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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.16542 of 2021

1. Sathya ...Petitioner/De-facto complainant
2. Pachaiyammal
3. Boologapandi
4. K.Udayakumar
5. Muneeswari
6. Varalakshmi
7. Manoharan
8. Latha
9. Saravanan
10. Krishnamurthy
11. Siva
12. Kamala ...Petitioners

Vs.

1. Dhamodharan
2. Ganesan
...Respondents 1 & 2/Accused A3 & A4
3. State Rep.by
The Inspector of Police,
Kumaran Nagar Police Station,
Adyar,
Chennai.
(Crime No. 57 of 2021) ...Respondent/Complainant

Prayer : Petition filed under Section 439(2) of Code of Criminal Procedure to set aside the order made in Crl.M.P.No.2207 of 2021 dated 18.02.2021 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai-600 015 and cancel the bail granted therein.

For Petitioners : M/S.D.Selvaraju

For Respondent R3 : Mr. C.E.Pratap
Government Advocate (Crl. Side)



ORDER

The petitioners filed the present petition seeking to set aside the order made in CrI.M.P.No.2207 of 2021 dated 18.02.2021 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai-600 015 and cancel the bail granted therein.

2. The case of the prosecution is that the accused A1 is the owner of the house at 8/6, Gandhi Street, West Jones Rad, West Saidapet, Chennai-600 015 and A2 is the son of A1 and the respondents 1&2/Accused A3 & A4 are brothers of the accused A1. The respondents 1&2/Accused A3 & A4 along with other accused persons have cheated the first petitioner/de-facto complainant and other petitioners 2 to 12 stating that they will lease out a portion of the above said house and decamped a huge sum of amount about Rs.27,25,000/-. Hence, the first petitioner/de-facto complainant made a complaint before the law enforcing agency. Based on that complaint, the respondent police registered a case against the respondents 1&2/Accused A3 & A4 and other accused persons and the respondents 1&2/Accused A3 & A4 were arrested and released on bail on the same day by the trial court. Challenging the same, the present petition is filed.

3. The learned counsel for the petitioner submitted that the respondents 1&2/Accused A3 & A4 along with other accused persons induced the petitioners stating that they will let out the portion of the above said house for lease and received a huge sum of money. Even after several days, they haven't let out the house for lease and when the same was questioned by the first petitioner/de-facto complainant, the respondents 1&2/Accused A3 & A4 along with other accused persons threatened the de-facto complainant with dire consequences. He further submitted that the first petitioner/de-facto complainant and other petitioners belong to financially weaker background and have got cheated by believing the sugar coated words of the respondents 1&2/Accused A3 & A4 and other accused persons. He further submitted that the trial Court, without considering all these facts, granted bail to the the respondents 1&2/Accused A3 & A4 as if the major part of the investigation is completed and taking into account special medical grounds without even hearing the submissions of the prosecutor and the same has to be canceled by this Court. Though notice has been served on Respondents R1 & R2, however there is no representation on their behalf.

4. The learned Government Advocate (CrI. Side) submitted that the the respondents 1&2/Accused A3 & A4 along with other accused persons committed offence under section 420 & 506(1) of IPC and got arrested on 18.02.2021 and on the same day the bail application was moved and the trial court granted bail to the



respondents 1&2/Accused A3 & A4 stating that the major part of the investigation has been completed and taking into account special medical grounds, for which no such medical records were submitted by the respondents 1&2/Accused A3 & A4, had granted bail. In view of the serious allegation, the learned counsel requested this court to cancel the bail to the second respondent.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate and perused the materials available on record.

6. 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.

7. 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



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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)

8. 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. The facts of the case is not in dispute and admittedly, the respondents 1&2/Accused A3 & A4 along with other accused persons cheated 12 innocent families stating that they will lease out the above said house and decamped a huge sum of money. Based on the complaint given by the first petitioner / De-facto complainant, the respondents 1&2/Accused A3 & A4 were arrested.

10. In the above backdrop, a perusal of the order passed by the trial court reveals that the sole ground on which the accused has been enlarged on bail seems to be the fact that the major part of the investigation is completed and on some special medical grounds bail has been granted. Apart from the said ground, no other ground seems to have weighed with the trial court to grant bail to the accused.

11. 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. Prima facie satisfaction should be based on the hypotheses of just and reasonableness and not on mere ipsi dixit of the court. However, the materials available on record reveal that the court below, on the only ground that the major part of the investigation is completed and taking into account special medical grounds has enlarged the respondent 1 & 2 /Accused A3 & A4 on bail, without considering the gravity of the offence and monstrous and magnitude of the misappropriation alleged against the respondent 1 & 2 /Accused A3 & A4. Further the trial Court, though, has adverted to special medical grounds being one of the



reason to grant bail, however, has not spelt-out the medical grounds and no records in support of the said medical ailment has been adverted to in the said order. Further even before this Court, RR -1 & 2 have not appeared inspite of service of notice and no material to substantiate the said medical ground has been placed before this Court.

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. The gravity of the offence and the amount cheated from very many persons and taking into consideration the fact that investigation is still going on, the court below ought not to have enlarged the accused on bail on the ground that the major part of the investigation is completed. The said ground alone would not suffice to grant bail to the respondent 1 & 2 / Accused A3 & A4. Further, the fact that the respondent 1 & 2 / Accused A3 & A4 were having some medical issues is also of no consequence while considering the application for bail. More so when no material was placed before the trial Court to substantiate the said plea.

13. In the above circumstances, this Court has no hesitation in arriving at a conclusion that the trial Court erred in enlarging the the respondent 1 & 2 /Accused A3 & A4 in bail. Accordingly the bail granted to the respondent 1 & 2 / Accused A3 & A4 is canceled and the third respondent police is directed to take immediate steps in accordance with law to arrest the respondent 1 & 2 /Accused A3 & A4. Accordingly, the order passed by the XXIII Metropolitn Magistrate, Saidapet, Chennai-600 015 in CrI.M.P.No.2207 of 2021 dated 18.02.2021 is set aside and this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

skt



To

1.The Inspector of Police,
Kumaran Nagar Police Station,
Adyar, Chennai.

2.The Public Prosecutor
High Court, Madras.

3.XXIII Metropoltan Magistrate,
Saidapet, Chennai-600 015.

+5ccs to Mr.D.Selvaraju, Advocate SR. No.59537 (08/02/2022)

Cr1. O.P. No. 16542 of 2021

BP (CO)
PR (01/12/2021)