



Crl.O.P.Nos. 2891, 2930 & 3037 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Crl.O.P.Nos. 2891, 2930 & 3037 of 2023

S.Sathya Saravanan,
D/o. Late Saravanan
on behalf of her power of attorney
Mr.K.Paneer Selvam,
S/o. Kandasamy

... Petitioner in all
Crl.O.P.s

Vs.

1. Gunasekaran,
S/o. Appachi Gounder

2. Krishnaveni,
W/o. Gunasekaran,

3. State by
Inspector of Police,
District Crime Branch,
Erode.
(Crime No.10 of 2022)

... Respondents in
Crl.O.P.No. 2891/2023



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1. Selvakumar,
S/o. Rajappan

2. State by
Inspector of Police,
District Crime Branch,
Erode.
(Crime No.10 of 2022)

... Respondents in
Crl.O.P.No. 2930/2023

1. Duraisamy,
S/o. Ramasamy Gounder

2. Marappan K.V.,
S/o. Veerappa Gounder

3. State by
Inspector of Police,
District Crime Branch,
Erode.
(Crime No.10 of 2022)

... Respondents in
Crl.O.P.No. 3037/2023

PRAYER in Crl.O.P.No. 2891 of 2023: Criminal Original Petition is filed under Section 439(2) of Criminal Procedure Code to cancel the order passed in Crl.M.P.No.3718 of 2022 on the file of the Principal District and Sessions Judge, Erode, dated 13.12.2022.



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PRAYER in Crl.O.P.No. 2930 of 2023: Criminal Original Petition is filed under Section 439(2) of Criminal Procedure Code to cancel the order passed in Crl.M.P.No.3717 of 2022 on the file of the Principal District and Sessions Judge, Erode, dated 13.12.2022.

PRAYER in Crl.O.P.No. 3037 of 2023: Criminal Original Petition is filed under Section 439(2) of Criminal Procedure Code to cancel the order passed in Crl.M.P.No.3716 of 2022 on the file of the Principal District and Sessions Judge, Erode, dated 13.12.2022.

For Petitioner
in all Crl.O.P.s. : Mr.A.Sundara Vadhanan

For 3rd Respondent in
Crl.O.P.Nos.2891 &
3037 of 2023 and
For 2nd respondent in
Crl.O.P.No.2930/2023 : Mr.Leonard Arul Joseph Selvam,
Govt. Advocate (Crl.Side.)

For Respondents 1 and 2 in
Crl.O.P.Nos.2891 &
3037 of 2023 and
For 1st respondent in
Crl.O.P.No.2930/2023 : Mr.N.Manokaran



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ORDER

The petitioner herein is the defacto complainant viz., S.Sathya Saravanan, represented through her power agent filed this petition praying to cancel the bail granted to the respondents 1 and 2 in Crl.M.P.Nos.3716, 3717 and 3718 of 2022 on the file of Principal District and Sessions Judge, Erode dated 13.12.2022 pertaining to Accused Nos.1 to 6 in Crime No. 10 of 2022 for the alleged offence under Sec. 120B, 418, 419, 420, 465, 468, 471 and 109 of I.P.C. on the file of District Crime Branch, Erode.

2. The defacto complainant/petitioner herein is the daughter-in-law of accused Gunasekaran and Krishnaveni, who are arrayed as A1 and A2 and she got married to their son Guhan on 08.09.2005 and thereafter she is now residing in New Zealand and she is working as Software Engineer. While so, at the instance of A1 Gunasekaran, she gave a power of attorney in his favour in the year of 2011 through a registered power of attorney and by using her money given as dowry of Rs.10 lakhs and remaining balance sum of Rs.10 lakhs belong to A2, through her power agent (A1), they



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purchased a land measuring 11 acres 18 cents through a registered sale deed dated 18.01.2022, in which, the defacto complainant and her mother-in-law (A2) having equal shares in that property. However, due to a family dispute, she obtained a decree of divorce from A1's son Guhan on 14.09.2021 in the court of New Zealand. Previously, with regard to division of property, a suit was filed by the brother of A1 in O.S. No.72 of 2013 against this petitioner and her husband, her in-laws before IV Addl. District Judge, Erode at Bhavani. Since A1 Gunasekaran/father-in-law acting against the interest of defacto complainant and her children, she revoked the said Power of attorney on 24.02.2020 and the said revocation was duly intimated to A1 through e-mail on 24.02.2020 and also intimated the same through her father to the Sub-Registrar, Bhavani. On 01.04.2021 the defacto complainant, through e-mail also intimated such revocation to the IV Addl. District Judge, Bhavani. Thereafter, she executed a power of attorney in favour of her father on 16.07.2021. In the said circumstances, on suppressing the revocation of power of attorney granted to A1, he along with his wife A2 fraudulently created a registered partition deed allotting 10 acres 93 cents to his wife Krishnaveni (A2) and allotting meagre extent



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of 25 cents to the defacto complainant on the strength of a fraudulent life certificate. However, her father died on 12.02.2022, hence, she came to India to attend funeral. At that time, A6 Medical Officer has given a false life certificate as if she appeared before her on 23.02.2022, in fact, she has not put any signature in the life certificate nor she appeared before the medical officer. On colluding with the other attesting witnesses A3 to A5, A1 and A2 created a partition deed without her knowledge in order to grab the property worth about Rs.5 crores. Hence, she gave a complaint against them and the same was registered in Crime No.10 of 2022.

3. Thereafter, on knowing about the registration of F.I.R., the accused persons 1 to 5 approached the District Court seeking for anticipatory bail in Crl.M.P.Nos. 2880, 2881, 2882 of 2022 and she intervened by submitting her objections and accordingly, the same was dismissed on 22.11.2022. Though the earlier anticipatory bail petition was dismissed, immediately, within a period of three days, the second anticipatory bail petition was filed and the trial court also allowed the petition on 13.12.2022 and anticipatory bail was granted to them without assigning any reason nor there is no change of circumstances, which is



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totally unfair. Furthermore, after obtaining the anticipatory bail, the accused persons not cooperating for the investigation and so far, there was no progress in the investigation, and hence, on that ground itself, the anticipatory bail is liable to be cancelled. Moreover, after obtaining the anticipatory bail, the accused A1 also attempted to transfer the property in the name of A2 by manipulating the document. Therefore, non-consideration of the facts and circumstances of the case as well as objections raised by the intervener before the trial judge, the anticipatory bail was granted in favour of accused concerned, which is totally against the law laid down by Hon'ble Supreme Court. Hence, the said order is liable to be set aside.

4. The learned counsel for defacto complainant/petitioner filed this petition praying to cancel the anticipatory bail order granted by the trial court on the ground that trial judge has not assigned any reason for granting the second anticipatory bail petition, when there is no change of circumstances, besides he has also failed to consider common intention of committing fraud in order to grab the property of defacto complainant by



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the accused concerned and after obtaining anticipatory bail, they are not cooperating for the further investigation.

5. The learned Government Advocate (Crl.Side) appearing for 3rd respondent would submit that first anticipatory bail petition filed by the accused concerned was dismissed on 22.11.2022 stating that on considering the nature of offence and the gravity of offence on the strength of such a fraudulent life certificate, the trial court not inclined to grant anticipatory bail in favour of A1 to A5. But, on the second anticipatory bail petition, which was filed by them was allowed by the trial judge on 13.12.2022 inspite of objections raised on the side of prosecution as well as on the side of intervener. Further, the learned Government Advocate also submitted that after obtaining the anticipatory bail order, A1 and A2 are not cooperating with the investigation and they failed to hand over the original document in their hands and the investigation is not yet completed due to their non-cooperation with the investigation.



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7. The learned counsel for defacto complainant relied on the ratio laid down by Hon'ble Supreme Court ***on 29th October, 2010 in the case of Prasanta Kumar Sarkar vs. Ashis Chatterjee and another***, wherein, it has been held as follows :-

“In this regard, it would be useful to refer to the following observations echoed in (2001) 4 SCC 224 (2005) 3 SCC 143 (2002) 9 SCC 364 (2005) 7 SCC 326 in the case of Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappul Yadav and another.

“In regard to cases where earlier bail applications have been rejected there is further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why inspite of such earlier rejection, the subsequent application for bail should be granted.”



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By relying the above proposition, the learned counsel for defacto complainant would submit that the learned Sessions Judge dismissed the earlier anticipatory bail petition on 22.11.2022 on considering the serious objections raised by the defacto complainant as well as nature and gravity of offence and on fabrication of a life certificate, the anticipatory bail petition was dismissed, but within short period of earlier dismissal of their anticipatory bail petition, the second anticipatory bail petition was filed within a short period in Crl.M.P.Nos.3716, 3717 and 3718 of 2022, which was allowed by the same Judge without assigning any reason for considering the subsequent anticipatory bail petition. As there was no change of circumstances between 22.11.2022 and 13.12.2022 within a short period of earlier dismissal of anticipatory bail petition, he prayed to cancel the anticipatory bail granted to them.

8. Heard and considered rival submissions of learned counsel for petitioner as well as respondents and perused the records.



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9. On a bare perusal of order of dismissal of anticipatory bail as well as order of granting anticipatory bail in favour of accused concerned by the Principal District and Sessions Judge, this court found that while allowing second anticipatory bail petition, learned Principal District and Sessions Judge has not assigned any specific reason nor there was no change of circumstances to grant such an anticipatory bail immediately after the dismissal of earlier anticipatory bail petition. Normally, the order of granting anticipatory bail to the accused is the discretion of the court, but such a discretion should be exercised judiciously, cautiously and strictly in compliance with the basic principles of law laid down in plethora of decisions of the court on the point. Though at the stage of granting anticipatory bail petition, an elaborate examination of witness and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence as per proposition laid down in **(2005) SCC Page 21**. But, the case in hand, the



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learned Principal District and Sessions Judge has not assigned any specific reason to grant anticipatory bail. Even in the discussion portion, he discussed all the facts while dismissing the earlier anticipatory bail petition, but on assigning the same reason, he has granted anticipatory bail in a subsequent petition, as such, it would clearly indicates that anticipatory bail was granted with non-application of mind by the Presiding Officer of the concerned court. Furthermore, as per the preposition laid down in the referred case, there must be a specific reason to grant anticipatory bail in a subsequent petition filed by the accused concerned and there must be a change of circumstances in granting anticipatory bail in the second petition. Hence, the reasons assigned by the petitioner is sustainable one.

10. The brief facts of the case would also reveals that daughter-in-law lodged a complaint against father-in-law and mother-in-law, who grabbed the property, which was worth about Rs.5 crores, belongs to her by executing a partition deed by utilising her power deed, which was already cancelled by her. Moreover, the defacto complainant and her husband already got a decree of divorce in the court of New Zealand. Due to a



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misunderstanding in the family, the defacto complainant already cancelled the power of attorney and the same was intimated to A1 through e-mail and the same was also informed to the Sub-Registrar, Bhavani as well as to the trial court, wherein the original suit is pending nearly six months earlier to the complaint. However, the cancellation of power of attorney is sufficient and it need not be registered as per the Registration Rules.

11. Admittedly, A1 is an advocate by profession in Bhavani, as an advocate, he knew all the legal procedures, but, after cancellation of power of attorney, he executed a partition deed by utilising the said power deed and transferred the property in favour of his wife A2 allotting 25 cents to her daughter-in-law, which would clearly indicates the notorious character of A1 and also it is a clear case of abuse of process of law. As per submissions made by the public prosecutor before the trial court that even after obtaining anticipatory bail, A1 has not handed over the originals as requested by the investigating agency and the same was also informed by the learned public prosecutor before the trial court in the relaxation petition, which would clearly reveals that A1 is not cooperating with the investigation after obtaining anticipatory bail.



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12. Moreover, from the perusal of power deed, the power was given by the defacto complainant only to purchase and to sell the property nor she gave power to enter into a partition deed, which is totally contrary to the specific power given to him. A1 being an advocate by profession, abused the process of law by manipulating the document and attempted to grab the property belongs to daughter-in-law, who is in New Zealand without her consent and knowledge. Hence, she gave a complaint against them stating that by using the power of attorney, they have created a partition deed and the accused also not cooperating for the investigation after obtaining anticipatory bail, as such, this is a fit case to cancel the bail. Accordingly, these Criminal Original Petitions are allowed and the order passed by the learned Principal District and Sessions Judge, Erode in Crl.M.P.Nos. 3716, 3717 and 3718 of 2022 dated 13.12.2022 is cancelled.

13. However, liberty is granted to the defacto complainant to initiate appropriate proceedings against A1, who is an advocate by profession before the Bar Council of Tamil Nadu as he is acting contrary to



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the interest of defacto complainant after cancellation of power deed by abusing his profession.

14. This court further reserves its right to call for explanation from the learned Principal District and Sessions Judge, Erode for his non-application of mind while allowing the subsequent anticipatory bail petition and also on what basis, the second anticipatory bail petition was granted immediately after the dismissal of earlier petition.

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N.B. : Registry is directed to call for explanation from the Principal District and Sessions Judge, Erode, and to submit a report before this court.

To

Principal District and Sessions Judge,
Erode.



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T.V.THAMILSELVI, J.

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**Pre-delivery order in
Crl.O.P.Nos. 2891, 2930 &
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