



WEB COPY



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

M.DHANDAPANI.,J.

The present petition has been filed by the defacto complainant to cancel the bail granted to the petitioner in Crl. O.P. No.17859/2021 on the ground that the petitioner has not complied with the condition imposed by this Court while granting anticipatory bail.

2. It is the case of the prosecution that the accused/2nd respondent along with other accused are alleged to have received a sum of Rs.25 Lakhs as commission from the defacto complainant for the purpose of arranging bank loan, but neither arranged loan nor repaid the amount, thereby cheated the defacto complainant, which resulted in the filing of the complaint.

3. The accused/2nd respondent, on being implicated for the offences under Sections 406 and 420 IPC in Crime No.215 of 2021, on the basis of the complaint of the petitioner, had preferred Crl. O.P. No.17859/21 seeking anticipatory bail and on the accused/1st respondent expressing his intent to pay a sum of Rs.15 Lakhs by way of demand draft in favour of the defacto



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

WEB COPY

complainant within a period of four weeks, this Court had granted anticipatory bail to the accused/2nd respondent. However, after obtaining anticipatory bail, the accused/2nd respondent failed to comply with the order of this Court resultantly the present petition is filed for cancellation of bail.

4. Learned counsel appearing for the petitioner submitted that this Court had granted anticipatory bail based on the undertaking given by the accused/2nd respondent that he will pay a sum of Rs.15 Lakhs by way of demand draft to the defacto complainant within a period of four weeks and based on the said undertaking this Court had granted anticipatory bail to the accused/2nd respondent. It is the grievance of the petitioner that till date the accused/2nd respondent had not complied with the undertaking given before this Court, which is nothing but wilful disobedience of the order of this Court and, therefore, the indulgence given to the accused/2nd respondent by way of anticipatory bail should be recalled.

5. Per contra, learned counsel appearing for the accused/2nd respondent submitted that as against the condition imposed while granting



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

WEB COPY

anticipatory bail, the accused/2nd respondent preferred SLP (Crl.) No.1117/2022 before the Hon'ble Apex Court and the said Special Leave Petition was withdrawn by the accused/2nd respondent on 16.2.2022 with liberty to file modification petition before this Court. It is further submitted that pursuant to the said liberty, the accused/2nd respondent had filed modification petition on 14.7.2022, which is pending consideration of this Court. It is alleged by the learned counsel for the accused/2nd respondent that the petitioner, with ulterior motive has filed the present petition seeking cancellation of bail even before this Court could consider the modification petition filed by the accused/2nd respondent and, accordingly, prays for dismissal of the present miscellaneous petition.

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

7. A perusal of the materials reveal that private notice was ordered to be taken on the accused/2nd respondent by the petitioner in the address



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

WEB COPY

mentioned in the earlier anticipatory bail petition, which was returned with an endorsement "no such person is available". Thereafter, this Court permitted the petitioner to take paper publication in vernacular newspaper on 27.7.2022, whereinafter, the accused/2nd respondent entered appearance through counsel and submitted that modification petition has been filed on 14.7.2022, which is pending as on date.

8. It is to be pointed out that this Court, vide order dated 29.9.2021 had granted anticipatory bail on the voluntary undertaking of the accused/2nd respondent that he would pay by way of demand draft a sum of Rs.15 Lakhs to the defacto complainant. However, despite giving the said undertaking, the accused/2nd respondent, in view of his inherent right to challenge the said order, had filed SLP (Crl.) No.1117/2022 before the Hon'ble Supreme Court and, thereafter, had withdrawn the said petition on 16.2.2022 on the basis of the liberty granted to file appropriate modification petition before this Court. As pointed out above, the aforesaid order of the Hon'ble Supreme Court was passed on 16.2.2022 and after passing of the said order, the accused/2nd respondent had kept silent and issuance of notice in the present petition, had filed the



CrI.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

WEB COPY

petition seeking modification on 14.7.2022. Almost for a period of about five months from the order passed by the Hon'ble Supreme Court, the accused/2nd respondent had kept silent just enjoying the benefit of the order of anticipatory bail granted by this Court. Only after filing of the present petition for cancellation of the anticipatory bail, the accused 2nd respondent had filed the petition for modification.

9. 'Bail is the norm and Jail is exception' is the rule, so long as the accused acts in good faith and does not circumvent/evade the orders of this Court or flout the orders of the Court. The accused/2nd respondent had, by invoking the appellate jurisdiction by filing SLP (CrI.) No.1117/2022 had gained time from 29.9.2021 till 16.2.2022 when the Special Leave Petition was withdrawn with liberty to the accused/2nd respondent to file modification petition before this Court. However, the accused/2nd petitioner had kept silent since 16.2.2022 and only when the defacto complainant had filed the present petition for cancellation of bail and notice was issued and paper publication was effected, thought it fit to utilise the liberty granted by the Hon'ble Apex Court.



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

WEB COPY

10. The liberty granted by the Hon'ble Apex Court is not to be utilised by the accused/2nd respondent at his whims and fancies. The accused/2nd respondent, so long as he follows the rule of law in letter and spirit would be safeguarded by the orders of this Court, but when the order of this Court is thrown to the winds and sought to be subjected to the intellectual ingenuity of the accused/2nd respondent to his benefit, this Court cannot be a mute spectator and allow such audacious act to be perpetrated in which the order of this Court is given the least respect. The act of the accused/2nd respondent in flouting the orders of this Court by not adhering to the undertaking and even not pursuing the liberty granted by the Hon'ble Supreme Court diligently, but only trying to utilise it when the need arose, this Court would necessarily have to wield the judicial sword to set right the wrong.

11. 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;*



WEB COPY



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

- 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."*

(Emphasis Supplied)

12. From the factors enumerated by the Hon'ble Supreme Court above, it is manifestly clear that under the guise of an appeal to the Hon'ble Supreme Court and getting liberty, the accused/2nd respondent has attempted to evade the course of justice and abused the concession granted by this Court by not complying with the voluntary undertaking given by him before this Court. The offence committed by the accused/2nd respondent is of such a nature that the gravity of the offence coupled with the act of the accused/2nd respondent in



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

WEB COPY

trying to evade compliance of the voluntary undertaking definitely warrants the invocation of the powers of cancellation of bail vested in this Court u/s 439 (2) Cr.P.C.

13. For the reasons aforesaid, this Court cannot grant any further indulgence and leniency of persons of such a nature, who flout and disobey the orders of this Court and, accordingly, the claim of the petitioner seeking cancellation of anticipatory bail granted to the accused/2nd respondent definitely warrants an affirmative answer at the hands of this Court. Accordingly, the anticipatory bail granted to the petitioner, vide the order of this Court dated 29.9.2021 stands recalled and vacated and the present miscellaneous petition is ordered as prayed for.

02.08.2022

SK/GLN



WEB COPY



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021

M.DHANDAPANI, J.

SK/GLN

CRL. M.P. NO. 8537 OF 2022

IN

CRL. O.P. NO.17859 OF 2021

02.08.2022



WEB COPY



Crl.M.P.No.8537 of 2022 in
CRL.O.P.No.17859 of 2021