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CRL OP(MD). N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 14/09/2022

Delivered on : 19/09/2022

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL OP(MD). No.17679 of 2021

Umamaheswari ... Petitioner/Defacto Complainant
Vs.
1.Vairam @ Raja ...Respondent No.1/Accused No.1
2.The Inspector of Police,
Andipatti Police Station,
Andipatti, Theni District.
Cr. No. 586 of 2021.. ...Respondent No.2/Complainant
3.The Inspector of Police,
District Crime Branch, Theni. ...3rd Respondent

(R3 Suo Motu Impleaded as Per Order
of This Court Dated 13.12.2021 in
Crl.Op. (MD).No.17679/2021).

For Petitioner : M/s.Karunanidhi R,
Advocate.

For Respondent 1 : Mr.S.Sankar, Advocate

For Respondents 2 & 3 : Mr.M.Vaikkam Karunanithi,
Government Advocate (Crl.Side)

PRAYER :-

To cancel the Anticipatory Bail granted to the Accused No.1 in
Crl.MP.(MD).No.3120 of 2021 on the file of the Principal District
and Sessions Cout,Theni dated .29.9.2021.

ORDER : The Court made the following order :-

This petition has been filed to cancel the anticipatory bail
granted to the accused No.1 in Crl.M.P.(MD)No.3120 of 2021, on the
file of the Principal District and Sessions Court, Theni, dated
29.09.2021.

<https://www.mhc.tn.gov.in/judis>



2. The first accused and others insisted the petitioner to purchase the property in Survey No.2319/2, Thimmarasanayakanur 2nd Bit, Andipatti Taluk, Theni District. Believing the words of the first accused, the defacto complainant agreed to purchase the land and the first accused had issued 4 pattas in the name of the defacto complainant and her family members and received a sum of Rs.3,20,000/-. Subsequently, the defacto complainant came to know that those pattas were forgedly created and the first respondent's husband received a sum of Rs.20,00,000/- in 3 instalments towards sale price of land in Survey No.2319/2, Bit I. Subsequently, the accused took the father of the defacto complainant to the Collector office, Theni and with the cooperation of one Thangapandian-Assisat, Satish, and Abdul naseer-Deputy Tahsildar produced a fake patta on 21.06.2019. The patta number was given as 5352, it was printed with the name of the petitioner. After verification, the defacto complainant came to know that the patta was in the name of "The President, Housing Board". The accused Nos.5,6 and 7 approached the defacto complainant, on 01.07.2019 and promised to return back the amount. But, they failed to repay the amount. When the same was questioned, wife of the first respondent called the police and lodged a fake complaint, as if the defacto complainant threatened her husband. After enquiry, that complaint was closed.

3.1. Already the first respondent is having a similar case in Crime No.166 of 2019 before the same police station. The first respondent and his wife gave a statement that the first respondent will settle the amount on or before 21.09.2019, within two months in 2 instalments.

3.2. In the meanwhile, A5 to A7 approached the defacto complainant and received Rs.9,75,000/- and with the collusion of the Deputy Tahsildar - Abdul nazeer, they provided another fake patta on 16.09.2019. Again, A5 to A7 with a help of A13 promised to register the property, after obtaining NOC from the Tamilnadu Housing Board and they received a sum of Rs.2,30,000/- on 18.09.2019. Subsequently, on 20.09.2019, A5 to A7 received a sum of Rs.20,00,000/- to get NOC and they provided a fake NOC alleged to have been issued by the Slum Clearance Board, Madurai. On 20.10.2019, they have received Rs.6,00,000/-. To solve the problem with the District Registrar, they subsequently, received Rs.20,00,000/-. Later, A1, A5 to A7 and others threatened the defacto complainant and demanded Rs.40,00,000/- to sought out the entire issue. On 11.03.2020, the first accused gave an undertaking to settle Rs.20,00,000/- and on the same date one Meenakshisundaram and Sivakumar gave a statement to the complainant's mother that they received Rs.31,00,000/- and the same was given to the first respondent's husband.

3.3. Again A5 to A9 offer another patta in patta number 2389 of Veerapandi village. Already the District Backward Community Welfare Officer, Theni, lodged a complaint regarding 300 pattas created by the first



accused. The first accused received money from 300 persons with the help of the Deputy Tahsildar-Abdul nazeer. The first accused and others cheated the defacto complainant.

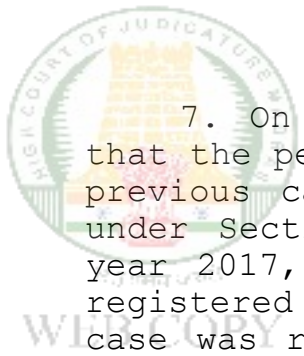
3.4. The Deputy Tahsildar-Abdul nazeer filed a petition for anticipatory bail in Crl.M.P.No.2514 of 2021 and that petition was dismissed by the District Court, Theni. The first accused filed a petition for anticipatory bail in Crl.M.P.No.2982 of 2021 and the same was dismissed on 23.09.2021, within 5 days, the first accused has preferred the 3rd anticipatory bail in Cr.M.P.No.3140 of 2021. The learned Principal District Judge, Theni, without assigning any reason, granted anticipatory bail on 29.09.2021. The learned Judge failed to consider the gravity of the offence and the bad antecedents of the accused and the overt act that the petitioner who is the prime accused was granted anticipatory bail and prayed the bail order to be cancelled.

4. On the side of the petitioner, it is stated that in the bail order granted by the Principal District Judge, Theni, it was mentioned that the accused was having only one previous case, whereas, the accused was having 4 previous cases. The accused and others created forged documents such as patta and they cheated the public by issuing patta for Adidraavidar land.

5. On the side of the petitioner, a judgment of this Court in Crl.O.P.(MD)No.13700 of 2021, [Revathi V. State rep. By the Inspector of Police, Andipatti Police Station] dated 18.08.2022 and another judgment of this Court in Crl.O.P.No.15723 of 2017 (M.Valanrayan V. Sulaimankhan and another), dated 01.10.2018, were cited, wherein, this Court cancelled the bail order, wherein, earlier cases were suppressed by the accused.

6. On the side of the petitioner, a judgment of the Hon'ble Supreme Court reported in 2022-0-Supreme SC-411 (MS.P. V. The State of Madhya Pradesh and another) is cited, wherein, it is stated as follows:-

"31. In view of the aforesaid facts and circumstances, we are of the considered opinion that the respondent No.2 does not deserve the concession of bail. Relevant material brought on record has been overlooked by the High Court while granting him bail. The supervening adverse circumstances referred to above, also warrant cancellation of bail. Accordingly, the impugned order is quashed and set aside and the respondent No.2 is directed to surrender within one week from the date of passing of this order."



7. On the side of the first respondent/accused, it is stated that the petitioner has cited that the first respondent was having 4 previous cases. The first case was registered in the year 2010, under Section 109 Cr.P.C. The second case was registered in the year 2017, under Sections 406 and 420 I.P.C. The third case was registered in the year 2018, under Section 151 Cr.P.C. The fourth case was registered in the year 2019, under Sections 465, 468, 471 and 420 I.P.C.

8. On the side of the first respondent-accused, it is stated that major portion of the investigation was already over, custodial interrogation of the accused was not at all necessary and the case was transferred to DCB police and there is no question of tampering the witness and prayed the petition to be dismissed.

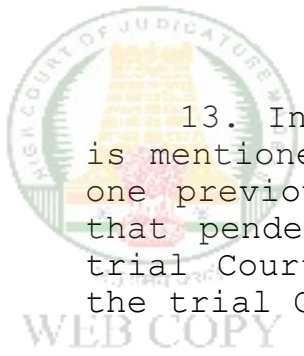
9. On the side of the first respondent/accused, a judgment of this Court in CrI.R.C.(MD)No.327 of 2017, (Stella Mary V. State rep. by the Inspector of police, District Crime Branch), dated 24.02.2021 and another order of the High Court of Delhi at New Delhi CrI.M.C.No. 2050 of 2021, [Charu Soneja V. State (NCT of Delhi) and others], dated 03.01.2022, were cited.

10. On the side of the first respondent/accused, a judgment of the Hon'ble Supreme Court reported in 1995-1-SCC-349 (Dolat Ram and others V. State of Haryana) is cited and another judgment of the Hon'ble Supreme Court in Criminal Appeal Nos.1974 and 1975 of 2019 @ SLP(Crl.)Nos.8882 and 8883 of 2013), (Myakala Dharmarajam and others V. The state of Telangana and another), dated 07.01.2022, were cited.

11. On the side of the prosecution, it is stated that after obtaining bail order, the accused was complying the condition regularly, then, the condition was relaxed by the Principal District Judge, on 11.11.2021. The respondent police examined 14 witnesses, under Section 161 of Cr.P.C.. The total amount cheated is Rs.73,40,000/-. The first accused is having 4 previous case. Charge sheet was referred in one of the case.

12. A perusal of the records reveals that the first respondent herein-first accused was having 4 previous cases, which is reads as follows:

Crime No.	Offence	Status
(i) Crime No.184 of 2010	109 Cr.P.C	Bond executed
(ii) Crime No.20 of 2017	406 & 420IPC	pending trial
(iii) Crime No.57/2018	151 Cr.P.C	referred charge sheet filed
(iv) Crime No.166/2019	465, 468,471 &420 IPC	pending trial



13. In the bail order, the Principal District Judge, [REDACTED] It is mentioned that the public prosecutor has submitted that there is one previous case pending against the first accused. It is seen that pendency of the other 3 cases was not mentioned before the trial Court and the trial Court has granted anticipatory bail and the trial Court subsequently, relaxed the condition.

14. It is seen that the first accused is having another 2 cases in Crime No.166 of 2019 and Crime No.20 of 2017, which are similar in nature. Considering the money involved in the occurrence and considering the nature of the offence and considering the fact that previous case particulars were not furnished to the Sessions Judge, Theni, considering the judgment referred on the side of the petitioner, this Court is inclined to allow the petition and the anticipatory bail granted to the first accused, in Crl.MP.(MD). No.3120 of 2021 on the file of the Principal District and Sessions Court, Theni, dated 29.09.2021, is hereby set aside.

15. This petition is allowed. The respondent police is directed to take further action as per law and to secure the accused.

sd/-
19/09/2022

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/09/2022

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

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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 PRINCIPAL DISTRICT AND SESSIONS COURT, THENI.
- 2.THE INSPECTOR OF POLICE,
ANDIPATTI POLICE STATION,
ANDIPATTI, THENI DISTRICT.
- 3.THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, THENI.



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

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RK/VR/SAR-1 (21/09/2022) 6P/5C

ORDER

IN

CRL OP(MD) No.17679 of 2021

Date :19/09/2022