

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.12168 of 2022

A.Kumutha

...Petitioner

Vs.

1. The Inspector of Police,
J-4, Kotturpuram Police Station,
Chennai - 600 085.

2. Annasamy

...Respondents

Prayer: Criminal Original Petition filed under Section 439(2) of Cr.P.C. praying to cancel the bail granted to the 2nd respondent herein Crl.M.PNo.3688 of 2022 dated 31.03.2022, on the file of the learned Metropolitan Magistrate IX Court, Saidapet.

For Petitioner : Mr.M.Guruprasad

For Respondents

For R1 : Mr.A.Damodaran
Additional Public Prosecutor.

For R2 : Mr.K.Shyam Sundar

ORDER

This petition has been filed for cancellation of bail granted to the 2nd respondent herein in Crl.M.PNo.3688 of 2022 dated 31.03.2022, on the file of the Metropolitan Magistrate IX, Saidapet, Chennai.

2. A complaint was lodged by the petitioner alleging that he is one of the subscribers of the Chit, run by the 2nd respondent, in which, the petitioner deposited a sum of Rs.20 lakhs, and that the 2nd respondent failed to return the said amount to the petitioner. On the said complaint, the 2nd respondent was arrested and remanded to judicial custody. In fact, the A1 as well as his wife/A2 had already filed an affidavit in Crl.O.P.No.13629 of 2021 on 21.10.2021, wherein, they agreed their liability and this Court directed them to repay the amount within a period of six months. Even then, the 2nd respondent failed to comply with the condition.

3. Therefore, while granting bail to the 2nd respondent, the Court below imposed the condition that the 2nd respondent shall pay Rs.12 lakhs to the de-facto complainant in hand within a period of four weeks after his enlargement on bail, otherwise his bail will stand automatically cancelled. Further, the 2nd respondent failed to comply with the same and filed the petition for modification before the Court below. Though the learned Magistrate had no power to modify the condition, the learned Magistrate modified the order in Crl.M.P.No.4528 of 2022 by an order dated 20.04.2022 to the extent that the 2nd respondent was directed to deposit a sum of Rs.6 lakhs instead of 12 lakhs.

4. Thereafter, the 2nd respondent again filed a petition to extend and modify the said condition imposed by the Court below before this Court in Crl.O.P.Nos.10183 & 10194 of 2022 and on such petition, this Court by order dated 29.04.2022, dismissed the petition. Even then, the 2nd respondent failed to comply with the condition imposed by the Court below, while he was granted bail.

5. The learned counsel for the 2nd respondent submitted that, instead of paying the money directly to the petitioner, he wants to modify the order to the effect he shall be directed to deposit the said amount to the credit of Crl.M.P.No.3688 of 2022. Further, the second respondent was granted bail on 31.03.2022 with the condition that he shall pay a sum of Rs.12 lakhs within a period of four weeks after his release from the prison. Though the said order was modified to the tune of Rs.6 lakhs instead of Rs.12 lakhs, there was no extension of time granted by the Court below for payment of said amount.

6. The learned Additional Public Prosecutor appearing for the 1st respondent submitted that the 2nd respondent failed to comply with the said condition, and in this regard, he relied upon a judgment of Hon'ble Supreme Court of India reported in 2022 Live Law (SC) 562, in the case of Deepak Yadav Vs. State of U.P & Another. The relevant portions of the judgement is extracted hereunder;-

''31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled;-

a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.

d) Where bail has been granted on untenable grounds.

e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

f) 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.

g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

32. In *Neeru Yadav Vs. State of Uttar Pradesh and Another*, the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under;-

''12....It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court''

7.In the case on hand, admittedly the 2nd respondent failed to comply with the condition imposed by the Court below while granting bail. Therefore, the above decision of the Hon'ble Supreme Court of India is squarely applicable to the case on hand. That apart, even the petitioner was granted bail by the Court below in Crl.M.P.No.3688 of 2022 on 31.03.2022 with a condition that if the 2nd respondent failed to comply with the condition imposed therein, his bail will automatically stands cancelled. Admittedly, the 2nd respondent failed to comply with the condition imposed by the trial Court.

8.Therefore, the bail granted to the 2nd respondent in Crl.O.P.No.3688 of 2022 dated 31.03.2022 is hereby cancelled and the 1st respondent is directed to secure the 2nd respondent/A1 and proceed against the 2nd respondent in accordance with law. Accordingly, this Criminal Original Petition stands allowed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
J-4, Kotturpuram Police Station,
Chennai - 600 085.
2. The Metropolitan Magistrate IX,
Saidapet, Chennai.
3. The Public Prosecutor
Madras High Court,
Chennai.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.43298

CRL.O.P.No.12168 of 2022

(CO)
RGA(18/07/2022)