



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2022

Pronounced on : 23.03.2022

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Cr1.M.P.No.13756 of 2021

in

Cr1.O.P.No.29272 of 2018

N.Santhakumari

... Petitioner/Defacto complainant

/versus/

1. Raghu
2. Rajan
3. Dilli
4. Anandi
5. Mohan @ Mohanakrishnan
6. Karthik
7. Siva
8. Devaraj
9. Jim Hari @ Hari Krishnan
10. Harikrishnan
11. Chinna Thambi

... Respondents 1 to 11/Accused 1 to 11

12. The State Rep. by its,
The Station House Officer,
E-9, Thalambur Police Station,
Chennai - 603 103.
(Crime No.641 of 2018)

... Respondents/Complainant

Prayer: This Criminal Miscellaneous Petition is filed under Section 439(2) of Cr.P.C., pleaded to cancel the order granting anticipatory bail to the respondents 1 to 11 in Cr1.O.P.No.29272 of 2018 dated 14.12.2018 on the file of this Hon'ble Court.

For Petitioner : Mr.S.Suresh

For R1 to R11 : Mr.G.Mohana Krishnan, for
Mr.A.Saravanan.

For R12 : Mr.S.Santhosh,
Government Advocate (Cr1.Side)



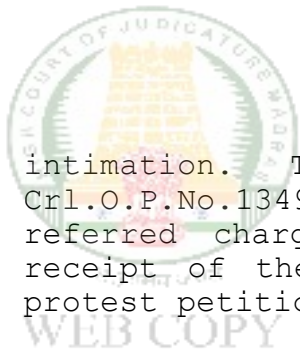
ORDER

The petitioner herein is the defacto complainant in Crime No.641/2018 on the file of the 12th respondent police.

2. The respondents 1 to 11 are the accused persons in that complaint. According to the petitioner herein, who is the defacto complainant, the land in S.No.253/11 measuring 0.13 cents at Navalur Village, Chengalpet belongs to the complainant. In a portion of the property, she has put up a building and had compounded the property. Her brothers Rajabhadar, Jaishankar and Baskar claiming right over the property through a settlement deed which according to the complainant is a forged document, with the help of the first and second respondents and their henchmen made attempt to grab the property, which lead to filing of suit and criminal complaints. While so, on 10/12/2018, in her absence, the accused persons with the help of JCB demolished the compound wall worth about Rs.5,00,000/-, the building in 750 sq.ft worth about Rs.41 lakhs, damaged CCTV camera worth about Rs.75,000/-, Electrical pillars, Computers accessories and taken away 70 sovereigns of jewels worth about Rs.17,50,000/- and cash Rs.7,00,000/-. They also took away her educational certificates and the title documents of the property.

3. The 12th respondent received the complaint and registered case under section 147, 448, 380, 506(1) of I.P.C and read with Section 3 (1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act 1992, in Crime No.641 of 2018 at about 22.45 hrs on 10/12/2018. Apprehending arrest, the persons accused in the complaint filed anticipatory bail petition before this Court in CrI.O.P.No.29272 of 2018. This Court granted anticipatory bail on condition, the petitioners to deposit Rs.20,000/- jointly and report before Investigating Officer, as and when required. After recording the submission of the Learned Additional Public Prosecutor that "during the investigation it has been found that the cost of damage is only Rs.25,000/- Further, she submits that it is a case in counter. However, she vehemently opposed to grant anticipatory bail to the petitioners."

4. When the defacto complainant filed CrI.O.P.No.13492 of 2020, to transfer the investigation from the 12th respondent police to CBCID, Kancheepuram, alleging that the 12th respondent taking their side and not investigating the case fairly, it was brought to the notice of this Court that, on registration of complaint, the next day the 12th respondent closed the complaint as "mistake of fact" on recording statement of witnesses. The 12th respondent claimed that, the defacto complainant was intimated about the referred final report 629/2018, but the defacto complainant denied the receipt of the



intimation. Therefore, this Court, vide order dated 02/09/2020 in CrI.O.P.No.13492 of 2020, directed the 12th respondent to serve referred charge sheet notice to the defacto complainant and on receipt of the notice, liberty to the defacto complainant to file protest petition, if so advised.

5. The defacto complainant filed protest petition in CrI.M.P.No.3363/2020 before the Learned Judicial Magistrate No.1, Chengalpattu and the Learned Judicial Magistrate, after considering the facts on record, directed the 12th respondent to conduct further investigation in Crime No.641/2018 and filed final report on further investigation as early as possible.

6. While so, this petition is filed to cancel the anticipatory bail granted to the respondents 1 to 11, in Crime No.642 of 2018 on the ground that, due to the collusion and connivance with the 12th respondent, the High Court was misled and anticipatory bail was granted to these respondents. The undue influence exerted by the accused persons on the Investigating Officer lead to closure of her complaint as "mistake of fact" the very next day of the complaint. Taking note of this, the Court reprimanded and ordered to conduct further investigation on the protest petition filed by the defacto complainant.

7. That apart, after committing crime of trespass and damages to the property on 10/12/2018, at the instigation of the other respondents, Devaraj (8th respondent herein), Dilli (3rd respondent herein) and Anandi (4th respondent herein) on 13/12/2018 night came to the asbestos shed where the defacto complainant was sleeping. They poured acid on her abdomen and thigh. She was taken to the hospital for the burn injuries and referred to Stanley Government Hospital Chennai, for treatment. She sustained 13% acid burn injury on her abdomen and thigh. The complaint given by her against these three persons was registered in Crime No.644/2018 by the 12th respondent against these three persons for offences under Section 324 I.P.C.

8. Aggrieved by not registering the case under appropriate sections of I.P.C and for not making any attempt to investigate the case, the petitioner herein moved this Court under section 482 of Cr.P.C., for change of Investigating Agency.

9. In that petition CrI.O.P.No.31756/2019, by order dated 07/07/2020, this Court directed the Investigating Officer to alter the F.I.R if required and complete the investigation within a period of three weeks and file the final report. In spite of this direction,



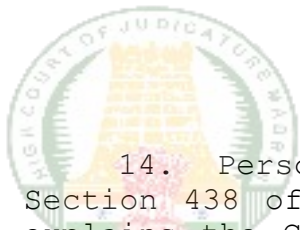
the 12th respondent police failed to complete the Investigation, even after a year. This forced the petitioner herein to knock the doors of justice again in Crl.O.P.No.8287/2021. When the petition was taken up for hearing, the Learned Government Advocate (Crl.Side) has given an undertaking that, on obtaining the medical certificate from the Kilpauk Medical College Hospital final report will be filed. Recording this undertaking, this Court on 13/07/2021, adjourned the case for reporting compliance.

10. Thereafter, the 12th respondent has filed the final report against the Respondents 3, 4 and 10 herein in Crime No.644/2018 for offences under section 448, 326 A I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

11. The Learned Counsel for the petitioner/defacto complainant after placing the facts as stated above and the relevant documents, submitted that, the first and second respondents are powerful persons and politically influential. With their help, the property of the petitioner is grabbed by force. To intimidate her from taking legal recourse to retrieve her property, the acid attack on her was done on 13th December 2018. The liberty given to the respondents been misused therefore, the anticipatory bail granted to them on 14.12.2018 in Crime No.641/2018 has to be cancelled.

12. The Learned Counsel for the petitioner submitted that the threat to victim/witness is established by filing of final report against three of them in Crime No.644/2018. The undue influence of the accused persons hold with the police proved through the urgency shown by the Investigating Officer to close the complaint in Crime No.641/2018 the very next day of the complaint and their recklessness in not completing the investigation of the acid attack case in Crime No.644/2018 within a period of 3 months, as per the direction from the High Court call for cancellation of bail.

13. Per contra, the Learned Counsel appearing for the respondents 1 to 11 submitted that, the petitioner herein without any right in the property creating nuisance to the real owners of the property. She by lodging false complaints, is trying to get over action for her criminal activities, for which cases are pending. The respondents are innocent and ready to face trial and prove their innocence. Cancellation of anticipatory bail granted three years ago is not warranted.



14. Person apprehending arrest granted advance bail under Section 438 of the Code of Criminal Procedure, if he satisfactorily explains the Court that there is no prima facie case against him or the offences alleged against him does not warrant custody and he will be available for investigation and trial without tampering evidence and threatening the witnesses. In case, if there is any violation and misuse of the liberty granted, court shall not hesitate to cancel the bail granted to ensure fair and proper trial.

15. It is no doubt true that, when the accused have been let off or enlarged on bail, Courts have to be careful and cautious in exercising power of taking back the accused in custody unless there is a reasonable apprehension that the accused would interfere and pollute justice which warrants the cancellation of bail. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection in appropriate cases, when by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. The Court has to strike a balance between two necessities, namely, necessity of not allowing the course of justice to be deflected and that of allowing liberty to the accused until he is found guilty.

16. The Hon'ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation reported in (2012) 1 SCC 40; while discussing the object of bail, held as under:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India , it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted



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or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

17. In Chaman Lal -vs- State of U.P and another reported in (2004) 7 SCC 525, the Hon'ble Supreme Court held that,

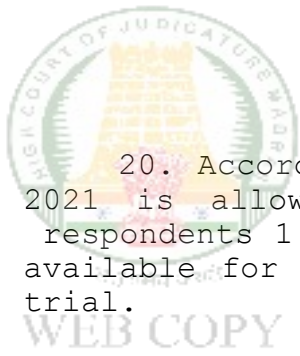
"9.....It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

3. Prima facie satisfaction of the court in support of the charge.

10. Any order dehors of such reasons suffers from non-application of mind as was noted by this Court in Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598:2002 SCC (Cri) 688], Puran v. Rambilas [(2001) 6 SCC 338:2001 SCC (Cri) 1124] and in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528:JT (2004) 3 SC 442] .



20. Accordingly, the Criminal Miscellaneous Petition No.13756 of 2021 is allowed. The 12th respondent is directed to secure the respondents 1 to 11 and proceed in accordance with law and make them available for trial without any interference to the progress of the trial.

-sd/-
23/03/2022

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 JUDICIAL MAGISTRATE,
NO.I, CHENGALPET, KANCHEEPURAM DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPET [FOR INFORMATION]

3 THE STATION HOUSE OFFICER,
E-9, THALAMBUR POLICE STATION,
CHENNAI-603 103

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SECTION OFFICER
V.R. SECTION, HIGH COURT, MADRAS

+1 C.C. to M/S.A.SARAVANAN Advocate on payment of necessary charges SR.NO.4438

+1 C.C. to M/S.S.SURESH Advocate on payment of necessary charges SR.NO.4464

Order
in
CRL MP.13756/2021
in
CRL OP.29272/2018

Date :23/03/2022

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

JPA 25/03/2022