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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on	Pronounced on
02.07.2021	07.07.2021

PRESENT

The Hon'ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . No.3799 of 2021
and
CrI.O.P.(MD)No.28 of 2021

CrI.O.P.(MD)No.3799 of 2021:

V.Priya

... Petitioner/Accused No.2

Vs

The State Rep. by
The Inspector of Police,
District Crime Branch,
Dindugal District.
Crime No.15/2020.

... Respondent/Complainant

For Petitioner : Mr.Arumugam C.M, Advocate.
For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor
For Intervenor : Mr.R.Gandhi, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.15 of 2020 on the file of the
respondent Police.

CrI.O.P.(MD)No.28 of 2021:

Sathish Kumar

... Petitioner/Intervener/
Defacto complainant

Vs

1. The State represented by
The Inspector of Police,
District Crime Branch,
Dindigul District.

... 1st Respondent/Complainant/
Complainant

2. Vijayarajan

... 2nd Respondent/Petitioner/
Accused



For Petitioner : Mr.R.Gandhi, Advocate.

For Respondents : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor
for R.1

: Mr.C.M.Arumugam, Advocate for R.2

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PETITION FOR CANCELLATION OF BAIL Under Sec.439(2) of Cr.P.C

PRAYER :-

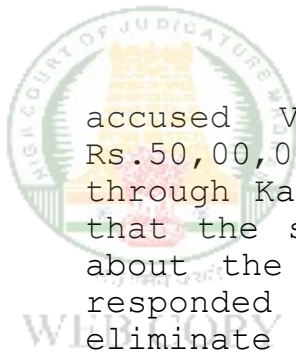
To call for records relating to the order dated 21.12.2020 made in Cr.M.P.No.6716 of 2020 on the file of the Judicial Magistrate Court No.II, Dindigul and cancel the bail granted to the second respondent/accused and commit him to custody.

COMMON ORDER : The Court made the following order :-

In Crl.O.P.(MD)No.3799 of 2021, the petitioner/A.2, apprehending arrest at the hands of the respondent police for the alleged offence punishable under sections 406, 420, 465, 467, and 506(i) I.P.C., in Cr.No.15 of 2020 on the file of the respondent police, seeks anticipatory bail.

2. In Crl.O.P.(MD)No.28 of 2021, the petitioner/defacto complainant filed this petition seeking to call for records relating to the order dated 21.12.2020 made in Cr.M.P.No.6716 of 2020 on the file of the Judicial Magistrate Court No.II, Dindigul and cancel the bail granted to the second respondent/accused and commit him to custody.

3. The case of the prosecution is that the defacto complainant is one of the owners in Sathish Gold Maligai. His father was managing this business till 2013 and thereafter, the defacto complainant and his brother Dilip Kumar are managing the affairs of the Sathish Gold Maligai. The accused Vijayarajan came to be known to the defacto complainant during his business transactions. He used to buy jewelry in his shop and pay in cash. He made arrangements for the defacto complainant to become a member of the Lions Club. He used to buy the jewelry and pay money in two or three days. By his repeated purchase and paying money after some days, he gained the confidence of the defacto complainant. Without knowing his ill-motive, the defacto complainant had given him jewels worth about Rs.75,00,000/-, on several occasions. When the defacto complainant demanded the money, he told him that he had fixed house warming ceremony of his house and would be getting lakhs of rupees as moi and would repay the money to the defacto complainant. Even after the house warming ceremony, he did not repay the money. When the defacto complainant asked money along with his friends, the



accused Vijayarajan gave two cheques for Rs.25,00,000/- and Rs.50,00,000/- each. When the cheques were presented for collection through Karur Vaisya Bank, the cheques were returned for the reason that the signature differs. The defacto complainant informed him about the dishonour of cheques and demanded money. The accused responded by saying that he is an influential person and he would eliminate the defacto complainant if he demands money. Therefore, this case came to be registered on the basis of the complaint given by the defacto complainant.

4. The learned Counsel appearing for the petitioner - Priya submitted that the petitioner is innocent and she has no role whatsoever in the alleged purchase of jewelry and non-payment of loan. She is implicated in this case only for the reason that she is the wife of the first accused Vijayarajan. Therefore, he seeks anticipatory bail to the petitioner-Priya.

5. The learned Counsel for intervenor strongly objected this petition for anticipatory bail. He also filed Crl.O.P.(MD)No.28 of 2021 for cancelling the bail granted to the first accused Vijayarajan by the learned Judicial Magistrate No.II, Dindigul. In the petition for cancellation of bail, he submitted that the first accused was arrested on 14.12.2020. He filed a bail petition before the learned Judicial Magistrate No.II, Dindigul. It was printed form bail application without any details. The defacto complainant filed a detailed objection by way of intervening petition, objecting to grant of bail. The learned Judicial Magistrate No.II, without considering the objection raised by the defacto complainant and giving any reasons for enlarging him on bail, granted bail. Grant of bail when the amount alleged to have been cheated had not been recovered shows total non-application of mind on the part of the learned Judicial Magistrate. Therefore, he seeks to cancel the bail granted by the learned Judicial Magistrate No.II, Dindigul in Cr.M.P.No.6716 of 2020.

6. The learned Counsel for the defacto complainant relied on the following judgments rendered by the Honourable Supreme Court in support of his case that the order without any reason is liable to be set aside:

(i) In ***Sonu Vs. Sonu Yadav and another*** reported in ***(2021) AIR (SC) 1950***, wherein the Honourable Supreme Court has held as follows:

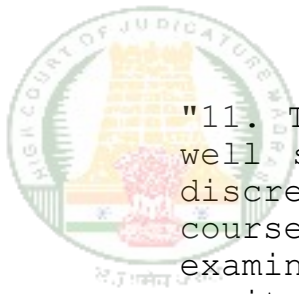
"The order of the High Court granting bail contains absolutely no reasons at all. While it is true that at the time of considering an application for bail the High Court would not be required to launch into a detailed enquiry into the facts which have to be determined in the course of trial, equally an application of mind by the High Court to the rival submissions is necessary. The High Court has merely recorded the submissions and

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(ii) In **Rajesh Kumar @ Polia and another** reported in (2020) AIR 70,

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"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.? (Emphasis supplied) "

25 Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court. Where an earlier application for bail has been rejected, there is a higher burden on the appellate court to furnish specific reasons as to why bail should be granted."

7. In reply to the submissions made by the learned Counsel for the defacto complainant, the learned Counsel for the first accused, who is also the Counsel for the second accused submitted that the bail order was granted after considering the merits of the case and also the duration of the custody. The accused Vijayarajan had been properly complying with the condition imposed by the Court. Therefore, there is no reason for cancelling the bail granted to Vijayarajan. It is his further submission that there is no acceptable evidence to show that the accused had cheated the defacto complainant by purchasing the jewels to the tune of Rs.75,00,000/- and not repaying it. Therefore, the learned Counsel for the accused seeks to dismiss the petition filed for cancellation of bail granted to the first accused Vijayarajan and prays for grant of anticipatory bail to the second accused V.Priya. He also relied upon the following judgment of the Honourable Supreme Court in support of his case:

Myakala Dharmarajam and Others Vs. the State of Telangana and another reported in CDJ 2020 SC 008, wherein the Honourable Supreme Court held as follows:

"It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

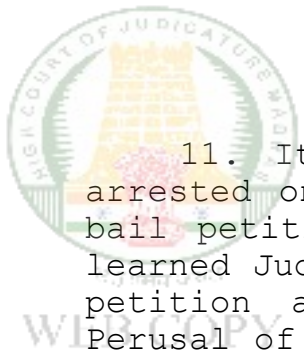


9. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant-Respondent No.2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence."

8. The learned Additional Public Prosecutor appearing for the State submitted that the investigation in this case is not yet completed. Therefore, he seeks dismissal of the petition for anticipatory bail and also prays for cancellation of bail granted to the first accused.

9. As narrated above, the allegations made against the accused especially against the first accused Vijayarajan in this case is that he had purchased jewelry on cash on hand basis, then on short term loan basis and gained the confidence of the defacto complainant. Reposing confidence on the accused, the defacto complainant said to have sold the jewels worth about Rs.75,00,000/- on several occasions. When the amount was demanded, it was not paid. On persistent demand, two cheques for Rs.25,00,000/- and Rs.50,00,000/- were given by the first accused to the defacto complainant for discharging his legally enforceable debt/liability to the defacto complainant. When these cheques were presented for collection, they were returned for the reasons that the signature differ.

10. It is seen from the submissions made by the learned Counsel for the first accused that there is no denial of giving two cheques for Rs.25,00,000/- and Rs.50,00,000/- to the defacto complainant. There is no other reason given for issuing these cheques to the defacto complainant. Therefore, the natural presumption is that these two cheques had been issued by the first accused to the defacto complainant for discharging his legally enforceable debt/liability relating to the payment of amount towards the purchase of jewelry. The fact that the first accused Vijayarajan had not paid the amount and issued the cheque with different handwriting *prima facie* shows that there is a criminal intention on his part to defraud the defacto complainant.



11. It is seen from the records that the first accused was arrested on 14.12.2020. The petitioner has filed the copy of the bail petition in Cr.M.P.No.6716 of 2020 filed on the file of the learned Judicial Magistrate No.II, Dindigul, copy of the intervening petition and order passed by the learned Judicial Magistrate. Perusal of these documents show that the bail petition is a printed format, giving absolutely no details with regard to the facts of the case. In the intervening petition, the facts of the case is explained in detail and a strong opposition was raised for grant of bail. The order of the learned Judicial Magistrate in Cr.M.P.No.6716 of 2020 shows that the facts of the case was not narrated, objection raised by the intervenor was not narrated and the bail order was granted for the reason that the first accused was in judicial custody from 14.12.2020. Though there is a mention about the referring to the documents, there is no mention, about what are the documents referred, what are the family circumstances of the defacto complainant, etc. The order granting bail by the learned Judicial Magistrate No.II, Dindigul is cryptic and without any reason. The amount said to have been cheated by Vijayarajan is Rs.75,00,000/-, which is a huge amount. Before ordering the release of the first accused Vijayarajan on bail, the learned Judicial Magistrate should have considered the objection raised by the defacto complainant and passed a reasoned order. It is trite law as found from the judgments referred supra that when the order is not supported by reason, it is liable to be set aside. Accordingly, the order of the learned Judicial Magistrate No.II, Dindigul in granting bail to the petitioner in Cr.M.P.No.6716 of 2020 is set aside. In the result, Crl.O.P.(MD)No.28 of 2021 seeking to cancel the bail granted to the first accused Vijayarajan is allowed. The first accused Vijayaraja is directed to surrender before the concerned Judicial Magistrate for being sent to jail. It is open to the first accused Vijayarajan to file bail petition before the concerned Judicial Magistrate and on such petition being filed, the learned Judicial Magistrate concerned is directed to dispose of the petition on merits, after hearing the submissions of the parties.

12. Insofar as the claim of anticipatory bail in Crl.O.P.(MD) No.3799 of 2021, on behalf of the accused V.Priya is concerned, perusal of the FIR shows that there is absolutely no mention about any role attributed to her either in buying jewelry or failure to pay the amount. There is also no matériel produced to show the role of the petitioner Priya in criminally intimidating the defacto complainant. Therefore, this Court is of the considered view that due to lack of materials available against the petitioner Priya, this Court grants anticipatory bail to her with certain conditions.

13. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on her appearance before the Judicial Magistrate No.II, Dindigul, within a period of fifteen days from the date of this order, on her executing a bond for



a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the said Magistrate and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police as and when required for interrogation;

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused/petitioner thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

07/07/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE No.II, DINDIGUL.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE, DINDIGUL DISTRICT.
3. THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH, DINDIGUL DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL OP(MD) No.3799 of 2021

Date :07/07/2021

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