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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.17871 of 2021

Abdul Malik

...Petitioner/Accused

Vs

The State Represented by
The Inspector of Police,
W.25, All Women Police Station,
T.Nagar, Chennai.

...Respondent/Complainant

PRAYER:Criminal Original Petition filed under sections 482 of Cr.P.C., to set aside the order passed by the learned Sessions Judge on the file of the Special Court for Exclusive Trial of cases under POCSO Act, Chennai in Crl.M.P.No.871 of 2021, dated 17.09.2021 and enlarge the petitioner on bail.

For Petitioner : Mr.P.Wilson - Sr.Counsel
for Mr.R.Krishna Kumar

For Respondent : Mr.Gokula Krishnan
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed by the petitioner to set aside the order passed by the Special Court for Exclusive Trial of cases under POCSO Act, Chennai in Crl.M.P.No.871 of 2021, dated 17.09.2021.

2.The petitioner herein is the accused in Crime No.1/2020 on respondent police.

3.The facts reveal that the petitioner has been arrested by the respondent Police as per the order passed by the learned trial Judge by cancelling the bail, which was granted in his favour in Crl.M.P.No.871 of 2021, dated 17.09.2021. As per the complaint lodged by the de-facto complainant / his wife, the respondent police registered a case in Crime No:1 of 2020 for the alleged offences under Sections 5(j)(iii), 5(i), 5(m), 5(n), 10 & 12 of POCSO Act, 2012 and Section 506(ii) of IPC on 29.05.2020. Thereafter, the petitioner has been enlarged on Statutory Bail under Section 167(2) Cr.P.C. in Crl.M.P.No.494 of 2020 on 27.08.2020 by the Special Court for exclusive trial of



cases under POCSO Act, Chennai.

4.The learned counsel for the petitioner submitted that the respondent Police, after completing the investigation, filed a final report in Spl.S.C.No.62 of 2020 before the said Special Court, and the trial has to be commenced. He regularly appeared before the trial Court, while so the de-facto complainant lodged a complaint alleging that the petitioner has threatened the victim girl / daughters and trying to tamper the witness, and CSR copy was also issued (CSR.103/W25 AWPS/2021). He further submitted that, without even conducting proper enquiry about the alleged incident, the respondent Police filed an application for cancellation of bail and the same was allowed by the learned trial Judge, without appreciating the facts. For the alleged threat no material particulars were furnished by the de-facto complainant and the trial Court failed to appreciate the provision of law for the cancellation of bail. Therefore, he filed this petition and prayed to allow the same.

5.The learned Additional Public Prosecutor appearing for the respondent submitted that, after release on bail, the petitioner threatened the de-facto complainant and her daughters, while they were on the way to school and minor daughter was afraid by the act of the petitioner. Hence, the mother of the victim child i.e., de-facto complainant gave a complaint to All Women Police which necessitated the respondent Police to file petition for cancellation of bail. The learned trial Judge rightly appreciated the subsequent events and cancelled the bail, which needs no interference by this Court. Hence he has prayed to dismiss the petition as there are no merits in this case.

6.At the time of arguments, the learned counsel for the petitioner submitted that the petitioner was in jail for more than 60 days and he was released on statutory bail under Section167(2) Cr.P.C, on 27.08.20 by the learned Special Judge of POCSO Act, in Spl.SC.No.62 of 2020 and this petitioner regularly appeared before the trial Court, but with ulterior motive, again, the de-facto complainant approached the respondent Police by giving a false information based upon which, his bail was cancelled. But before cancelling the bail, the Court has to satisfy as to whether the alleged act of the petitioner would amount to tampering of evidence. He also pointed out that no specific date or event was given by the de-facto complainant and as to when the younger daughter / victim girl was threatened by the petitioner. Without substantiating the material evidence, the learned trial Judge erroneously concluded that the petitioner threatened the victim girl, after released on bail. To support his contentions, the petitioner relied the following authorities. (i)Dolat Ram and others Vs. State of Haryana reported in 1995 1 SCC 349 and (ii) Puran Vs.



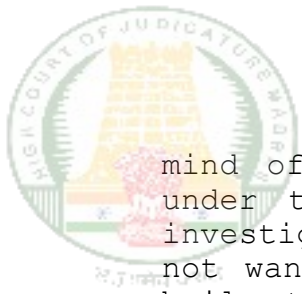
Rambilar and Another reported in 2001 6 SCC 338.

7. As per the proposition laid down in the above referred case law, before cancelling the bail, the de-facto complainant should satisfy the Court that with very cogent and overwhelming circumstances which are necessary for cancellation of the bail. Furthermore bail should not be cancelled by the Court in the mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

8. Coming to the facts of the case, in Para.8 the learned trial Judge mentioned that "the younger daughter of the de-facto complainant started going to school after reopening of school for 9th to 12th standard, since she studied 9th standard. On the way to her school, the respondent/ accused threatened her. If this threaten continues, this will affect the trial and the same will defeat the ends of justice."

9. But as pointed out by the learned counsel for the petitioner, as per the order of the learned Trial Judge reveals that the victim girl was produced through Video conferencing from child friendly room and when enquired, the elder daughter of the de-facto complainant complained that as per the direction given by their father / petitioner, every one in the street is threatening them and calling them as "call girls". The 2nd daughter also stated that, while she returned from school he used to stand near the school gate and threatened her and so she got fear. Further, the events as narrated by the victim child reveals as if the petitioner threatened the neighbours as well as the street persons and auto-man not to support the de-facto complainant and the victim girls. But neither the Police nor the complainant mentioned the specific name of the person to whom alleged threat was made by this petitioner. In order to cancel the bail, mere allegation made by the de-facto complainant or the victim is not sufficient, because once the person is enlarged on bail, if the Court wants to cancel it, is to be dealt carefully without prejudice to the right and freedom of the accused.

10. In this case, the petitioner was not released on bail and only on Statutory bail under Section 167(2) Cr.P.C., he was enlarged on bail . By that time, he was in judicial custody for more than 60 days. Thereafter, the bail was immediately cancelled by the learned trial Judge on 17.09.2021 based upon the alleged complaint given by the de-facto complainant. But with the help of the photographs annexed with the petition the petitioner also attempted to deliberate a conduct of the de-facto complainant and his daughters, which also disturbed the



mind of the Court that whether now the victim girls are also under the safe custody of the de-facto complainant. Now, the investigation is completed and trial has to be begun. This Court not want to go into the merits of the case. But to cancel the bail, the de-facto complainant simply mentioned the allegation against the petitioner about the alleged threat, but it is not supported by any of the material particulars and not even mention the specific name of the person to whom alleged threat was made nor mentioned the date of the event when the victim girls were specifically threatened by the petitioner, without which, the bail was cancelled is unsustainable. The authorities relied by the petitioner also support his contention.

11. Therefore, the order passed by the learned trial Judge in Crl.M.P.No.871 of 2021 is hereby set aside and thereby the bail order granted to the petitioner in Crl.M.P.No.494 of 2020 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, dated 27.08.2020 is sustainable. Hence earlier order of bail is restored.

12. Accordingly, the Criminal Original Petition is allowed. The petitioner is directed to co-operate trial, till the disposal of the case, he should not have any communication with the de-facto complainant and the victim girls. If the petitioner / accused is in jail, he shall be released forthwith, unless he is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Special court for Exclusive Trial of cases
under POCSO Act, Chennai.

2. The Inspector of Police,
W.25, All Women Police Station,
T.Nagar, Chennai.

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

+2cc to M/s.R.Krishnakumar, Advocate, S.R.No.59419

Crl.O.P.No.17871 of 2021

RR(CO)
RGA(18/11/2021)