

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1239 of 2020 &
Crl.M.P.No.8681 of 2020

1.Loganathan
2.Latha
3.Bharatha Mani
4.Baby Shalini

...

Petitioners

Vs.

1.N.Rohini
2.State rep.by the
Inspector of Police,
AWPS Coonoor,
(Crime No.3 of 2019)

...

Respondents

PRAYER: Criminal Revision Petition filed under 397 r/w 401 of Cr.P.C. to set aside the order passed in Crl.M.P.No.27 of 2020, dated 09.12.2020, on the file of the learned Sessions Judge, Nilgiris.

For Petitioners: Mr.S.Shankar

For Respondents: Mr.N.N.Ponraj for R-1

Mr.A.Madhan
Government Advocate (Crl.Side) for R-2

O R D E R

The petitioners have come forward with this Revision questioning the correctness of the order dated 09.12.2020, passed by the learned Sessions Judge, Nilgiris at Udthagamandalam in Crl.M.P.No.27 of 2020, cancelling the bail granted to the petitioners.

Short facts:-

2. A case in Crime No.3 of 2019 has been registered by the second respondent-Police, against the petitioners for the alleged offence under Sections 498(A) and 494 of IPC. The first

petitioner / first accused is the husband of the first respondent, and the petitioners 2 to 4 are the family members of the first petitioner. According to the first respondent / wife, the petitioners 2 and 4, have tried to interfere with the Investigation Officer in investigating the matter, by misusing their official position. On petitions filed by the accused/petitioners herein, the learned District and Sessions Judge, Nilgiris, granted anticipatory bail to the petitioners in C.M.P.Nos.795 and 796 of 2019, on 03.12.2019. On 19.12.2020, in Crl.M.P.No.27 of 2020, the learned Sessions Judge, by the impugned order, cancelled the said anticipatory bail order, on the ground that the petitioners have suppressed the earlier order passed by this Court on 25.11.2019 in Crl.O.P.No.27282 of 2019. The said cancellation of anticipatory bail order is being challenged here.

3. The learned counsel for the petitioners would submit that petitioners have filed bail application before this Court Crl.O.P.No.27282 of 2019. This Court, while about to dispose the bail application, the learned counsel sought permission to withdraw the same, and the bail application was dismissed as withdrawn on 25.11.2019. Subsequently, the petitioners have approached before the learned Sessions Judge in Crl.M.P.Nos.795 and 796 of 2019 respectively and the learned Judge, after enquiry, granted anticipatory bail to the petitioners. Thereafter, the first respondent / defacto complainant had filed a petition before the learned Sessions Judge, Nilgiris District, Udhagamandalam, on the ground that the petitioners had filed the anticipatory bail petitions before the District Court, by suppressing the fact of filing the petitions in Crl.O.P.No.27282 of 2019 before this Court. It is further submitted that paragraph Nos.11 to 14 stated in the bail application before the learned District and Sessions Judge, are usual format and in paragraph No.14, inadvertently mentioned as no bail petition filed before the High Court and the same is not an intentional one, and therefore, the learned Sessions Judge, ought not to have cancelled the bail application.

4. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the investigation was completed and charge sheet is yet to be filed.

5. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and the learned Government Advocate appearing for the second respondent and perused the materials placed on record.

6. Admittedly, the petitioners 1 to 3 have filed applications in Crl.O.P.Nos.27282 of 2019 for grant of anticipatory bail under Section 438 of Cr.P.C. for the alleged

offences under Section 498(A), 494 of IPC. During the process of dictating order in the anticipatory bail application, the petitioners/accused sought permission to withdraw the application and the same was also observed by this Court. At this juncture, it is relevant to extract paragraph No.7 of the order, dated 25.11.2019:-

"7. In view of this fact, this Court is not inclined to grant anticipatory bail to the petitioner. During the process of dictating the order in this anticipatory bail application, the petitioner sought permission to withdraw this Application. Accordingly, the Criminal Original Petition stands dismissed as withdrawn."

7. Subsequently, i.e, on 29.11.2019, the petitioners / accused herein approached the learned Sessions Judge for grant of anticipatory bail under Section 438 of Cr.P.C, in Crl.M.P.Nos.795 and 796 of 2019. In the said petitions, in paragraph No.14, it is stated that "These petitioners have not filed bail application before the Hon'ble High Court of Judicature, Chennai, in the above case".

8. Though it is the contention of the learned counsel for the petitioners that in paragraph No.14 in the bail application, inadvertently mentioned as no bail petition filed before the High Court and the same is not an intentional one, it could not be taken into consideration for the reason that the bail petitions filed before this Court in Crl.O.P.Nos.27282 and 27260 of 2019, was dismissed as withdrawn on 25.11.2019, and immediately after four days, i.e., 29.11.2019 itself another application was filed before the learned Sessions Judge. From the above, it could be seen that intentionally, in order to get favourable order, the petitioners have suppressed the very factum of filing the prior anticipatory bail petitions before the learned Sessions Judge.

9. It is settled principles, grant of bail and anticipatory bail, is purely discretionary power of the Court and the learned Sessions Judge has rightly observed that the petitioners always taking a chance either in the bail application filed before the trial Court and this Court, without disclosing the true facts. It is a serious issue, and it cannot be taken lightly, as stated by the learned counsel for the petitioner that "it is only usual format". If such practice is encouraged, the petitioner simultaneously can file two petitions before the trial Court and another before the High Court and take the chance of forums' shopping therefore, there is no perversity in the order passed by the learned Sessions Judge, the learned Sessions Judge has rightly observed that the petitioners have not disclosed the

factum of bail application filed before this Court. Since the petitioners have not come with clean hands, they are not entitled to get discretionary relief.

10. In the result, the Criminal Revision Petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Inspector of Police,
AWPS, Coonoor.
2. The learned Sessions Judge,
Nilgiris.
3. The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.1239 of 2020 &
Crl.M.P.No.8681 of 2020

RSV(CO)
CB(03/03/2021)



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