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Crl.O.P.No.5440 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**  
**RESERVED ON : 20.09.2023**

**PRONOUNCED ON : 26.09.2023**

**CORAM**

**THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN**

**Crl.O.P.No.5440 of 2023**

Jessy Joseph

...

Petitioner

Vs.

1.State rep.by Inspector of Police,  
District Crime Branch,  
The Nilgiris.

2.Shanthipriya,  
Former Manager,  
Muthoot Fincorp Ltd.,  
Manjoor Branch.

...

Respondents

**PRAYER:** Criminal Original Petition filed under Section 439 (2) Cr.P.C. praying to set aside the order passed in Crl.M.P.No.1334 of 2022, on the file of the Sessions Division Judge of the Nilgiris District at Udthagamandalam and cancel the bail granted to the second respondent.

For Petitioner : Ms.J.Sudeksha

For First respondent : Mr.S.Rajakumar  
Additional Public Prosecutor

For Second respondent : Mr.K.Balasubramaniam

**ORDER**



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This petition is filed to set aside the order passed in Cr.L.M.P.No.1334 of 2022, on the file of the Sessions Division Judge of the Nilgiris District at Udthagamandalam and cancel the bail granted to the second respondent.

2.The learned counsel for the petitioner submitted that on the basis of the complaint given by the petitioner/defacto complainant, FIR in Crime No.1 of 2022 was registered for the offences under Sections 34, 408, 468 & 477A IPC. The allegations against the second respondent/first accused and the other accused are that, second respondent is the branch manager of Muthoot Fincorp Ltd., Manjoor Branch, Nilgiris. Other accused occupy positions as customer service executives. Jewels pledged with Muthoot Fincorp Ltd., would be properly sealed and kept in strong room. The jewels used to be periodically inspected. On 04.09.2021, when the valuer Sudhakar inspected the Muthoot Fincorp Ltd., Manjoor Branch, Nilgiris, it was found that the jewellery pledged during the period from 27.01.2021 to 28.06.2021, sealed and kept in strong room were tampered and the



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packets were damaged. When the inspection was conducted, it was found that there was spurious jewels in 81 packets. The value of the jewels in the 81 packets is Rs.1,02,68,058/-. During the course of inspection, it was noticed that some of the customers' jewellery were pledged in the name of others. Accused had, in connivance and in collaboration with each other, removed the original gold jewellery in 81 packets, created applications in the name of the some other customers and other documents, pledged jewellery in 46 accounts and received money to the tune of Rs.55,19,470/-. They have used the jewellery in 38 packets for their own use, committed criminal breach of trust and then misappropriated the amount to the tune of Rs.1,30,42,229/-. Accused had admitted their crime and paid a sum of Rs.32,12,126/- and returned 43.5 grams of gold. Still they are liable to pay Rs.98,30,103/-. She further submitted that the petitioner had filed anticipatory bail petition before the Sessions Court, Udthagamandalam and then before this Court and both petitions came to be dismissed. Then she surrendered before the trial Court and she was remanded to judicial custody. She filed C.M.P.No.4874 of 2022 seeking bail. The learned Judicial Magistrate,



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Udhagamandalam, without considering the gravity of the offence, volume of the amount misappropriated and cheated, granted bail to the petitioner. Challenging the bail order, petitioner filed CrI.M.P.No.1334 of 2022 before the Sessions Court, Udhagamandalam. However, the learned Sessions Judge, without considering the petitioner's plea, had dismissed the petition. Therefore this petition. She further submitted that second respondent had infact gave an undertaking letter admitting her crime and to settle the amount within a month. However, the stolen jewels and the amount misappropriated are not recovered so far. Therefore, she seeks to set aside the order passed by the learned Sessions Judge, Udhagamandalam and cancel the bail granted to the second respondent.

3.In reply, the learned counsel for the second respondent submitted that the learned Judicial Magistrate, Udhagamandalam had considered all the relevant aspects and then granted bail to the second respondent. There is no ground for cancellation of bail. Cancellation of bail cannot be ordered ordinarily unless strong grounds are made out, like, interference of the accused in the investigation, tampering evidence, threatening the



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witnesses etc. No such grounds are made out in this case. Therefore, he prayed for dismissal of this petition.

4.Considered the rival submissions and perused the records.

5.As already narrated, it is a case where the accused in this case had cheated the defacto complainant by replacing the original gold jewellery with spurious jewellery; by pledging the stolen jewellery had taken loan and thus, caused loss to the tune of Rs.1,30,42,229/-. Only a part of the amount i.e., Rs.32,12,126/- was returned and gold weighing 43.5 grams was returned. Still it is alleged that Rs.98,30,103/- has to be recovered. Petitioner is a branch manager. She is the overall in-charge of the entire operations of the Muthoot Finance, Manjoor Branch, Nilgiris. While dismissing the anticipatory bail petition in Crl.O.P.No.6061 of 2022, this Court observed as follows:

*4.This Court finds difference between this petitioner and other accused who were granted bail. This petitioner is over all responsible for*



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*the custody of the jewels. She along with other staff have replaced the original jewels pledged by the customers of the Muthoot Fincorp and substituted it with fake jewels and repledged the jewels in the name of different borrowers, thereby the original owner of the jewels have been deprived of their property entrusted through Muthoot Fincorp.*

6. When the anticipatory bail was denied, it appears that she surrendered before the learned Judicial Magistrate and remanded to judicial custody. She filed bail petition in C.M.P. No.4874 of 2022 and the learned Judicial Magistrate, Udthagamandalam, passed the following order,

*4. Both sides heard and records perused. On perusal of records, it is found that the accused is remanded to judicial custody on 15.10.2022 and for past 12 days, she is in judicial custody. Even through respondent police has objected stating that, the case property is not been recovered but no intention is seen from the investigation officer concerned to investigate about the property to the accused herein and the*



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*offences involved is based on documentary evidence and there is less chance of tampering with the evidences. Considering the facts and circumstances and considering the remand period and in the interest of justice, this Court is inclined to grant interim bail to the petitioner with the following conditions.*

7. Petitioner was in judicial custody from 15.10.2022 and on 26.10.2022, she was granted bail. The observations made in the bail order that the respondent police has no intention to investigate about the property and the offence involved is based on documentary evidence is totally not correct and inappropriate. Admittedly, this petitioner could not be apprehended by the police then for the reason that she was absconding and she was moving for anticipatory bail. Only after the anticipatory bail was not granted, she surrendered before the concerned Court. We do not know where from the learned Judicial Magistrate recorded that the respondent police has not investigated about the property. Similarly, the observation that this case was based on the documentary evidence is not wholly true. It is a case where the original jewels were replaced with spurious jewels. Stolen jewels were pledged in the name of others, loans



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were obtained by the accused and the amount misappropriated. Entire stolen jewels and the loan amounts are not recovered.

8.In the said circumstances, the observations made that this case relies on documentary evidence and there is no chance of tampering the evidence is not a correct reason. The Hon'ble Supreme Court enumerated the following supervening factors that justify the cancellation of bail.

- i) Interference or attempt to interfere with the due course of administration of justice;*
- ii) Evasion or attempt to evade the due course of justice;*
- iii) Abuse of the concession granted to the accused;*
- iv) Possibility of the accused absconding;*
- v) Likelihood of/actual misuse of bail;*
- vi) Likelihood of the accused tampering with the evidence or threatening witnesses;*
- vii) Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.*

8.1.The supervening circumstances are clearly classified under the



following heads :-

i) Where the court granting bail ignores relevant material and takes into account irrelevant material of substantial nature and not trivial nature;

ii) *Where the court granting bail overlooks the position of the accused qua the victim especially if the accused is in some position of authority such as a policeman and there is prima facie, a misuse of position and power, including over the victim.*

iii) *Where the court granting bail ignores the past criminal record and conduct of the accused while granting bail;*

iv) Where bail has been granted on untenable grounds;

v) *Where the order granting bail suffers from serious infirmities resulting in miscarriage of justice;*

vi) Where the grant of bail was not appropriate in the first place, given the very serious nature of the charges against the accused which disentitles him for bail and thus



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cannot be justified;

vii) When the order granting bail is  
apparently whimsical, capricious and perverse  
in the facts of the given case.

*(Emphasis Supplied)*

The Hon'ble Supreme Court in the case of ***Vipan Kumar Dhir Vs. State of Punjab and another in Criminal Appeal Nos.1161-1162 of 2021*** observed as follows:

*9.At the outset, it would be fruitful to recapitulate the well settled legal principle that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. It is necessary that 'cogent and overwhelming reasons' are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non conducive to fair trial, making it necessary to cancel the bail. This Court in Daulat Ram and others vs. State of Haryana observed that:*

*“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so*



*granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”*



*These principles have been reiterated time and again, more recently by a 3judge Bench of this Court in X vs. State of Telegana and another.*

*10. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.*



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9. Here is the case where the learned Judicial Magistrate without properly appreciating the gravity of the offence, volume of the amount involved and the fact that the stolen jewellery and amount are not fully recovered, granted bail on unacceptable reasons, i.e., respondent police have not done any investigation on the property stolen and that the case was based on documentary evidence. The order is not appropriate and legal. When this order was challenged before the Sessions Judge, the learned Sessions Judge has also not considered this aspect and dismissed the petition. Non application of mind on the part of the Courts below in granting bail/sustaining bail is a supervening circumstance warranting this Court to interfere in the order of the Courts below. Therefore, this Court set aside the order passed by the learned Sessions Judge, Udhagamandalam, in Crl.M.P.No.1334 of 2022, dated 16.12.2022 and the order of the learned Judicial Magistrate in C.M.P.No.4874 of 2022, dated 26.10.2022.

10. Accordingly, this petition is allowed and the bail granted to the



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second respondent is cancelled and she is directed to surrender before the concerned Court within a period of one week from the date of receipt of a copy of this order, failing which, the first respondent police is directed to take steps in accordance with law to arrest the second respondent and remand her to judicial custody. In fine, this Criminal Original Petition is allowed.

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**26.09.2023**

To:

1. Inspector of Police,  
District Crime Branch,  
The Nilgiris.
2. The Sessions Division Judge,  
Nilgiris District at Udhagamandalam.
3. The Judicial Magistrate,  
Udhagamandalam.
4. The Public Prosecutor,  
High Court, Madras.

**G.CHANDRASEKHARAN , J.**



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**Pre-Delivery Order in**  
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