



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on	Pronounced on
19.07.2021	26.07.2021

PRESENT

The Hon'ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) No.5043 of 2021

R.Mohanraj

...Petitioner/3rd party/
Defacto complainant

Vs

1. The State rep. by
The Inspector of Police,
District Crime Branch,
Theni District.
(Crime No.15 of 2019)

...1st Respondent/Respondent/
Complainant

2.P.Arun Babu

...2nd Respondent/Accused/
Sole Accused

For Petitioner : Ms.L.Maithily
Advocate
For Respondent No.1 : Mr.E.Antony Sahaya Prabahar
Government Advocate(Criminal Side)
For Respondent No.2 : Mr.S.Muniyandi
Advocate

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

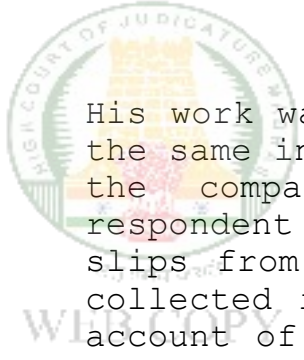
PRAYER :-

To Cancel the bail granted to the second respondent/sole accused in Crl.M.P.No.2585 of 2020, dated 05.12.2020 by the learned Judicial Magistrate, Theni.

ORDER : The Court made the following order :-

This petition is filed seeking to cancel the bail granted to the second respondent/sole accused in Crl.M.P.No.2585 of 2020, dated 05.12.2020 by the learned Judicial Magistrate, Theni.

2. The case of the prosecution is that the second respondent was working as cash pick-up service provider in the petitioner's company, Periyakulam and Aundipatti for the past 10 years.



His work was to collect cash from the customers of RCMS and deposit the same in stipulated bank account as per the instructions given by the company. Between 03.08.2019 and 08.08.2019, the second respondent had collected Rs.97,12,526/- by signing cash collection slips from various customers of RCMS and did not deposit the cash collected in the stipulated bank accounts, which is the ICICI bank account of RCMS. He had also not deposited a sum of Rs.4,58,337/- from 2 cash executives working under him and misappropriated to the tune of Rs.1,01,70,863/-. Therefore, this case came to be registered, on the basis of the complaint given by the defacto complainant.

3. The learned Counsel for the petitioner submitted that earlier, the second respondent had filed Crl.O.P.(MD)No.12484 of 2019 for anticipatory bail and he withdrew it and therefore, it was dismissed as withdrawn and subsequently, he filed Crl.O.P.(MD) No.15372 of 2019 seeking anticipatory bail. Considering the serious allegations of misappropriation to the tune of Rs.1,01,70,863/-, this Court did not grant anticipatory bail and dismissed the petition. Then he surrendered before the learned Judicial Magistrate concerned and was remanded. He subsequently filed bail petition under Section 167(2) Cr.P.C., even before completion of 90 days.

4. The learned Judicial Magistrate, Theni granted bail in Crl.M.P.(MD)No.7241 of 2019, on 13.12.2019. Aggrieved against the said order of granting default bail even before completion of 90 days of time, the petitioner filed a petition in Crl.O.P.(MD)No.3695 of 2020 for cancellation of bail granted by the learned Judicial Magistrate, Theni.

5. This Court, after elaborately considering the submissions made by the parties, cancelled the default bail granted to the second respondent and gave some directions. Misconstruing the said condition, again the learned Judicial Magistrate passed an order in Crl.M.P.(MD)No.2585 of 2020, dated 05.12.2020, by granting bail to the second respondent. Therefore, the present Criminal Original Petition is filed to cancel the bail granted to the second respondent.

6. The learned Counsel appearing for the second respondent submitted that the bail was granted on the basis of the direction given by this Court in Crl.O.P.(MD)No.3695 of 2020. Final report has been filed in this case. There is no necessity for cancellation of bail and prayed for dismissal of this petition.

7. The learned Government Advocate (Criminal side) appearing for the State submitted that the second respondent had not complied with the direction given in Crl.O.P.(MD)No.3695 of 2020 and therefore, supported the case of the petitioner.

8. Heard the learned Counsel for the petitioner, the learned Government Advocate (Criminal side) appearing for the State and the



learned Counsel for the second respondent and perused the materials placed on record.

9. The issue involved in this case is as to whether the bail granted by the learned Judicial Magistrate, Theni, on 05.12.2020 in Crl.M.P.No.2585 of 2020 is in accordance with the direction given by this Court in Crl.O.P.(MD)No.3695 of 2020.

10. This Court, in Crl.O.P.(MD)No.3695 of 2020, while cancelling the default bail granted to the second respondent, gave certain directions. For better understanding, it is relevant to extract hereunder the same:

" 21.In view of the above discussions, the default bail granted to the second respondent is liable to be cancelled. However the learned counsel for the second respondent submitted that the second respondent is ready and willing to deposit original title deed to show his *bonafide* before the concerned Court in the crime number. The said submission cannot be considered for the reason that the petition has been filed for cancellation of default bail granted under Section 167(2) of Cr.P.C.

22.Accordingly this Petition is allowed and the bail granted to the second respondent in Crl.MP(MD)No.7241 of 2019 dated 13.12.2019 by the learned Judicial Magistrate, Theni is hereby cancelled and the first respondent is directed to secure the second respondent and proceed in accordance with law. However, the second respondent is at liberty to file a fresh bail petition before the Court concerned and the concerned Court is directed to consider the submission of deposit of title deed and pass orders on merits and in accordance with law.

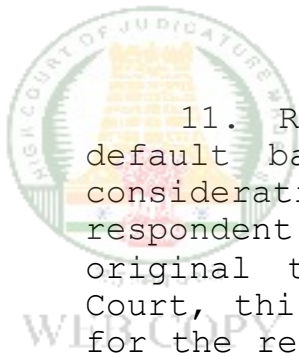
Sd xxxx

23.11.2020

After pronouncing orders the learned Counsel appearing for the second respondent submitted that the second respondent is ready and willing to surrender before the concerned Court within a period of two weeks from today.

2. In view of the same, the first respondent is directed not to secure the second respondent herein till then. In the event of second respondent not surrendering before the first respondent on or before 06.12.2020, the first respondent is directed to secure the second respondent and proceed in accordance with law.

3. After the surrender of the second respondent, he is at liberty to file a fresh petition for bail before the concerned Court and his petition may be considered on the same day on merits and in accordance with law."

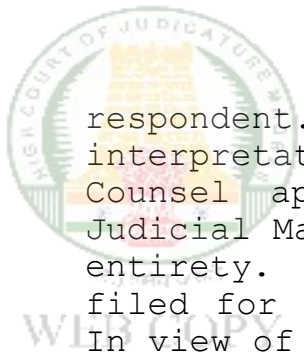


11. Reading of this order shows that while cancelling the default bail granted to the second respondent and taking into consideration the submissions of the learned Counsel for the second respondent that the second respondent was willing to deposit the original title deed, to show his *bonafide* before the concerned Court, this Court observed that, that request cannot be entertained for the reason that the petition has been filed for cancellation of default bail. Accordingly, allowed the petition for cancellation and cancelled the default bail granted by the learned Judicial Magistrate, Theni in Crl.M.P.No.7241 of 2019, dated 13.12.2019. The first respondent was directed to secure the second respondent and proceed in accordance with law. A liberty was given to the second respondent to file a fresh petition before the Court concerned and the Court concerned was directed to consider the submission of deposit of title deed and pass orders on merits and in accordance with law.

12. After pronouncing this order, the learned Counsel appearing for the second respondent submitted that the second respondent was ready and willing to surrender before the concerned Court within two weeks from today. In view of the said submission, the first respondent was directed not to secure the second respondent till then. In the event of the second respondent not surrendering before the second respondent on or before 06.12.2020, the first respondent was directed to secure the second respondent and proceed in accordance with law. It was also directed that after the surrender of second respondent, he is at liberty to file a fresh petition for bail before the concerned Court and that petition may be considered on the same day on merits and in accordance with law.

13. It appears that in accordance with the direction, the second respondent surrendered before the learned Judicial Magistrate and the learned Judicial Magistrate passed an order in Crl.M.P.No.2585 of 2020, dated 05.12.2020. During the course of hearing, the Investigating Officer submitted a reply stating that the second respondent was directed to produce original title deed. However, the learned Counsel for the second respondent made an argument that the condition was waived by the Honourable High Court by accepting the representation during the hearing. The learned Judicial Magistrate accepted this submission and stated that the order of the High Court did not specify the said condition in the later part of order. Taking note of this fact and the fact that the investigation is already over and final report is filed, the learned Judicial Magistrate granted bail to the second respondent on the same day of filing the bail petition.

14. The issue now is as to whether the learned Judicial Magistrate and the learned Counsel appeared for the second respondent before the learned Judicial Magistrate were right in interpreting the order of this Court that this Court waived the condition for depositing the original title deed by the second



respondent. In the considered opinion of this Court, the said interpretation by the learned Judicial Magistrate and the learned Counsel appeared for the second respondent before the learned Judicial Magistrate is not correct. The order has to be read in its entirety. In fact, the order was pronounced allowing the petition filed for cancellation of bail granted in Crl.M.P.No.7241 of 2019. In view of the submission made by the learned Counsel for the second respondent that the second respondent was prepared to produce the original title deed to show his *bonafide*, this Court directed the learned Judicial Magistrate, if fresh bail petition is filed before him, he was directed to consider the submission of deposit of original title deed and pass orders on merits and in accordance with law. Only after pronouncing this order, it was submitted by the learned Counsel for the second respondent that the second respondent was ready and willing to surrender before the concerned Court. In the said circumstances, this Court directed him to surrender on or before 06.12.2020, giving liberty to file a fresh petition. On filing of such petition, the Court concerned was directed to consider on the same day on merits and in accordance with law. There is no specific mention about waiving or withdrawing the earlier direction to the Court to consider the submission of deposit of original title deed, while considering the fresh bail petition. That condition stands. That was not altered or cancelled/withdrawn. Therefore, both the learned Judicial Magistrate and the learned Counsel for the second respondent were not correct in making a wrong interpretation that, that condition was waived by this Court.

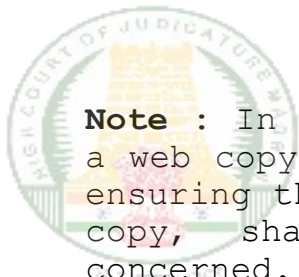
15. Considering the fact that final report has been filed in this case, this Court directs the second respondent to produce the original title deed as submitted earlier during the hearing in Crl.O.P.(MD)No.3695 of 2020, within 30 days from the date of receipt of a copy of this order before the concerned Court, failing such production, the bail granted to the second respondent in Cr.M.P.No.2585 of 2020, on 05.12.2020 by the learned Judicial Magistrate, Theni shall stand automatically cancelled. Then the learned Judicial Magistrate, Theni is directed to take steps to secure the second respondent and remand him into judicial custody for facing the trail.

16. This Criminal Original Petition is disposed of in the above terms.

sd/-
26/07/2021

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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.

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TO

1. THE JUDICIAL MAGISTRATE,
THENI.
2. -DO- THROUGH: THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
3. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
THENI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1cc to Ms.L.Maithily, Advocate, Sr. No.23810

ORDER
IN
CRL OP(MD) No.5043 of 2021
Date :26/07/2021

SSL
SRS/JC/SAR-II/28.07.2021/6P/6C