



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Second day of November Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL ORIGINAL PETITION No.18785 of 2021

KARTHIKEYAN @ KARTHIK

[PETITIONER / ACCUSED]

Vs

THE STATE BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION (EAST)
COIMBATORE.
CRIME NO.22 OF 2021.

[RESPONDENT]

For Petitioner : M/S.V.JEEVAGIRIDHARAN Advocate

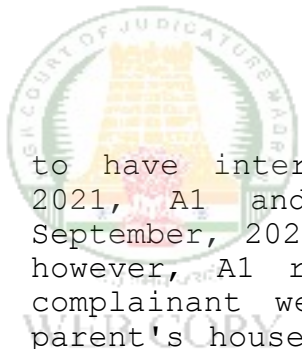
For Respondent : MR.A.GOPINATH, Govt. Advocate (Crl. Side)

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner who was arrested and remanded to judicial custody on 12.09.2021 for the offence under Sections 376 (2) (n), 376D, 323, 506 (2) IPC r/w Sections 66E, 67A of the Information Technology Act and Section 4 of T.N. Prohibition of Harassment of Women Act, 2002, in Crime No.22 of 2021 on the file of the respondent police, seeks bail.

2. It is the case of the prosecution that one Vinoth Kumar @ Manikandan, who is the first accused in this case, introduced himself to the defacto complainant through the social media platform, viz., Instagram. Initially, the defacto complainant refused to interact with A1, however, A1 continuously pursued his relationship and also expressed his love to the defacto complainant. Thereafter, it is alleged that love blossomed between them. It is the further case of the prosecution that in the month of March, 2021, A1 took the defacto complainant to a lodge and gave her 'Hans' lased with some drug and had intercourse with her forcibly and videographed the same. Thereafter, A1 threatened the defacto complainant that he will publish the video in social media and forced the defacto complainant



to have intercourse with his friends. Thereafter, during August, 2021, A1 and the defacto complainant got married and during September, 2021, the defacto complainant asked A1 to erase the video, however, A1 refused to erase the same. Thereafter, the defacto complainant went to her parent's house, however, A1 came to her parent's house and also attacked her, due to which she was admitted in Hospital. Due to the continuous ill-treatment and sexual abuse meted out to her by all the accused, the defacto complainant had lodged the complainant against all the accused.

3. The learned counsel appearing for the petitioner submits that the petitioner has not committed any offence as alleged by the prosecution. The learned counsel further submits that even as per the case of the prosecution, the allegations are levelled as against A1 that he married the victim and he forced the victim to have physical relationship with his friends and further submits that A1 has already been granted bail by the lower Court. It is further submitted that investigation is completed and that there are no serious allegations against the petitioner and, therefore, this Court, in view of the grant of bail to A-1, may also grant similar relief to the petitioner herein.

4. Learned Government Advocate (Crl. Side) appearing for the respondent submits that the statement of the victim has been recorded u/s 164 Cr.P.C. In which serious allegations have been levelled against A-1 and the other accused. It is the further submission of the learned Government Advocate that A-3 is the friend of A-1 and he also had forcible sexual relationship with the defacto complainant, which have been spoken to by the defacto complainant in the statement recorded u/s 164 Cr.P.C. It is the further submission of the learned Government Advocate that the learned Principal District & Sessions Judge, Coimbatore, without properly appreciating the seriousness of the offence and not proper considering the statement of the victim recorded u/s 164 Cr.P.C., had erroneously granted bail to A-1, viz., Vinoth Kumar @ Manikandan, vide order dated 25.10.2021 in Crl. M.P. No.4155 of 2021, had granted bail, merely considering the period of incarceration suffered by A-1 and, therefore, A-3 cannot take aid of the said order for seeking similar relief of bail and, accordingly, prays for dismissal of this petition.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

6. A perusal of the statement of the victim recorded u/s 164 Cr.P.C. Reveals a pathetic and very sorry state of affairs in which the victim had been pushed by the accused. A1, introducing himself to the defacto complainant through the social media platform, viz., Instagram, had pursued his relationship with the victim and under the guise of love, had not only ruined her physically, but also mentally,



by subjecting her to mental torture, by making her to have physical relationship with his friends, who have been arrayed as accused in this case. The statement of the victim further reveals that recording the sexual acts, which A-1 had with the victim, A-1 had subjected her to mental torture by frightening her that he will publish the video on social media pages, if she does not subject herself to his whims and caprice and, thereby subjected her as a treat to his friends. The statement further reveals that even after marrying the victim, A-1 had continued on with the said act by torturing her and making her subject herself to the pleasures of his friends, who also stand accused in this case, of which the petitioner is one of the person.

7. The above enumeration by this Court brings out a very stellar fact. The victim had been subjected to torture of such a nature, both mentally and physically and the sexual abuse meted out to her by the accused not only shakes the conscience of this Court, but also reminds this Court of its arduous duty and the necessity of discharging its work of rendering substantial justice. The main plank on which bail is sought for by the petitioner is on the ground that A-1 had been granted bail by the Court of Session and there being no serious allegations against the petitioner, he may also be granted similar relief.

8. Though such a stand is taken by the petitioner while canvassing his plea for enlargement on bail, this Court is clothed with the task of first finding out whether the bail granted to A-1 by the Court of Session is on the basis of just and reasonable findings or the same requires interference at the hands of this Court in view of the ratio laid down by the Hon'ble Apex Court in the case of Daulat Ram - Vs - State of Haryana (1995 (1) SCC 439).

9. 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.

10. 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)

11. The Hon'ble Supreme Court in Daulat Ram's case (supra), has clearly held that bail, once granted, the same shall not be cancelled unless supervening circumstances are brought to the notice of the Court. Equally, it is the ratio laid down in the said decision that the mere fact that no supervening circumstances are pointed out, does not negate the power of the Court to cancel the bail, if the said bail had been granted on extraneous and untenable reasons and the relevant materials are not taken into consideration for granting the bail and the position of the victim qua the accused also is material, which has to be looked into.

12. From the above proposition of law laid down by the Hon'ble Supreme Court, it is crystal clear that this Court is clothed with power to cancel the bail granted, irrespective of the oft quoted



saying that "Bail is the norm and Jail is exception", when the facts in the case reveal that bail ought not to have been granted to the accused even at the earliest point of time.

13. However, the only question that this Court poses to itself is that the person, who has been granted bail being not before this Court, could the bail granted to the said individual be cancelled without putting the said accused on notice. The question has been posed by the Court to the Court for the simple reason that taking aid of the bail granted to A-1, the petitioner herein, who is arrayed as A-3 is canvassing the plea for a similar order to be granted to him. In this backdrop, the above query has been posed to the court by itself as to whether in such a scenario, this Court is empowered to cancel the bail granted to A-1 without notice to A-1 on its own motion.

14. The power of the court to cancel bail flows from Section 439 (2) Cr.P.C. and for better appreciation, the said provision is extracted hereunder :-

"439. Special powers of High Court or Court of Session regarding bail.- (1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

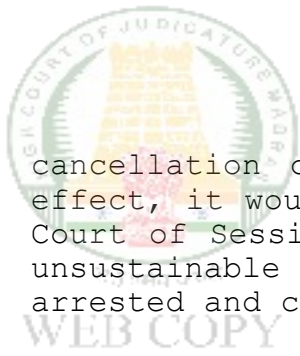
(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified :

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

(Emphasis Supplied)

15. From the above provision of law it is clear that while considering the bail plea of an accused u/s 439 (1) Cr.P.C., while a notice is a mandatory requirement, which is to be given to the Public Prosecutor in relation to offences which is triable exclusively by the Court of Session, or which, though not so triable, is punishable with imprisonment for life, however, under sub-section (2) to Section 439 Cr.P.C., the requirement of notice to the accused in the event of



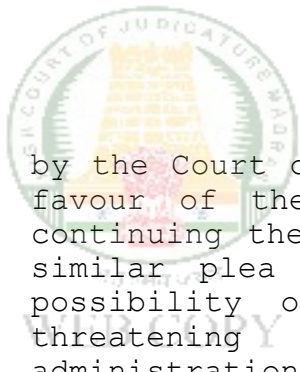
cancellation of bail, already granted, has not been codified. In effect, it would only mean that in the event of the High Court or the Court of Session feeling that the bail granted to a person is per se unsustainable or untenable, the said person could be directed to be arrested and committed to prison.

16. This view of this Court finds favour from the decision of the Hon'ble Supreme Court in Daulat Ram's case (supra), where the circumstances in which the bail granted to a person could be cancelled have been clearly categorised and the main ground on which the bail granted could be cancelled is the non-application of mind on the part of the Court to Session to the materials placed while granting bail to the said person.

17. In the case on hand, it is the case of the prosecution that investigation is not complete, which, though pointed out to the trial court, however, without advertent to the same and not even advertent to the gravity of the offence and the allegations made by the victim in her statement recorded u/s 164 Cr.P.C., the trial court, had, in a mechanical manner, considering the period of incarceration of A-1, had granted bail to A-1.

18. A perusal of the order passed by the court below granting bail reveals that the court below, without advertent to the gravity of the offence or the statements of the victim u/s 164 Cr.P.C., has, in a mechanical and routine manner, granted bail to A-1, merely considering the period of incarceration of the accused. It is to be pointed out that the postulates of the Hon'ble Supreme Court in Daulat Ram's case (supra) that the position of the accused qua the victim is a point, which requires to be taken into consideration while dealing with a petition relating to grant of bail. Further, the Supreme Court had pointed out that bail could be cancelled by the courts if relevant materials are not taken into account and that irrelevant materials are taken and that on the said materials bail ought not to have been granted at the initial stage.

19. From the above, it is manifestly clear that on untenable grounds and without advertent to the relevant materials, bail has been granted to A-1 by the trial court in the most whimsical, capricious and perverse manner and allowing the bail granted to A-1 to continue would not only lead to miscarriage of justice, but would also lead to the other accused, who have been associated with A-1 in committing the heinous offence against the victim, who was subjugated to the most inhuman treatment and abuse at the hands of the accused, go scot-free. Further, it would also erode the faith of the public and the affected persons have reposed in the justice delivery system. The temple of justice is the solace for the persons, who have suffered such cold-blooded treatment at the hands of ruthless and cruel minded persons like the accused. The enormity and the gravity of the offence committed by A-1 in no way deserves the relief granted



by the Court of Session and the scales of justice definitely tilt in favour of the victim for cancelling the bail granted to A-1 as continuing the bail granted to A-1 would, in turn, lead to allowing similar plea by the other co-accused and would also entail the possibility of the accused in tampering with the evidence and threatening the victim and, thereby, interfere with the administration of justice. Further, continuing the bail to A-1 would be nothing but making a mockery of the justice delivery system by persons, who perpetrate such acts with venom against the women folk. This Court cannot be a mute spectator to such an act committed by the accused and cannot allow the bail granted by the Court of Session, on total non-application of mind to continue, as this Court would be failing in its duty to render substantial justice, if it does not exercise its powers u/s 439 (2) Cr.P.C.

20. Therefore, for the reasons aforesaid, this Court, in exercise of its powers u/s 439 (2) Cr.P.C., and in the interest of justice, is inclined to suo motu cancel the bail granted to A1 without causing any notice to A-1. Accordingly, the bail granted to A1 namely, Vinoth Kumar @ Manikandan, vide order dated 25.10.2021 made in CrI.M.P.No.4155 of 2021, by the learned Principal District and Sessions Judge, Coimbatore, is hereby cancelled.

21. In view of the fact that this Court has cancelled the bail granted to A-1, the pivotal submission of the petitioner that A-1, the main accused had been granted bail and, therefore, the petitioner may also be granted bail becomes wholly academic and, therefore, the present petition for enlargement on bail by the petitioner does not merit acceptance.

22. For the reasons aforesaid, this petition is devoid of merits and, accordingly, this criminal original petition is dismissed.

23. Registry is directed to mark a copy of this order to the Principal District & Sessions Court, Coimbatore and the learned Principal District & Sessions Judge as also the respondent herein is directed to take action to secure A-1 and remand him back to prison.

-sd/-

02/11/2021

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 PRINCIPAL DISTRICT & SESSIONS JUDGE,
COIMBATORE.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION (EAST)
COIMBATORE.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S.V.JEEVAGIRIDHARAN Advocate on payment of necessary
charges

CRL OP.18785/2021

Date :02/11/2021

JPA 18/11/2021