu W.P. No.12395/2021* and even FIR has been directed to be registered against the petitioner. It is further submitted by the Judicial Officer that in spite of directions issued by this Court for registration of FIR against the petitioner, the respondent was not inclined to register the FIR and only after a lapse of almost a month, after great persuasion and taking action, the FIR was registered.

7. It is further submitted through the said letter that the petitioner had swindled the compensation paid to very many claimants and had enjoyed the benefits without paying the same along with interest to the claimants and that the present payment, alleged to be made, is without interest, which fact has also not been placed before this Court at the time of grant of bail. It is further submitted that the petitioner had swindled more than Rs.22,70,751/- and the learned Judicial Officer has further gone on to state that the investigation has also not been done in a proper manner and in fact, no investigation has been done and the stand taken by the respondent is nothing but aiding the offender/petitioner to the detriment of the court and the judicial proceedings and it is in stark contravention of the directions issued by the Division Bench of this Court.

8. It is further evident from the said letter that the misappropriation, which is the subject matter of the present case, which is alleged to have been paid to the claimant, on the basis of the directions issued by the Division Bench, case has been registered against the petitioner, though a stand was taken by the petitioner that he had returned the misappropriated amount. Very many fallacies in the investigation and the act of the petitioner and the collusion between the petitioner and the investigating agency is pointed out by the learned Subordinate Judge and prays for cancellation of anticipatory bail granted to the petitioner.

9. To pointed questions from this Court regarding the said communication from the learned Subordinate Judge, Dharapuram, regarding the involvement of the petitioner in very many cases of misappropriation as pointed out by the learned Subordinate Judge, neither the petitioner nor the respondent has any answer to the same. Further, no material whatsoever is placed before the Court to counter the letter of the learned Subordinate Judge, Dharapuram to show that the petitioner was not involved in any such offence.

10. This Court paid its careful consideration to the materials available on record and also the letter of the learned Subordinate Judge, Dharapuram.

11. This Court is oblivious of the decision of the Hon'ble Supreme Court in the case of Dolat Ram v. State of Haryana (1995 (1) SCC 349), 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.

12. 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.

13. 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)

14. 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.

15. 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 and collusion on the part of the petitioner and respondent in granting bail to the petitioner.

16. On a holistic consideration of the entire materials, it transpires that while this Court had granted anticipatory bail to the petitioner, the facts, as pointed out by the learned Subordinate Judge, has not even found a whisper, either in the averments of the petitioner or in the submission of the respondent. However, the respondent, in a callous manner, had not objected for grant of anticipatory bail to the petitioner, but, in fact, had stated that the misappropriated amount had been paid and, therefore, no objection was made by the respondent for granting anticipatory bail to the petitioner. The concession shown by the investigating agency/investigation officer to the petitioner in not objecting to the anticipatory bail, is not only unjust, but also prejudicial to the interest of the defacto complainant, as knowing fully well the act of the petitioner, not only in the present misappropriation, but in very many cases, which had resulted in the Division Bench ordering registration of case against the petitioner, the investigating officer has taken sides with the petitioner for reasons best known to the investigating officer. However, in the absence of the investigating officer being a party to the present proceeding, this Court is not inclined to make any further observation, but deems it just and necessary that a copy of this order be marked to the Superintendent of Police to take necessary action against the said investigating officer so that the said officer does not in any way tamper with the evidence and the witnesses, which is being monitored by the Division Bench of this Court.

17. In the aftermath of the aforesaid letter, which paints a very gloomy picture about the acts of the petitioner and the petitioner having not come before this Court with clean hands and the petitioner, being a member of the noble profession, has misused his professional privilege and acted in detriment to his client as well as the Court, this Court is of the considered view that supervening circumstances as tabulated by the Hon'ble Supreme Court above would stand squarely attracted. Further, the act of the petitioner in not divulging the actual details and screening the same from the eyes of this Court to get favourable orders in connivance with the respondent, definitely warrants cancellation of the anticipatory bail granted to the petitioner even in the absence of any supervening circumstances, as the materials, which were necessary to consider the anticipatory bail have not been disclosed to this Court which, if otherwise had been placed, would have resulted in the dismissal of the anticipatory bail. Therefore, when even at the first instance, bail would not have been given to the petitioner had the materials been disclosed, necessarily the same, once it comes to the knowledge of this Court, definitely warrants recall of the said bail and, consequently, the petition deserves to be dismissed.

18. For the reasons aforesaid, this petition is dismissed by recalling and cancelling the anticipatory bail granted to the petitioner, vide order dated 23.08.2021.

19. Registry is directed to mark a copy of this order to the Superintendent of Police, Tiruppur District, for initiation of appropriate proceedings/action against the investigation officer, who is in-charge of this case and a new investigation officer be deputed in his place with specific direction to conclude the investigation as expeditiously as possible.

-sd/-

09/09/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
DHARAPURAM.

2 THE CHIEF JUDICIAL MAGISTRATE,
TIRUPPUR DISTRICT (FOR INFORMATION).

3 THE SUBORDINATE JUDGE,
DHARAPURAM.

4 THE INSPECTOR OF POLICE,
DHARAPURAM POLICE STATION,
THIRUPPUR DISTRICT.

5 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

COPY TO

THE SUPERINTENDENT OF POLICE,
TIRUPPUR DISTRICT.

+1 CC to M/S. E.KANNADASAN Advocate on payment of necessary charges SR.NO.9857

CRL OP.14515/2021

Date :09/09/2021

RW 16/09/2021