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CRL.M.P(MD).



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 16.11.2022

Delivered on : 24.11.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL.M.P(MD). No.7686 of 2022
in
CRL.O.P.(MD). No.20591 of 2021

S.Alagu Kanthaiya ...Petitioner/Defacto complainant

Vs.

1. State Rep.by
The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
Crime No.530/2021.1st Respondent/Complainant

2.Dr.Selvarajan2nd Respondent/Sole Accused

For Petitioner : Mr.J.Jeya Kumaran,Advocate

For Respondents : Mr.P.Kottaichamy,
Government Advocate(Cr.Side)for R1.

: Mr.V.Angusamy, Advocate for R2.

PETITION FOR
CANCELLATION of ANTICIPATORY BAIL Under Sec.439(2) of Cr.P.C.

PRAYER :-

For cancellation of anticipatory Bail in Crime No.530 of 2021
on the file of the respondent Police.

ORDER : The Court made the following order :-

The Criminal Miscellaneous Petition has been filed under
Section 439(2) of Cr.P.C., seeking orders to cancel the anticipatory
bail granted in Crl.O.P.(MD)No.20591 of 2021, dated 21.03.2022 to



the second respondent/accused in connection with Crime No. 530 of 2021, on the file of the Srivilliputhur Town Police Station, Virudhunagar.

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.530 of 2021, on 17.10.2021 against the second respondent for the alleged offence under Sections 294(b), 284, 427, 509 and 506(i) IPC.

3.It is evident from the records that the second respondent has filed a petition in CrI.O.P(MD) No.20591 of 2022, seeking anticipatory bail; that the present petitioner was permitted to intervene in the above petition and that this Court after enquiry, has passed the order, dated 21.03.2022, granting anticipatory bail by imposing certain conditions.

4.The case of the complainant is that there existed land dispute between the parties; that the second respondent/accused had poured an acid like solution on the wall of the defacto complainant and also posing nude on the terrace of his house. When the petition for anticipatory bail was taken up for hearing on 21.03.2022, the learned counsel for the second respondent has filed an undertaking affidavit sworn by the second respondent, wherein, he has specifically stated that he felt ashamed of his conduct and sought unconditional apology and that he will not indulge in such kind of behaviors in future.

5.Considering the facts and circumstances of the case and also taking note of the undertaking affidavit filed by the accused, this Court has granted anticipatory bail to the second respondent with certain conditions. 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."

6.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. 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.

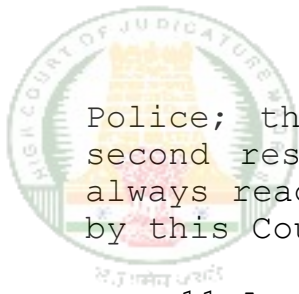


7.The petitioner/complainant, in the affidavit filed in support of the above petition, has stated that after granting of interim relief in the suit filed by him, the accused trespassed into his house and threatened with deadly weapons and caused severe damages; that the complainant has immediately, lodged the Police complaint; that the accused appeared before the first respondent Police and sought an apology that he will not indulge in such activities; that the accused has then violated the interim order granted by the trial Court and once again trespassed into the pathway and caused trouble and threatened by showing a deadly weapon to the family members; that the petitioner has lodged a compliant on 04.11.2018 before the first respondent Police in C.S.R.No.351 of 2018 and the accused was called for enquiry to the Police, that the accused claiming to be a Doctor came to the Police Station by wearing a white coat and threatened the Police by saying that he came down from operation theatre, immediately he must be going to operation theatre or otherwise, the patient will die; that the first respondent Police are afraid of even conducting enquiry as against the accused herein; that on 27.06.2019 another compliant was lodged and since there was no action taken by the Police, he filed a private complaint before the learned Judicial Magistrate No.II, Srivilliputhur and the same was forwarded to the first respondent Police for registering the case; that the Police has thereafter, registered the case in Crime No. 525 of 2019 for the offence punishable under Sections 427, 294 (b), 506(i) IPC; that thereafter, on 03.06.2020 morning at about 10.00 am, the accused trespassed into the pathway and made an attempt to demolish the wall; that the complainant has immediately lodged a complaint in C.S.R.No.129 of 2020 and that the Police advised the complainant to install CCTV camera in order to ascertain the facts and nuisance committed by him.

8.The petitioner in his affidavit has further stated that on 30.09.2020 morning at about 09.30 am, the accused poured acid in the wall and indirectly threatened the woman by coming in front of her without wearing any dress, that though this incident was captured in the CCTV camera and a complaint was lodged, there was no action and hence, he filed a private complaint before the learned Judicial Magistrate No.II, Srivilliputhur and the same has been forwarded to the respondent police and FIR came to be registered and that subsequently, the accused by giving undertaking, has obtained the anticipatory bail.

9.The main complaint of the petitioner is that even after granting of anticipatory bail, by violating the undertaking affidavit filed by him, he has been causing nuisance very often and that therefore, the complainant with no other option, has filed the present application.

10.The first respondent has filed a counter affidavit stating that the petitioner has no grievance with the first respondent



Police; that the petitioner's main allegation is only against the second respondent/accused and that the first respondent Police is always ready to obey and comply with the directions and order passed by this Court.

11.As already pointed out, the second respondent/accused has filed an undertaking affidavit and the relevant passages are extracted hereunder:

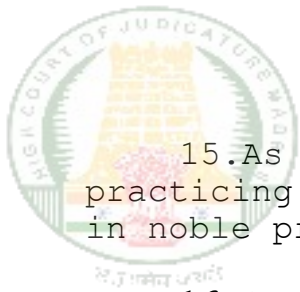
"7.I submit that I rolled back my memories to the date of incident and I feel ashamed of my conduct from the bottom of my heart, and hence I am seeking unconditional apology and remorse for my conduct. I further submit that I will not indulge such kind of behaviours which would cause any kind of disturbance to the people residing nearby my house.

8.I submit that I am a Doctor by profession, and running clinical establishment at the ground floor of my house. A single day incarceration would affect the patients who are under my follow-up. Hence, this Hon'ble to accept this affidavit to apology for considering this bail application."

12.When the above petition for cancellation of anticipatory bail is pending, considering the nature of dispute and on hearing the learned counsel for the petitioner as well the second respondent, the matter was referred to Mediation and Conciliation Centre attached to this Bench, but, the matter was sent back to this Court, as mediation ended in failure.

13.The main contention of the petitioner is that even after granting of anticipatory bail, he has been causing nuisance and disturbance; that he has been pouring water and acid like solution and that he has been posing in nude.

14.When the matter was taken up earlier, the learned counsel for the petitioner submitted that they have already produced the photos and CCTV footages to the concerned Police. In pursuance of the direction of this Court, the Inspector of Police, Srivilliputhur Town Police Station, Srivilliputhur, has submitted a report, dated 16.11.2022 to the Additional Public Prosecutor, stating that they have verified the CCTV footages and on examining the other witnesses, they came to know that the accused has been indulging unwanted activities and that on 24.03.2022; 29.03.2022; 18.04.2022; 06.05.2022; 11.05.2022; 25.07.2022; 10.08.2022; 11.08.2022; 14.08.2022 and 16.08.2022, the accused was found pouring water and acid like solution in the pathway and that the respondent/accused, even after getting anticipatory bail, has been indulging in similar kind of activities again and again.



15.As already pointed out, the second respondent is a practicing Doctor and such misconduct is not expected from a person in noble profession.

16.Considering the facts and circumstances of the case and also the report filed by the Inspector of Police, this Court has no hesitation to hold that the anticipatory bail granted to the petitioner in CRL.O.P.(MD). No.20591 of 2021, is liable to be cancelled and is cancelled accordingly.

17.In the result, this Criminal Miscellaneous Petition is allowed and the anticipatory bail granted by this Court in CRL.O.P.(MD).No.20591 of 2022, dated 21.03.2022, is cancelled.

sd/-
24/11/2022

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/12/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO.II,
SRIVILLIPUTHUR.
- 2 DO-THROUGH :
THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 3 THE INSPECTOR OF POLICE
SRIVILLIPUTHUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.J.JEYAKUMARAN, Advocate (SR-13767[I] dated 25/11/2022)

ORDER
IN
CRL MP (MD) No.7686 of 2022
IN
CRL OP (MD) No.20591 of 2021
Date :24/11/2022

das

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