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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 04/04/2022

Pronounced on : 18/05/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) . No.11109 of 2021

in

Cr1.OP(MD)No.18760 of 2021

and

Cr1.OP(MD)Nos.4797, 6175 and 6209 of 2022

CRL MP(MD) . No.11109 of 2021 :

Vigneshwaran

...Petitioner/Informant

Vs

1.The State rep.by
The Inspector of Police,
Somarasampettai Police Station,
Trichy District.
(Crime No.766/2021).

... Respondent/Complainant

2.Ramesh

... Respondent/Accused

...Petitioner/Accused in
Cr1 OP(MD)No.18760 OF 2021

PRAYER IN Cr1 MP(MD)No.11109 of 2021 in CRL OP(MD)No.18760 of 2021:-

To cancel the Anticipatory Bail granted to the second respondent in Cr1.OP(MD)No.18760 of 2021, dated 30.11.2021.

Cr1.OP(MD)Nos.4797, 6175 and 6209 of 2022 :

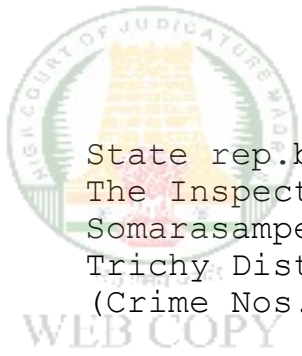
U.Vigneswaran

... Petitioner/Accused No.2
in Cr1 OP(MD)No. 4797 of 2022

...Petitioner/Accused Rank Not known
in CRL OP(MD)No. 6175 of 2022

...Petitioner/Accused Rank Not Known
IN CRL OP(MD)No.6209 of 2022

Vs.



State rep.by
The Inspector of Police,
Somarasampettai Police Station,
Trichy District.
(Crime Nos.67&51 of 2022)

...Respondent/Complainant
in Crl OP(MD)No. 4797 & 6175 of 2022

State rep.by
The Inspector of Police,
Jeeyapuram Police Station,
Trichy District.
Crime No.34 of 2022.

... Respondent/Complainant
in Crl.OP(MD)No.6209/2022

(in all petitions)

For Petitioner : Mr.N.R.Murugesan, Advocate

For Respondents : Mr.M.Muthumanikkam,
Government Advocate (Crl.Side)

For Intervenor : Mr.S.Ram Sundar Vijayaraj.
(in Crl.OP(MD)No.4797/2022)

PETITIONS FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

COMMON PRAYER Crl.OP(MD)Nos.4797, 6175 and 6209 of 2022 :-

For Anticipatory Bail in Crime Nos.67, 51 and 34 of 2022 on the file of the Respondent Police, respectively.

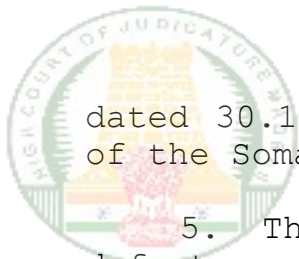
ORDER : The Court made the following order :-

The petitioner/Accused, (in Crl.OP(MD)No.4797 of 2022), who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 170, 506(i) 109, 120(B) of IPC, in Crime No.67 of 2022, seeks anticipatory bail.

2. The petitioner/Accused, (in Crl.OP(MD)No.6175 of 2022), who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 170 and 189 IPC, in Crime No.51 of 2022, seeks anticipatory bail.

3. The petitioner/Accused, (in Crl.OP(MD)No.6209 of 2022), who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 170 of IPC, in Crime No.34 of 2022, seeks anticipatory bail.

4. The above Crl.M.P.(MD)No.11109 of 2021 has been filed seeking orders to cancel the anticipatory bail granted to the second respondent/Accused, in Crl.O.P.(MD)No.18760 of 2021, vide order



dated 30.11.2021 in connection with Cr.No.766 of 2021, on the file of the Somarasampettai Police Station, Trichy District.

5. The petitioner in Crl.M.P.(MD)No.11109 of 2021 is the defacto complainant and on the basis of the complaint lodged by the petitioner, F.I.R., came to be registered in Cr.No.766 of 2021, dated 16.11.2021 against the second respondent/ accused and others for the alleged offences under Sections 434, and 379 I.P.C. It is evident from the records that the second respondent/accused has filed a petition in Crl.O.P.(MD)No.18760 of 2021 seeking anticipatory bail and that this Court, after hearing the submissions made by the learned Counsel for the accused as well as by the learned Additional Public Prosecutor, vide order dated 30.11.2021 has granted anticipatory bail to the second respondent/accused, by imposing certain conditions. It is further evident that this Court has directed the second respondent/accused to report before the first respondent police daily at 10.30a.m., for a period of 30 days. It is also not in dispute that the second respondent/accused, after executing sureties before the concerned Court, as directed, has reported before the first respondent police for a period of 30 days from 16.12.2021 to 14.01.2022.

6. The case of the prosecution is that the petitioner/complainant was the then President of Malliyampathu Village Panchayat, Srirangam Taluk, Trichy District, that an extent of 2 acres of land situated in S.No.49/3 classified as Government poramboke (cemetery) was encroached by the proprietor of the Vasan estate company, that since the above encroachment was objected by the local people, the Panchayat passed a resolution on 02.08.2021 to get back the land from the encroacher, that thereafter a representation was given to the Tahsildar, Srirangam requesting him to take necessary steps to get back the encroached land, that the Surveyor surveyed the land in the presence of the Village Administrative Officer on 13.11.2021 and fixed four boundaries, that the land was fully fenced by the panchayat by erecting stones, that they have also erected name board notified as the subject land allotted for children's park of Malliyambathu Village, that on 13.11.2021 at about 07.00p.m., at the instigation of the real estate owner, the second respondent along with other accused damaged the fence stones and damaged the name board kept by the Village Panchayat and on the next day morning, the second respondent/accused came to the spot and took away the fencing stones and that the accused 1 to 7 had damaged the fence and also the name board. Based on the above complaint, the first respondent has registered the case in Cr.No.766 of 2021.

7. The petitioner's case is that the second respondent is a land grabber and he is working in the Rural Department office, that the second respondent instead of protecting the government land, with the help of Land Mafias had attempted to grab the Government land.

<https://hccases.courts.mil.in/hccases/>

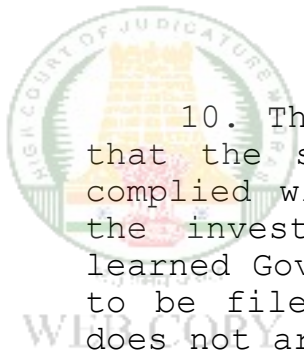
the second respondent's earlier anticipatory bail



application in Crl.M.P.No.5273 of 2021 was dismissed by the Principal Sessions Court, vide order dated 24.11.2021. The petitioner's further case is that the second respondent had threatened the petitioner through phone to withdraw the above said complaint and also criminally intimidated him not to proceed in removing the encroachment in the petitioner village panchayat, that in connection with the above said occurrence, the petitioner's friend Sivakumar was murdered on 26.11.2021 by four persons and a case was registered in Cr.No.769 of 2021, under Sections 294(b), 109 and 302 I.P.C., and that the involvement of the second respondent was also suspected in that case. By raising the above pleas, the petitioner has sought for cancellation of anticipatory bail granted to the second respondent.

8. The first respondent has filed a counter affidavit disputing the contentions raised by the petitioner and opposed the petitioner's prayer for cancellation of anticipatory bail. In the counter affidavit, the first respondent has stated that after registering the F.I.R., they have conducted a detailed enquiry, prepared the observation mahazar and rough sketch and recovered the properties and examined 9 witnesses and recorded their statements under Section 161(3) Cr.P.C. The first respondent has further stated that they have fairly completed the investigation and final report would be filed shortly. The first respondent has further stated in the counter affidavit that though the petitioner has made some grounds for cancellation, those grounds are legally not sustainable, that the second respondent/accused is not named as accused in Cr.No.769 of 2021, which came to be registered for the murder of the petitioner's friend Sivakumar, that the investigation in the murder case has not been completed, that the second respondent has complied with all the conditions imposed by this Court while granting anticipatory bail and that since the second respondent has not violated any of the conditions imposed by this Court, the question of cancelling the anticipatory bail does not arise at this stage.

9. The learned Counsel for the second respondent would submit that the petitioner-Vigneshwaran along with one Subash, who is claiming to be an IAS Officer and holding the post of Joint Secretary in the Secretariat, were involved in all the activities of impersonation and grabbing of money from the people and are doing white collar crimes, that at the instigation of the petitioner, the said Subash had contacted the police officials and threatened them to register the case and to act in favour of the petitioner Vigneshwaran and three cases came to be registered against the petitioner as well as the said bogus I.A.S. Officer Subash and that both of them have been periodically indulging in the activities of threatening the people and impersonating as Government Officials and grabbing money from them.



10. The learned Counsel for the second respondent would submit that the second respondent, after getting anticipatory bail, has complied with the conditions imposed by this Court and that since the investigation had already been completed as stated by the learned Government Advocate (Crl.Side) and the charge sheet is going to be filed shortly, the question of cancelling anticipatory bail does not arise at all.

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:

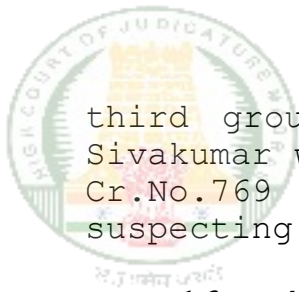
"439(2): A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

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.

13. 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 bails, 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.

14. 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.

15. In the case on hand, the petitioner has raised three grounds for cancelling the anticipatory bail granted to the second petitioner/accused. According to the petitioner, the second respondent is a land grabber and though he has been working in the Rural Development Office, with the help of the Land Mafias, he has been attempting to grab the Government lands. The next ground that was advanced is that the second respondent had threatened the petitioner through phone to withdraw the above said complaint and also criminally intimidated the petitioner not to proceed further with the removal of encroachments in the village panchayat. The



third ground that was canvassed is that the petitioner's friend Sivakumar was murdered by four persons and in the case registered in Cr.No.769 of 2021 for the murder of the said Sivakumar, they are suspecting the involvement of the second respondent.

16. Whether the second respondent is a land grabber and he is colluding and helping the Land Mafias to grab the Government lands are the aspects that can be ascertained during the investigation and that, that by itself is not a ground to cancel the anticipatory bail at this point of time. Though the petitioner has alleged that he was threatened by the second respondent through phone and also caused criminal intimidation, the petitioner has not shown that the complaints were lodged with the police. It is not the case of the petitioner that though the police complaints were lodged, the same were of no avail.

17. As already pointed out, the first respondent in the counter affidavit itself, has specifically stated that the second respondent has not been shown as an accused in the murder case and the investigation of the murder case is pending. Except the above three reasons, the petitioner has not shown any other valid and acceptable reason or ground for cancelling the anticipatory bail.

18. It is not the case of the petitioner that the second respondent has failed to comply with the conditions imposed by this Court. Moreover, as rightly pointed out by the learned Counsel for the second respondent, the first respondent in his counter affidavit, has specifically stated that the grounds alleged by the petitioner for cancellation of bail are legally not sustainable, that the investigation has already been completed and they are going to file charge sheet shortly and that the second respondent has complied with all the conditions and has not violated any of the conditions imposed by this Court.

19. As already pointed out, the case was registered for the offences under Sections 434 and 317 I.P.C., and that since there existed previous enmity between the complainant and the alleged encroacher Vasan and also considering the nature of the charges levelled against the second respondent and also taking note of the fact that the second respondent was not having any previous cases for similar or serious offences, this Court was inclined to grant anticipatory bail.

20. As rightly contended by the learned Counsel for the respondents, the reasons canvassed by the petitioner/defacto complainant in the above petition, by no stretch of imagination, can be considered a valid reason or sufficient ground to cancel the anticipatory bail granted by this Court. Considering the above, this Court has no hesitation to hold that the above Criminal Miscellaneous Petition is devoid of merits and the same is liable to



Crl.O.P. (MD) Nos.4797, 6175 and 6209 of 2022:

21. In Crl.O.P.(MD)No.4797 of 2022, the second respondent/accused in Crl.M.P.(MD)No.11109 of 2021 is

the defacto complainant and on the basis of the complaint lodged by the said Ramesh, F.I.R. in Cr.No.67 of 2022 came to be registered against two persons including the petitioner Vigneswaran for the alleged offences under Sections 170, 506(i), 109 and 120(B) I.P.C.

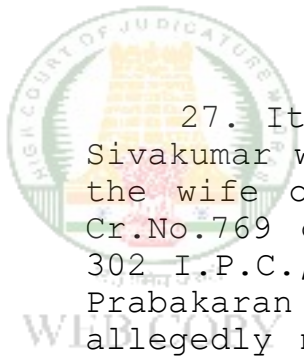
22. In Crl.O.P.(MD)No.6175 of 2022, the Inspector of Police - Udayakumar, Somarasampettai Police Station is the complainant and on the basis of the complaint given by him to the Sub-Inspector of Police of the same station, F.I.R., came to be registered in Cr.No.51 of 2022 against one Subash for the offences under Sections 170 and 189 I.P.C.

23. In Crl.O.P.(MD)No.6209 of 2022, the Deputy Superintendent of Police - P.K.Senthilkumar, Jeeyapuram Sub-Division, Trichy District is the complainant and on the basis of the complaint lodged by him to the Sub-Inspector of Police, Jeeyapuram Police Station, F.I.R. came to be registered in Cr.No.34 of 2022, dated 04.02.2022 against the said Subash for the offence under Section 170 I.P.C.

24. As already pointed out, the petitioner Vigneswaran's name does not find place in two F.I.Rs relating to Cr.No.51 of 2022 of Somarasampettai Police Station and Cr.No.34 of 2022, on the file of the Jeeyapuram Police Station. But the petitioner Vigneswaran's name finds place in the case registered in Cr.No.67 of 2022, on the file of the Somarasampettai Police Station and he has been arrayed as second accused. It is pertinent to note that in all the three cases, the said Subash has been shown as the accused.

25. The case of the prosecution is that the said Subash by contacting the Inspector of Police and the Deputy Superintendent of Police as if he was an I.A.S. Officer working as Joint Secretary at Secretariat, was speaking and threatened them. Admittedly, the petitioner Vigneswaran was the President of Malliampathu Village, Srirangam Taluk, Trichy District at the time of registration of the above cases.

26. It is not in dispute that the petitioner has lodged a complaint against the defacto complainant in Cr.No.67 of 2022, who is also the second respondent/accused in Crl.M.P.(MD)No.11109 of 2021 and others for removing the fencing stones and for damaging the name board kept by the Village Panchayat, for which F.I.R., came to be registered in Cr.No.76 of 2021 and in that case, 7 persons were arrayed as accused.



27. It is evident from the records that the petitioner's friend Sivakumar was murdered, that on the basis of the complaint lodged by the wife of the said Sivakumar, F.I.R., came to be registered in Cr.No.769 of 2021 for the offences under Sections 294(b), 109 and 302 I.P.C., r/w Section 4 of Women Harassment Act and in that case Prabakaran and Deepak were shown as the main accused, who had allegedly murdered the said Sivakumar at the instigation of other accused. It is not in dispute that the said Subash was arrested by the Maduravoyal police and while he was in judicial custody, he was arrested formally in connection with the case in Cr.No.34 of 2022 of the Jeeyapuram Police Station and is in judicial custody.

28. The learned Government Advocate(Crl.Side) appearing for the State would submit that the said Subash has given a voluntary confession statement before the Inspector of Police, Jeeyapuram Police Station and wherein he has specifically implicated the involvement of the petitioner Vigneswaran and according to them, the said Subash in his statement, has stated that only at the request of the said Vigneswaran, he had contacted the Police Officials and threatened them to register the case on the basis of the complaint lodged by the said Vigneswaran.

29. The learned Government Advocate (Crl.Side) would further submit that in the confession statement, Subash has stated that he spoke to Vigneswaran through conference call along with Prakash, that since four persons had removed the fencing stones and no action was taken by the police, he requested the said Subash to speak with the police officials as if he was an I.A.S. Officer and get the complaints registered and that he has paid Rs.90,000/- to the said Prakash and Subash was given his share of Rs.30,000/-

30. The learned Counsel for the intervenor/ complainant in Crl.O.P.(MD)No.4797 of 2022 would submit that the petitioner Vigneswaran himself had written a letter to the said Subash directing him to threaten the police officials and got his complaints registered. No doubt, the intervenor has produced a copy of the letter alleged to have been written by Vigneswaran as the President of Malliampathu Panchayat to N.Subash, I.A.S., Additional Secretary, Home and Rural Development, Secretariat, Chennai. It is pertinent to mention that the copy of the entire letter alleged to have been written by the petitioner Vigneswaran was not produced and only a copy of one page is available in the typed set. Moreover, as rightly pointed out by the learned Counsel for the petitioner, the petitioner has sent a letter addressed to the said Subash by showing him as Additional Secretary for Home and Rural Development, Secretariat, Chennai.

31. The learned Counsel for the petitioner would further submit that even assuming for arguments sake, that such letter was written by the petitioner Vigneswaran, it is not shown that Vigneswaran was



person and that he requested the said Subash to threaten the police officials as if he was an I.A.S. Officer.

32. As rightly pointed out by the learned Counsel for the petitioner, in the alleged confession statement given by the said Subash, he has not stated that he met the President Vigneswaran or that he received the payment directly from the said Vigneswaran and even according to the said Subash, the petitioner Vigneswaran was known to him through his friend Prakash, who is still absconding.

33. As already pointed out, the Inspector of Police, Somarasampettai Police Station has filed counter affidavit in Crl.M.P.(MD)No.11109 of 2021 stating that on the basis of the complaint lodged by the petitioner Vigneswaran, F.I.R. came to be registered against the said Ramesh and others and that they have already completed the investigation and they are going to file charge sheet shortly. It is not the case of the first respondent therein that the petitioner Vigneswaran has lodged a false complaint against the said Ramesh and others.

34. Considering the above facts and circumstances and also the nature of the charges levelled against the present petitioner and also the fact that there existed previous enmity between the petitioner and the said Ramesh and others and that the petitioner is not having any previous cases for serious offences, except the present cases, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

35. Accordingly, the petitioner is ordered to be released on bail in the event of his arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.V, Trichy, on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five thousand only) with two sureties each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a)the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b)the petitioner shall report before the Jeeyapuram Police Station daily at 10.30a.m., for period of 30 days and thereafter as and when required for interrogation.

(c)the petitioner shall not tamper with evidence or witness either during investigation or trial;



(d)the petitioner shall not abscond either during investigation or trial;

(e)on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]***; and;

(f)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

36. In the result, Crl.M.P.(MD)No.11109 of 2021 in Crl.O.P.(MD) No.18760 of 2021 is dismissed and Crl.O.P.(MD)Nos.4797, 6175 and 6209 of 2022 are ordered.

sd/-
18/05/2022

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

SSL

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,
TIRUCHIRAPALLI.
- 2 DO-THROUGH :
THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
- 3 THE INSPECTOR OF POLICE
SOMARASAMPETTAI POLICE STATION,
TRICHY DISTRICT.



4 THE INSPECTOR OF POLICE,
JEEYAPURAM POLICE STATION, TRICHY DISTRICT.

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

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+1CCtoM/s.S.RAMSUNDAR VIJAYRAJ, Advocate (SR-4798[I] dated 19/05/2022)

ORDER
IN
CRL MP (MD) No.11109 of 2021
IN
CRL OP (MD) No.18760 of 2021
Date :18/05/2022

PKP/PN/SAR-4/24.05.2022/11P/7C