



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 03/03/2022
Pronounced on : 11/04/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.10629 of 2021

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Ravindren

... Petitioner/Intervenor/
Defacto Complainant

Vs

1.Sundaralingam Nadar
2.Uthiralingam Nadar
3.Manoharalingam

... Respondents/Petitioners
/Accused No.1 to 3

4.State rep.through
The Inspector of Police,
Sayalkudi Police Station,
Ramanathapuram District.
(Crime No.287 of 2021)

... Respondents/Respondents/
Complainant

For Petitioner	: Mr.Haja Mohideen Gisthi, Advocate.
For Respondents	: Mr.T.Lajapathi Roy, Advocate for R1.
	: Mr.S.Muthu Malai Raja, Advocate for R2 & R3
	: Mr.M.Muthumanikkam,
	Government Advocate (Crl.Side) for R4.

PETITION FOR Cancellation of ANTICIPATORY BAIL Under Sec.438 of Cr.P.C.

PRAYER :-

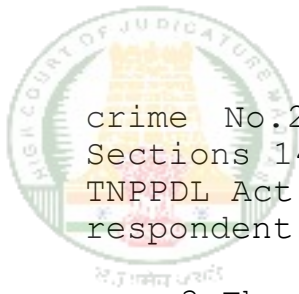
To Cancel the order of anticipatory bail granted to the Respondents/Accused No.1 to 3 herein by the learned Principal District and Sessions Court at Ramanathapuram in Crl.M.P.No.1448 of 2021, dated 29.07.2021.

ORDER : The Court made the following order :-

The Criminal Original Petition has been filed under Section 439 (2) of Cr.P.C, seeking orders to cancel the anticipatory bail granted in Crl.M.P.No.1448 of 2021, dated 29.07.2021 by the learned Principal District and Sessions Judge, Ramanathapuram in connection with the Crime No.287 of 2021 on the file of the fourth respondent Police.

2.The petitioner is the defacto complainant and on the basis of the complaint lodged by the petitioner, FIR came to be registered in

<https://hcservices.ecourts.gov.in/hcservices/>



crime No.287 of 2021 for the alleged offences punishable under Sections 147, 148, 447, 294(B), 427 and 506(ii) IPC and Section 3 of TNPPDL Act against the respondents 1 to 3, on the file of the fourth respondent Police.

3.The petitioner's case, in short, is as follows :

(i)The petitioner is working as a Site Engineer in Kaviyan Constructions Private Limited and K4 Hotel and Apartment; that the petitioner's employer- Deenadayalapandian had purchased an extent of 27 cents of land in Survey Nos.78/1B 1 B, 78/1B 1C at Kannirajapuram Village, Kadaladi Taluk, Ramanathapuram Taluk and he has been in possession of the property since July 2020; that they have started a project in the said land at the cost of Rs.1.50 Crores; that the petitioner had started to construct a compound wall around their property on 07.07.2021; that when the petitioner and his employer came to the property for supervision, they were prevented to enter into the property by the respondents 1 to 3 and some unknown persons and they have entered into the premises with weapons and caused damages and also caused criminal intimidation, that the petitioner's employer had immediately lodged a complaint before the Superintendent of Police, Anti-Land Grabbing Cell, Ramanathapuram and the same was received in CSR.NO.23 of 2021, that when the petitioner entered into the site, suddenly, the respondents 1 to 3 and some unknown persons had entered into the premises with weapons alleging that there is a common pathway available in the property for the Village people and prevented the petitioner and his men from proceeding with the construction work and damaged the constructed wall, abused them in filthy language and attempted to attack them, that the petitioner's complaint was registered in Crime No.287 of 2021 on 08.07.2021 and thereafter, the petitioner has filed a petition in Crl.OP(MD)No.17652 of 2021 and after intervention of this Court, the fourth respondent has altered the Sections of Law and added the offence under Section 3 of TNPPDL Act.

4.The respondents 1 to 3 have filed a petition in Crl.M.P.No.1448 of 2021, seeking anticipatory bail before the learned Principal District Court, Ramanathapuram. The petitioner has filed an intervening application and raised his objections. The Principal District Court, Ramanathapuram, vide order, dated 29.07.2021 has granted anticipatory bail. Challenging the grant of anticipatory bail, the defacto complainant has come forward with the present petition for cancelling the anticipatory bail.

5.Before entering into further discussion, it is necessary to consider the legal position. Section 439 (2) Cr.P.C, 1973, reads as follows:

"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."



6.It is pertinent to note that cancellation of bail, is now not limited to the occurrence of the supervening circumstances for the Court to cancel the bail. Recently, the Hon'ble Supreme Court in **Jayaben Vs. Tejas Kanubhai Zala and another** reported in **2022 SCC Online SC 24**, has reiterated the settled position of law that cancellation of bail and quashing and setting aside the wrong order releasing the accused on bail stand on different footings, that there will be different considerations, while considering the application for cancellation of bail for breach of conditions etc., and while considering the order passed by the Court releasing the accused on bail and that once, it is found that the order passed by the High Court releasing the accused on bail is unsustainable, necessary consequences shall have to follow and the bail has to be cancelled.

7.In *Puran Vs. Rambilas*, the Hon'ble Apex Court has held that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation.

8.The learned counsel for the petitioner has relied on the following decisions of the Hon'ble Supreme Court.

(i) Dinesh M.N. (SP) Vs. State of Gujarat reported in **2008 5 SCC 66** :

"25.The perversity as highlighted in Puran's case (supra) can also flow from the fact that as noted above, irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature. In the instant case, the trial Court seems to have been swayed by the fact that Sohrabuddin had shady reputation and criminal antecedents. That was not certainly a factor which was to be considered while granting bail. It was nature of the acts which ought to have been considered. By way of illustration, it can be said that the accused cannot take a plea while applying for bail that the person whom he killed was a hardened criminal. That certainly is not a factor which can be taken into account.

26.Another significant factor which was highlighted by the State before the High Court was that an FIR allegedly was filed to divert attention from the fake encounter. The same was not lodged by the Gujarat Police. The accused was the leader of the Rajasthan team and the other officials were Abdul Rehman, Himanshu Singh, Mohan Singh, Shyam Singh and Jai Singh. The first named Abdul Rehman had



lodged the FIR. It is pointed out from the General Diary in respect of entry on 26.11.2005 that accused Dinesh was present. In FIR CR-I 5/2005 also the presence of Dinesh has been noted. The relevance of these factors does not appear to have been noticed by the High Court. In other words, relevant materials were kept out of consideration. Once it is concluded that bail was granted on untenable grounds, the plea of absence of supervening circumstances has no leg to stand.

27. We have only highlighted the above aspects to show that irrelevant materials have been taken into account and/or relevant materials have been kept out of consideration. That being so, the order of granting bail to the appellant was certainly vulnerable."...

(ii) Padmakar Tukaram Bhavnagare and another Vs. State of Maharashtra and another reported in **2012 (13) SCC 720** :

"It is true that this Court has held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. This Court has clarified that these instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail order must be quashed in the interest of justice. (See: Dolat Ram v. State of Haryana[2] & Dinesh M.N. (S.P.) v. State of Gujarat[3]). No such case, however, was made out to persuade learned Single Judge to quash the anticipatory bail order passed in favour of accused 6 & 7. Order granting anticipatory bail to them, therefore, deserves to be confirmed. We feel that if the conditions imposed by learned Sessions Judge are confirmed, it would be possible for the investigating agency to interrogate the accused effectively."

(iii) Vipin Kumar Dhir Vs. State of Punjab and another reported in **2021 SCC Online SC 854** .

"11. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a



Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.

12. Broadly speaking, each case has its own unique factual scenario which holds the key for adjudication of bail matters including cancellation thereof. The offence alleged in the instant case is heinous and protrudes our medieval social structure which still wails for reforms despite multiple efforts made by Legislation and Judiciary."

9. In the first cited decision, it was the case of fake encounters carried out by the accused, who were the then Officers of Anti Terrorist Squad and was considered as heinous crime.

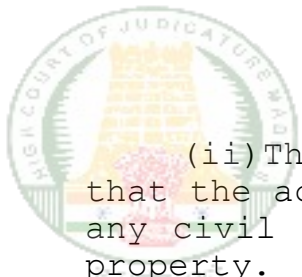
10. In the second cited decision, the Nagpur Bench of the Bombay High Court has cancelled the anticipatory bail given to the accused 6 and 7, who were charged with the offence under Section 306 IPC and the Hon'ble Supreme Court, by observing that there is no concrete material to show that the accused had interfered with the course of investigation by threatening the complainant and the members of the family, has set aside the orders of the High Court and restored the orders of the District Judge.

11. In the third decision cited above, the accused therein were charged with the offence under Sections 304(b), 302 r/w 120(B) IPC and in that case, since the arrest warrant could not be executed, the accused was declared as an absconder under Section 82 of the Code of the Criminal Procedure and the Hon'ble Supreme Court has set aside the order of the High Court granting anticipatory bail.

12. There is no dispute about the position of law canvassed by the learned counsel for the petitioner through the above decisions, that if the bail order is passed ignoring the evidence on record or taking into the irrelevant materials, then the order can only be considered as perverse and the same is liable to be set aside.

13. Now, coming to the case on hand, the petitioner/defacto complainant has canvassed the following grounds to impugn the order granting anticipatory bail:

(i) The learned Principal Sessions Judge has not considered the gravity and seriousness of the case alleged against the accused.



(ii) The learned Sessions Judge has failed to consider the fact that the accused claiming to be the Village Headman did not move to any civil forum to establish that there is a common pathway in the property.

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(iii) The respondents 1 to 3/accused in their application for anticipatory bail, pleaded falsehood i.e., they are in no way connected with the offence and they are innocents.

(iv) The learned Sessions Judge has not considered that the respondent Police has not even visited the occurrence place and they were in collusion with the accused.

(v) The learned Sessions Judge ought to have directed the Revenue Officials to produce the official records of the said land, which will prove that there is no common pathway as alleged by the accused.

(vi) The learned Sessions Judge has also failed to consider the damages caused by the accused to the tune of Rs.5,00,000 (Rupees Five Lakhs Only), but the learned Judge has relied on the submission made by the fourth respondent Police that the damages was to the tune of Rs.1,00,000/-, (Rupees One Lakh Only).

(vii) The learned Principal Sessions Judge has failed to make any of his own observation in the impugned order, as he passed an order in one sentence.

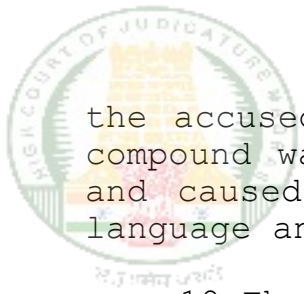
(viii) The learned Sessions Judge ought to have directed the fourth respondent to produce the CCTV footage, which was given by the petitioner, would reveal what has happened at the time of occurrence.

14. Considering the above, it is very much clear that the petitioner has sought for cancellation of bail only on the ground that the learned Judge has failed to consider the relevant materials or factors, required to be considered for the grant of bail and as such, the order is liable to be set aside.

15. At the outset, it is pertinent to note that originally, FIR came to be registered for the offences under Sections 147, 148, 447, 294(b) and 506(ii) IPC and that thereafter, after intervention of the Court, the offence under Section 3 of TNPPDL Act was added.

16. The learned Principal Sessions Judge has recorded the submissions made by the learned counsel for the accused, defacto complainant and the Public Prosecutor.

17. The learned Principal Sessions Judge has recorded the submissions made by the learned Public Prosecutor of that Court that



the accused along with 30 others unlawfully assembled, damaged the compound wall, CCTV camera and Door with sickle, iron rod, crowbar and caused loss to the tune of Rs.1,00,000/-, abused with filthy language and criminally intimidated the defacto complainant.

18.The learned Sessions Judge, upon considering the submissions made by all the parties, the nature of the offence and also taking note of the fact that no one sustained injury and also the progress of the investigation, was inclined to grant anticipatory bail to the accused with stringent conditions, as stated by the Court itself.

19.In **Myakala Dharmarajam Vs. The State of Telangana and others** in **Crl.A.Nos.1974-1975/2019, dated 07.01.2020**, the Hon'ble Supreme Court has held that the bail Court has to only opine as to whether there is a *prima facie* case against the accused and for the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the Police and comment on the same. Moreover, the bail Court is not expected to go in to the disputed questions in detail and arrive at a decision on those aspects.

20.As rightly contended by the learned counsel for the respondents, the learned Principal Sessions Judge has considered the submission of the respondent Police that the petitioners/accused has caused damages to the tune of Rs.1,00,000/-. Though the petitioner has alleged that the damages were caused to the tune of Rs.5 lakhs, the District Court cannot embark upon the evidence and adjudicate on the value of the damages at that stage. Moreover, it is also not necessary for the bail Court to summon the revenue records to decide about the nature of the property at the bail stage.

21.As rightly contended by the learned counsel for the respondents 1 to 3, the decisions relied on by the learned counsel for the petitioner are with respect to the serious and heinous crimes of murder. In the case on hand, as rightly pointed out by the learned Principal Sessions Judge, no one has suffered any injury.

22.Moreover, the bail Courts are not expected to give lengthy orders with elaborate discussion, but the reasons must be assigned for either granting or refusing bail or anticipatory bail. In the case on hand, though the learned Principal Sessions Judge has expressed his decision in three line paragraph, he has recorded all the aspects canvassed and advanced by the parties. Moreover, the learned Principal Sessions Judge has imposed some stringent conditions, directing the accused to deposit a sum of Rs.10,000/- (Rupee Ten Thousand Only) each to the credit of Crime No.287 of 2021, and directed them to stay at Rameswaram and report before the Rameswaram Temple Police Station daily at 10.00.am and 05.00 pm, until further orders and further directed them not to leave India without prior permission of the Court along with other usual conditions.



23.The learned counsel for the petitioner has raised some more objections at the time of arguments, challenging the subsequent conduct of the accused. After granting of anticipatory bail, the accused have been creating troubles and problems again and again and they have been preventing the petitioner's employer and others from entering into the property and from proceeding with their construction work in their property.

24.It is the case of the petitioner that one Thirunavukkarasu, Law Officer, who was employed with Kaviyan Constructions Private Limited and K4 Hotel and Apartment, has preferred a complaint before the fourth respondent Police stating that unidentified persons abused him for his construction with the Beach resort with dire consequences, for which, CSR.No.190 of 2021 was issued, that thereafter, the petitioner has also submitted a complaint on 25.10.2021, stating that the some accused persons had attempted to murder him, for which, CSR.No.247 of 2021 was issued, that the fourth respondent Officers were refusing to register the case for extraneous reasons and that the fourth respondent has not at all enquired into his complaints.

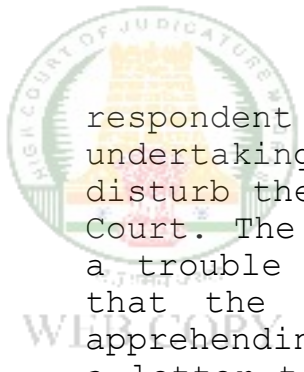
25.The learned counsel for the petitioner would further submit that the accused 1 to 3 are indulging in the acts of tampering with evidence and are attempting to see that the evidence is lost and the investigation could be hampered.

26.It is evident from the records that the petitioner's employer/Deenadhayalan, has filed two Writ Petitions in W.P.(MD) Nos.12001 and 12002 of 2022, seeking writ of Mandamus, directing the respondent Police to give Police Protection to him and his family members and give police protection to construct the compound wall in the property situated at Survey Nos.78/1B 1 B, 78/1B 1C at Kannirajapuram Village, Kadaladi Taluk, Ramanathapuram, and perform the business.

27.The learned Judge of this Court, vide order, dated 23.07.2021, has granted limited Police protection to the life of the said Deenadhayalan whenever he visits the place of occurrence and with regard to the police protection for putting up compound wall, the parties were directed to resolve their disputes through civil process.

28.As already pointed out, the respondents 1 to 3 have been claiming pathway right over the property in which, the petitioner's employer has been claiming absolute ownership. Even in the common order passed in the writ petitions above referred, the learned Judge has recorded the subsequent happenings.

29.It is further evident that on the basis of the interim order passed by this Court in Crl.O.P.(MD)No.10626 of 2021, the third



respondent and others were called and that they have made an undertaking they will not interfere into the construction work and disturb the petitioner and to work out their remedy before the civil Court. The learned Judge has further observed that even thereafter, a trouble arose between the petitioner and the third respondent, that the third respondent and others had staged a protest and apprehending breach of peace, the Inspector of Police has addressed a letter to the Revenue Divisional Officer regarding the initiation of proceedings to maintain the law and order in that area and that proceedings under Section 107 Cr.P.C have already been initiated by the Revenue Divisional Officer.

30.It is not in dispute that subsequent to the registration of the present FIR in Crime No.287 of 2021, another FIR came to be registered in Crime No.320 of 2021 on 31.07.2021 and according to the petitioner, thereafter, four complaints were lodged and CSRs were alone issued.

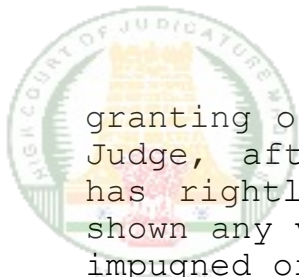
31.Considering the above, as rightly pointed out by the learned Judge in the common order above referred, there existed a civil dispute between the petitioner's employer and the respondents 1 to 3 and others and the said aspect cannot be gone into by the Courts while exercising the bail jurisdiction.

32.It is pertinent to mention that the fourth respondent has filed a counter affidavit, wherein it has been stated that they had initiated the investigation, visited the scene of occurrence, prepared rough sketch and observation mahazar and they have already recorded the statement of the witnesses under Section 161(3) Cr.P.C.

33.It is also evident from the records that the respondents 1 to 3 have filed a petition in Crl.M.P.Nos.2342 and 2343 of 2021 for modification of the conditions imposed earlier and the learned Principal Sessions Judge, vide order, dated 30.09.2021 modified the conditions and directed them to appear and sign before the respondent Police once in a week ie., on every Monday at 10.00 am until further orders and that, subsequently, in Crl.M.P.No.3060 of 2021, the learned Principal Judge has passed an order relaxing the conditions totally.

34.As rightly pointed out by the learned Government Advocate (Criminal Side), the petitioner's employer was given police protection whenever he visits the property in dispute and further directed the parties to work out their remedy and disputes regarding the property through civil process.

35.It is pertinent to mention that as already pointed out, the petitioner has sought for cancellation of bail only on the ground that the order passed by the learned Principal Sessions Judge is perverse, but not on the supervening circumstances nor raised any



granting of anticipatory bail. Since the learned Principal Sessions Judge, after considering the relevant factors and the materials, has rightly granted anticipatory bail and the petitioner has not shown any valid or acceptable reason or ground to interfere with the impugned order.

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36.The learned counsel for the respondents 1 to 3 would submit that the petitioner's employer who is a non-practicing Advocate has set up his people to give complaints after complaints, so as to create a ground for cancellation of anticipatory bail and for proceeding with their illegal constructions.

37.As rightly contended by the learned counsel for the respondents 1 to 3, in case, if the fourth respondent has refused to register the case, then the petitioner is at liberty to prefer the complaint before the higher police officials and even thereafter, no action is taken, they can very well prefer a private complaint before the jurisdictional Court.

38.But, this Court, at this stage, cannot go into the genuineness of the complaints lodged by the petitioner's company and their people.

39.On considering the entire facts and circumstances, this Court is of the view that the petitioner has not made out any case for cancellation of anticipatory bail, but, at the same time, this Court is of the view that the respondents 1 to 3 are to be directed to comply with the undertaken given by them that they will not interfere into the construction work and disturb the petitioner and to work out their remedy before the Civil Court. The fourth respondent is also directed to complete the investigation and file a final report before the jurisdictional Court within three months from the date of receipt of copy of this order.

40.With the above observations and directions, this Criminal Original Petition is disposed of.

sd/-

11/04/2022

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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



TO

1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
RAMANATHAPURAM.

2 THE JUDICIAL MAGISTRATE,
KADALADI.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANTHAPURAM.

4 THE INSPECTOR OF POLICE
SAYALKUDI POLICE STATION,
RAMANATHAPURAM DISTRICT.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.HAJA MOHIDEEN GISTHI S Advocate (SR.No.17822[F]
dated 11.04.2022)

ORDER

IN

CRL OP(MD) No.10629 of 2021

Date :11/04/2022

RS/VR/SAR.1 (26.04.2022) 11P-7C