



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Eighteenth day of May Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP (MD) No.3386 of 2022

IN

CRL OP (MD) No.20991 of 2021

MYTHILI

... PETITIONER/DEFACTO
COMPLAINANT

Vs

1. STATE REP.BY
THE INSPECTOR OF POLICE
SOMARASAMPETTAI POLICE STATION,
TRICHY DISTRICT.
IN CRIMENO.769/2021.

... 1ST RESPONDENT/RESPONDENT/
COMPLAINANT

2. RAVI MURUGAIAH

... 2ND RESPONDENT/PETITIONER/
ACCUSED

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to cancel the anticipatory bail order passed in Crl.OP(MD)No.20991/2021 dated 29/12/2021 by this Honble Court.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.MURUGESAN N R, Advocate for the petitioner and of M/S.M.MUTHUMANIKKAM, Government Advocate (Criminal Side) for the Respondent 1, the court made the following order:-

The above Criminal Miscellaneous Petition has been filed under Section 439(2) Cr.P.C., seeking orders to cancel the anticipatory bail granted in Crl.O.P.(MD)No.20991 of 2021 dated 29.12.2021 to the second respondent/fourth accused in connection with Crime No.769 of 2021 on the file of Somarasampettai Police Station, Trichy District.

2.The petitioner is the defacto complainant and on the basis of the complaint lodged by the petitioner, FIR came to be registered in Crime No.769 of 2021 dated 28.11.2021 for the offences under Sections 294(b), 109 and 302 IPC against four persons including the second respondent herein.



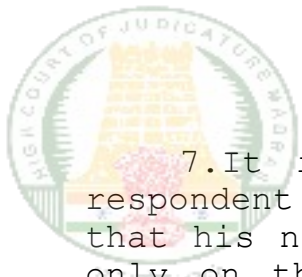
3.It is evident from the records that the fourth accused has filed a petition in CrI.O.P.(MD)No.20991 of 2021 seeking anticipatory bail and the learned Judge of this Court, vide order dated 29.12.2021, has granted anticipatory bail to the fourth accused.

WEB COPY

4.The case of the prosecution is that one Vigneshwaran, who was the president of Malliampathu panchayat, with the assistance of the defacto complainant's husband Sivakumar removed the encroachment of burial ground situated at Sengathirsolai as per the direction of the District Collector, Trichy, that all the four accused had enmity with the defacto complainant's husband and the said Vigneshwaran, that due to the said enmity, on 28.11.2021 at about 06.00 p.m., accused Prabhakaran and Deepak came to the front side of the defacto complainant's house and abused the defacto complainant's husband in filthy language, that when the defacto complainant's husband came out and raised question about their conduct, the first accused Prabhakaran and the second accused Deepak had attacked the defacto complainant's husband with wooden stick on the back side of his head and right side of his ear at the instigation of the third accused Kathirvel and the fourth accused Ravimurugaiya, that when the defacto complainant had raised alarm, the accused 1 and 2 had openly challenged that they would kill Vigneshwaran and also made life threat to the defacto complainant, that after seeing the public, they had escaped from the place of occurrence and that when the defacto complainant's husband was taken to the Government hospital, Trichy, he was declared as brought dead.

5.In the present application for cancellation of anticipatory bail, the petitioner/defacto complainant has narrated about the disputes that existed between her husband and the four accused, civil and criminal cases pending between them and the consequent enmity that existed between them.

6.The petitioner's case is that the second respondent/ fourth accused was ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days before the learned Judicial Magistrate No.V, Tiruchirapalli, that he was directed to report before the respondent police daily at 10.30 a.m., until further orders, that the second respondent has surrendered before the concerned Court on 11.01.2021 and executed the bond along with sureties on that day itself, but for the past 48 days, the second respondent did not get the intimation from the Court, that the second respondent has not obeyed the orders of this Court, but on the other hand, he has disobeyed the orders and committed contempt, that the petitioner has already filed a petition before the Court of the Judicial Magistrate No.V, Tiruchirapalli, to take action against the second respondent on 01.02.2022, but the said petition was returned and that the said petition was represented on 10.02.2022.



7. It is the further case of the petitioner that the second respondent has cheated this Court by representing wrong particulars that his name does not find place in the FIR and he was implicated only on the basis of the confession of the co-accused, that the defacto complainant has lodged the complaint specifically stating that only at the instigation of the accused 3 and 4, her husband was murdered by the accused 1 and 2, that the petitioner's name finds place in the FIR and that the second respondent by suppressing the same has obtained the orders for anticipatory bail.

8. As already pointed out, the learned Judge of this Court, after considering the submissions made by the learned counsel for the fourth accused and the learned Government Advocate (Criminal Side), has granted anticipatory bail vide order dated 29.12.2021.

9. Before entering into further discussion, let us consider the legal provision regarding cancellation of bail. Section 439(2) Cr.P.C. reads as follows:

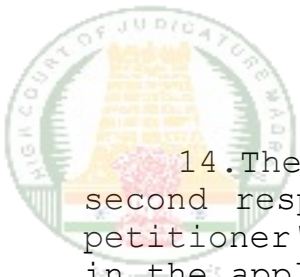
"439(2): A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

10. It is settled law that once bail is granted to any person, the same cannot be cancelled in a mechanical manner without there being supervening circumstances, which are not conducive for fair trial. The Hon'ble Supreme Court in **State (Delhi Administration) Vs. Sanjay Gandhi** reported in (1978)2 SCC 411, has specifically held that the power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection.

11. No doubt, the High Court or the Sessions Court can cancel the bail in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. The Hon'ble Apex Court in **Myakala Dharmarajam vs The State Of Telangana and another** in Criminal Appeal Nos. 1974-1975 of 2019, dated 07.01.2020, has held that while exercising powers in the matter of cancellation of bail, it is necessary to examine whether the orders passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in miscarriage of justice.

12. It is pertinent to note that if the court granting bail ignores relevant materials indicating *prima facie* involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, then the Court would be justified in cancelling the bail.

13. Now coming to the case on hand, as already pointed out, the petitioner has raised two grounds for cancelling the anticipatory bail granted to the second respondent/fourth accused.



14.The learned counsel for the petitioner would submit that the second respondent has suppressed the material fact that though the petitioner's name finds place in the FIR, he has specifically stated in the application for anticipatory bail that his name does not find place and he was implicated only on the basis of the confession of the co-accused and that specific allegations were made against the second respondent/fourth accused.

15.The learned counsel for the petitioner would further submit that though this Court has directed the second respondent to appear before the respondent police daily at 10.30 a.m., until further orders, he has failed to comply with the direction of this Court.

16.No doubt, as rightly pointed out by the learned counsel for the petitioner, the counsel, who appeared for the second respondent/fourth accused, has submitted before the learned Judge of this Court, while considering the anticipatory bail in CrI.O.P.(MD) No.20991 of 2021, that the fourth accused's name does not find place in the FIR, he has been implicated as an accused only based on the confession given by the co-accused and he was not present in the scene of occurrence. But it is pertinent to note that FIR came to be registered against four persons including the second respondent herein.

17.The learned Judge, taking into consideration the facts and circumstances of the case, and by observing that even as per the FIR, the second respondent/fourth accused was not present in the scene of occurrence and the facts that only based on the confession statement given by the co-accused, he was arrayed as an accused, that there is no averment about the fourth accused as per the confession of the second accused and that there is no averment that the fourth accused had instigated the other accused to commit the murder, decided to grant anticipatory bail to the second respondent.

18.As rightly contended by the learned counsel for the second respondent, since the FIR contains the name of four persons including the second respondent, the contention of the petitioner that the fourth accused had cheated this Court by misrepresentation cannot be accepted.

19.Now turning to the second contention that the second respondent has not complied with the conditions imposed by this Court, it is evident from the records that the second respondent has filed a petition in CrI.M.P.(MD)No.1542 of 2022 in CrI.O.P.(MD) No.20991 of 2021 seeking relaxation of condition and this Court, vide order dated 02.02.2022, has relaxed the condition and directed the fourth accused to report before the respondent police as and when required for interrogation.

20.As rightly pointed out by the learned counsel for the second respondent, in the order dated 02.02.2022, this Court has recorded



the submission made by the learned Additional Public Prosecutor that the fourth accused has been complying with the condition regularly.

21. Moreover, the first respondent has filed a counter affidavit stating that the condition imposed by this Court was complied by the second respondent / fourth accused without any default and he reported before the respondent police from 12.01.2022 to 31.01.2022 and that thereafter, the fourth accused's application for relaxation in CrI.M.P.(MD)No.1542 of 2022 was allowed and the condition imposed by this Court on him was relaxed.

22. Considering the above, the objection of the petitioner that the second respondent has not complied with the condition imposed by this Court is incorrect and the same is liable to be rejected.

23. The first respondent, in his counter affidavit, has further stated that though the petitioner has made several grounds for cancellation of anticipatory bail, those grounds are legally not sustainable, that their investigation would reveal that there is no strong material evidence against the accused 3 and 4 and there is no nexus between occurrence and the accused 3 and 4 and that they were implicated only based on the assumptions. He has further stated that they have already completed the investigation and sent a report for approval before the Public Prosecutor, District Court, Trichy, and that the second respondent has not violated any conditions imposed by this Court and as such, the question of cancelling the anticipatory bail does not arise at all.

24. The second respondent has also filed an elaborated counter affidavit disputing the averments raised in the petition for cancellation of anticipatory bail and he has further stated that his association with Sengathirsolai Village was in the year 2005 while he had developed the layout in Sengathirsolai village and at that time, based on the request of the villagers of Sengathirsolai, he has given land to the villagers by gift deed and he has built two public toilets for the villagers and that the said cremation land was used by the villagers from 2005 till date and he has no connection with the said land and the same belongs to the Government.

25. The second respondent, in his affidavit, has further stated that he has been residing for the past 10 years in Chennai along with his family and used to visit Trichy only for unavoidable reasons and he was not at all present at the scene of occurrence and he has nothing to do with the alleged occurrence.

26. No doubt, as rightly pointed out by the learned counsel for the second respondent, similarly placed third accused was granted anticipatory bail by this Court in CrI.O.P.(MD)No.470 of 2022 vide order dated 09.02.2022 and the paragraph No.9 of the said order



"9. But for the reasons stated above, I am not able to place on record any opinion with regard to the alleged involvement of the petitioner in the occurrence in view of the previous enmity between the deceased and the petitioner. As mentioned earlier, as on date, no material is available, even as per the confession statement of the co-accused. Further, similarly placed co-accused has been granted anticipatory bail in CrI.O.P.(MD) No.20991 of 2021, dated 29.12.2021 on the ground that the above said co-accused was also not implicated by the co-accused in the course of confession statement. Since the petitioner is also similarly placed person, this Court is inclined to enlarge the petitioner on anticipatory bail."

27. The learned Government Advocate (Criminal Side) would submit that the accused 1 and 2 were arrested and confession statements were taken from them and thereafter, they were detained under Goondas Act, vide order dated 29.12.2021, that the accused 3 and 4 had obtained anticipatory bail before this Court and that there is no strong material evidence available against the accused 3 and 4 and they were implicated only on the assumption basis.

28. The learned counsel for the second respondent would submit that the co-accused 1 and 2 have not implicated the fourth accused with the alleged murder and that the petitioner/defacto complainant at the instigation of the said Vigneshwaran has lodged the complaint falsely implicating the second respondent.

29. As already pointed out, the first respondent has already completed investigation and is awaiting for approval for the final report from the Public Prosecutor, District Court.

30. It is pertinent to note that the petitioner has not canvassed any other valid reasons or grounds for cancelling the anticipatory bail.

31. Considering the above facts and circumstances of the case and also the facts that the petitioner has not shown any valid reasons or grounds for cancelling the anticipatory bail, that investigation has already been completed and that similarly placed third accused has already been granted anticipatory bail by this Court and taking note of the counter affidavit of the first respondent that there is no strong material evidence against the second respondent, this Court is not inclined to allow this petition.



32. In the result, this Criminal Miscellaneous Petition is dismissed.

WEB COPY

/ TRUE COPY /

Sd/-
18/05/2022

09/06/2022
Sub-Assistant Registrar (C.S.II)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

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.

TO

1. THE JUDICIAL MAGISTRATE NO.V,
TRICHY.
2. -DO- THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
3. THE INSPECTOR OF POLICE,
SOMARASAMPETTAI POLICE STATION,
TRICHY DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.A.MADHUMATHI, Advocate SR.No.4806

ORDER
IN
CRL MP (MD) No.3386 of 2022
IN
CRL OP (MD) No.20991 of 2021
Date :18/05/2022