



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

Reserved on : 31.10.2022

Delivered on : 24.11.2022

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL.M.P(MD).No.10108 of 2022

in

CRL.O.P.(MD).No.5725 of 2022

Mary Janci Rani

: Petitioner/Intervener/
Defacto Complainant

Vs.

1.State rep.by

The Inspector of Police,
Karimedu Police Station,
Madurai.

Crime No.1239 of 2021.

: 1st Respondent/Respondent/
Complainant

2.Sheeba

: 2nd Respondent/Petitioner/
Accused No.1

For Petitioner : Mr.K.Sathish Kumar, Advocate

For Respondents : Mr.P.Kottaichamy,

Government Advocate(Cr.Side)for R1.

: Mr.A.L.Kannan, for R2.

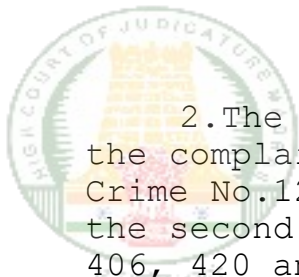
PETITION FOR CANCELLATION of ANTICIPATORY BAIL Under Sec.439(2)
of Cr.P.C.

PRAYER :-

For cancellation of anticipatory Bail in Crime No.1239 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.5725 of 2022, dated 11.04.2022 to the
second respondent/first accused in connection with Crime No.1239
of 2021, on the file of the Karimedu Police Station, Madurai.

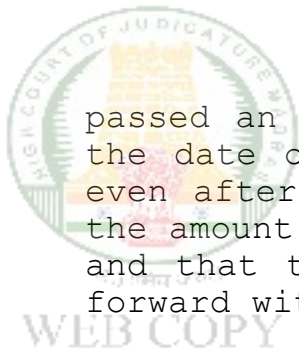


2.The petitioner is the defacto complainant and on the of the complaint lodged by the petitioner, FIR came to be registered in Crime No.1239 of 2021, on 28.10.2021 against three persons including the second respondent for the alleged offence under Sections 294(b), 406, 420 and 506(1) IPC.

3.It is evident from the records that the first accused has filed a petition in Crl.O.P(MD)No.5725 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 11.04.2022, granting anticipatory bail by imposing some conditions.

4.The case of the complainant is that the first accused has approached the defacto complainant and offered to sell her house property for a sum of Rs.50,00,000/-; that the petitioner/defacto complainant had agreed to purchase the same and gave a sum of Rs.20,00,000/- as advance; that subsequently, the petitioner gave a sum of Rs.4,00,000/- on 05.09.2020; that thereafter, when the defacto complainant called the petitioner to execute the sale agreement, the petitioner has been postponing the same on some pretext or the other with clear intention to cheat the defacto complainant and subsequently, the first accused refused to execute the sale agreement and informed that she would repay the amount shortly, for which, the third accused/relative of the first accused had issued five cheques as surety; that when the defacto complainant had deposited the said cheques for collection, the same were returned dishonored for want of sufficient funds and that when the defacto complainant had demanded the amount from the first accused, she abused in filthy language and threatened the petitioner with dire consequences.

5.The petitioner, in the affidavit filed in support of the above petition, has stated that she worked as Chief Nursing Superintend at Railway Department and got retired from services in March 2020, that since the first accused has offered to sell his house property, she decided to purchase the said house with her retirement benefits, that when the first accused filed an anticipatory bail application in Crl.O.P.(MD)No.5725 of 2022, she filed an intervening petition in Crl.M.P.(MD)No.4302 of 2022, raising objections to grant anticipatory bail; that at the time of hearing of anticipatory bail petition, this Court was not inclined to grant the relief at that time and hence, the first accused has filed an undertaking affidavit to pay the entire balance amount of Rs.23,00,000/- to the petitioner on or before 30.06.2022 and that this Court by recording the said undertaking affidavit, has granted anticipatory bail with conditions; that the first accused shall pay the remaining amount of Rs.23,00,000/- to the defacto complainant on or before 30.06.2022; that the first accused did not pay any amount to the complainant, but she filed an application for extension of payment in Crl.M.P.(MD)No.7414 of 2022 and this Court has



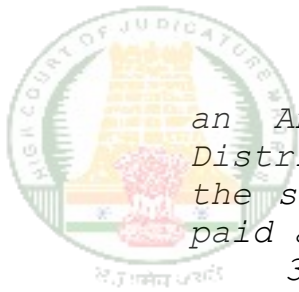
passed an order, dated 01.07.2022 extending time by one month from the date of receipt of copy of that order, that the first accused even after the lapse of the extended period, has not chosen to pay the amount in total violation of the condition imposed by this Court and that therefore, the complainant with no other option has come forward with the above application to cancel the anticipatory bail.

6.The second respondent/first accused has filed a counter affidavit, raising a new defence that the third accused, who is her relative got hand loan of Rs.24,00,000/- from the defacto complainant, for which, title deeds relating to the property of the first accused was given to the complainant as security; that since the third accused has not settled the hand loan within time, the defacto complainant after coming to know that the third accused do not have any resources, has decided to prosecute the first accused, that she had created concocted story and lodged a false complaint, that the first accused in order to show her *bonafide* to settle the issue amicably, has filed the undertaking affidavit; that after granting of anticipatory bail, she has been taking earnest steps to repay the amount on her own and she has also been insisting the third accused to keep up his promise; that subsequently the first accused has paid Rs.1.5 lakhs and that thereafter, Rs.3 lakhs to the defacto complainant through her bank account; that the defacto complainant at the request of the first accused, has orally assured to wait till 20.10.2022, but due to her shock and surprise, she has received a notice from this Court with regard to the cancellation of anticipatory bail and that she has to be granted further time for repayment.

7.As rightly contended by the learned counsel for the petitioner, it is pertinent to note that the first accused in the undertaking affidavit has specifically admitted the receipt of the sale advance of Rs.24,00,000/- from the complainant and the relevant passages are extracted hereunder :

"1.I submit that I filed the above said Criminal Original Petition for seeking Anticipatory bail in Crime No.1239/2021 on the file of Respondent Police. It is admitted fact that I received a sum of Rs.24,00,000/- as advance from the defacto complainant namely Mary Janci Rani and entered into sale agreement for my house. After receiving the amount I am unable to sale my house and when I have taken steps to repay the advance amount, my daughter met with an accident and for which I spent more money for her treatment.

2.I submit that further I could not able to mobilize the money. While being so the respondent police registered this present case and taken steps to arrest me. Due to that I could not able to roaming freely an arrange money for settlement. Further earlier I along with my daughter filed



an Anticipatory bail application before the Principal District and Sessions Judge in Crl.M.P.No.5722 of 2021 and the same was referred to mediation and in the mediation I paid a sum of Rs.1,00,000/- to the defacto complainant.

3.I submit that I am ready to settle the remaining amount of Rs.23,00,000/- to the defacto complainant, for which I need some time to mobilize the money. Further I undertakes that I will repay the entire remaining amount of Rs.23,00,000/- to the defacto complainant on or before 30.06.2022."

8.As already pointed out, now the respondent/first accused has taken 'U' turn and alleged in the counter affidavit that the third accused alone had obtained hand loan of Rs.24,00,000/- from the defacto complainant by handing over property documents of the first accused as security.

9.As rightly contended by the learned counsel for the petitioner, considering the nature of the offence and mainly taking note of the undertaking affidavit filed by the first accused, this Court has granted anticipatory bail to the first accused by imposing condition that she shall pay the entire balance amount of Rs.23,00,000/- on or before 30.06.2022, as claimed by herself.

10.It is not in dispute that subsequently on the petition filed by the first accused for extension of time, the learned Judge of this Court in Crl.M.P.(MD)No.7414 of 2022, has granted one month time from the date of receipt of copy of that order. Admittedly, the first accused has not chosen to comply with the orders of this Court till now.

11.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."

12.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 can cancel the bail in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice.



13.No doubt, as rightly pointed out in the counter affidavit of the first accused that the Courts, while exercising its powers under Sections 438 and 439 of Code of Criminal Procedure cannot act as collecting agents for realization of the amounts due by the accused to the defacto complainants. In the case on hand, as already pointed out, the first accused by admitting the case of the defacto complainant has given an undertaking to repay the entire balance amount of Rs.23,00,000/- on or before 30.06.2022 and this Court by relying on the said undertaking, has granted anticipatory bail.

14.But now, the first accused by taking 'U' turn and changing her earlier case, has come forward with a case that the third accused had alone taken a loan of Rs.24,00,000/- and not by the first accused. As rightly contended by the learned counsel for the petitioner, the above conduct of the first accused would go to prove *prima facie* her intention to cheat the complainant and thereby to retain the amount.

15.Considering the above, this Court has no hesitation to hold that the anticipatory bail granted to the first accused is liable to be cancelled and is cancelled accordingly.

16.In the result, this Criminal Miscellaneous Petition is allowed and the anticipatory bail granted by this Court in CRL.O.P. (MD).No.5725 of 2022, dated 11.04.2022, 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.V, MADURAI.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
3. THE INSPECTOR OF POLICE,
KARIMEDU POLICE STATION, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.SATHISH KUMAR, Advocate (SR-13758[I] dated 25/11/2022)

ORDER IN

CRL MP(MD) No.10108 of 2022

IN

CRL OP(MD) No.5725 of 2022

Date :24/11/2022

das

<https://www.bbc.in/SAR-I/01.12.2022/5P/6C>