

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.M.P.No.9641 of 2021

in

Crl.O.P.No.3448 of 2021

Mrs.Asha Manoharan

.. Petitioner/de facto complainant

Vs.

1. State rep.by its
Inspector of Police,
CCB, Vepery Police Station,
Chennai, Crime No.789 of 2015

2. Hemnath

.. Respondents

Prayer : The Petition is filed under Section 439(ii) of the Code of Criminal Procedure, to cancel the bail granted to the second respondent by this Hon'ble Court in Crl.O.P.No.3448 of 2021 dated 26.02.2021.

For Petitioner : Mr.J.N.Naresh Kumar

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)

Mr.Hemnath (Party-in-person)

ORDER

This petition is filed to cancel the bail granted in Crl.O.P.No.3448 of 2021 dated 26.02.2021.

2. The petitioner is the de facto complainant. She lodged a complaint against two accused persons, in which the second respondent is arrayed as Accused No.2 (A2). The second respondent is the family friend of de facto complainant. The second respondent introduced himself to the de facto complainant stating that he is having contact with the political persons and also promised that he will get a medical seat to the daughter of the de facto complainant. In pursuant to the promise and assurance given by the second respondent, de facto complainant and two other persons paid a sum of Rs.1,05,00,000/- (Rupees One Crore and Five Lakhs Only) in the year 2011 to get medical seats. Thereafter, the second respondent failed to get any

medical seat and refused to return the money and thereby the de facto complainant and two others had lodged a complaint against the second respondent. Pursuant to the said complaint, the first respondent registered an FIR in Crime No.789 of 2015 for the offences under the Sections 420 and 506(i) of IPC. The second respondent was arrested and remanded to judicial custody on 24.12.2020. Thereafter the second respondent filed a bail petition before this Court in Crl.O.P.No.3448 of 2021. This Court granted bail to the second respondent with certain conditions, which are as follows:

"6. I have considered the submissions made by the counsel and perused the materials available on records.

7. Now, investigation is completed and final report has also been filed. That apart, the petitioner has also come forward to deposit a sum of Rs.15 Lakhs (Rupees Fifteen Lakhs Only).

8. Taking into consideration of the above facts and circumstances of the case, and the fact that investigation is completed and final report has also been filed and also considering the period of incarceration suffered by the petitioner, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute 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 learned Metropolitan Magistrate, CCB and CBCID Cases, Chennai, and on further conditions that:

(b) the sureties shall affix their photographs and left Thumb Impression in the Surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner is directed to deposit a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the credit of Crime No.789 of 2015 before the Metropolitan Magistrate, CCB and CBCID Cases Chennai, within a period of eight weeks from the date of release from prison.

(d) the petitioner shall report before the respondent police as and when required for interrogation;

(e) the petitioner shall not commit any offences of similar nature;

(f) the petitioner shall not abscond either during investigation or trial;

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(h) on breach of any of the aforesaid conditions, the learned Judicial 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 petitioners released on bail by the learned Magistrate / Trial Court himself is laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560];

(i) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC."

3. Accordingly, the second respondent executed the sureties and came out of prison. However, the second respondent failed to deposit a sum of Rs.15 lakhs to the credit of Crime No.789 of 2015 within a period of 8 weeks from the date of release from the prison. Thereafter the second respondent filed a petition for extension of time to comply with the conditions in Crl.O.P.No.5586 of 2021. It was dismissed by this Court by an order dated 25.06.2021. The second respondent also filed an appeal before the Hon'ble Supreme Court of India, as against the conditions imposed while he was granted bail in Crl.O.P.No.3448 of 2021, in Special Leave To Appeal in (CRL)No.5470 of 2021. The Hon'ble Supreme Court of India by an order dated 04.08.2021, dismissed this SLP on the ground that the second respondent having himself volunteered to deposit the amount and cannot make a grievance of the same. Even after the dismissal of the SLP, the second respondent failed to comply with the conditions imposed by this Court.

4. The second respondent had appeared before this Court in person on 08.06.2022 and sought time to engage a counsel to defend him. At the request of the second respondent, the matter has been adjourned to today. Even today, the second respondent appeared before this Court stating that he already filed a petition to appoint any counsel through Legal Aid to defend his case and on that ground, seeks further time. As the second respondent was able to file an appeal before the Hon'ble Supreme Court of India against the conditions imposed by this Court, this Court is not able to believe that the second respondent could not able to engage a counsel to defend his case before this Court and seeking Legal Aid counsel.

5. However, it is seen that admittedly, the second respondent failed to comply with the conditions till today. The second respondent was granted bail by an order dated 26.02.2021. While granting of bail to the second respondent, this Court directed the second respondent to deposit a sum of Rs.15 Lakhs within a period of 8 weeks from the date of release from the prison. Even after the completion of 8 weeks, the second respondent failed to comply with the conditions and he filed a petition for modification in Crl.O.P.No.5586 of 2021 and the same was also dismissed by this Court by an order dated 25.06.2021. Thereafter SLP petition was filed by

the second respondent before the Hon'ble Supreme Court of India was also dismissed by an order dated 04.08.2021. After a period of nearly 10 Months from the date of dismissal of SLP, the second respondent failed to comply with the conditions imposed by this Court. Therefore, the second respondent has no defence to defend his present petition.

6. In view of the above, the bail granted to second respondent (Mr.R.Hemnath) in the order dated 26.02.2021 in Crl.O.P.No.3448 of 2021 is hereby canceled. The first respondent is directed to pursue as against the second respondent in accordance with law.

-sd/-
15/06/2022

This order, on being produced, be punctually observed and carried into execution by all concerned
TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE METROPOLITAN MAGISTRATE,
CCB AND CBCID CASES, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI (FOR INFORMATION)

3 THE INSPECTOR OF POLICE,
CCB, VEPERY POLICE STATION, CHENNAI

4 THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

C.C. to M/S.J.N.NARESH KUMAR Advocate on payment of necessary charges

Order
in
CRL MP.9641/2021
in
CRL OP.3448/2021

Date :15/06/2022

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RVR 21/06/2022