



Crl.O.P.No.5393 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.5393 of 2023

M.Munusamy ...Petitioner /defacto complainant

Vs.

1. The State Represented by
The Inspector of Police
Town Police Station
Krishnagiri
... 1st Respondent/Respondent
2. Abishek ... 2nd Respondent/Petitioner

PRAYER:Criminal Original Petition is filed under Section 439(1)(b) of Cr.P.C. praying to cancel the bail granted to the second respondent in Crl.M.P.No. 338Of 2023 on the file of Hon'ble Principal District Judge, Krishnagiri by its order dated 01.02.2023.

For Petitioner : Mr. J.Prakasam

For 1st Respondent : Mr. R.Vinoth Raja
Government Advocate, (Crl. Side)



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For 2nd Respondent: Mr. K.Selvarangan

ORDER

This petition has been filed by the defacto complainant seeking cancellation of anticipatory bail granted to the second respondent in Crl.M.P.No. 338 of 2023 by the Principal Judge at Krishnagiri by an order dated 01.02.2023.

2. It must be stated that originally, the first respondent had registered FIR in Cr.No. 294 of 2022 under Section 174 Cr.P.C., and later altered into Section 306 IPC.

3. The case of the prosecution was that the second respondent had a relationship with the daughter of the present petitioner and also had physical intercourse with her, promising to marry her. He later cheated her and refused to marry her. It is stated that frustrated with such rejection, she had committed suicide. The second respondent had been remanded to judicial custody on 15.12.2022 and thereafter he had



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commenced filing bail applications not only before this Court but also before the Sessions Court. Before the Sessions Court, he had originally filed Crl.M.P.No. 3285 of 2022 and by an order dated 22.12.2022, the learned Principal Sessions Judge at Krishnagiri had dismissed the said application. Thereafter, the second respondent filed Crl.O.P.No. 32538 of 2022 seeking bail before this Court.

4. A learned Single Judge of this Court had while observing that the investigation is at preliminary stage, dismissed the application seeking bail by an order dated 28.12.2022. The second respondent then filed yet another application in Crl.O.P.No. 1203 of 2023 and again sought bail. A learned Single Judge of this Court observed that nine witnesses were yet to be examined during the course of investigation and that the investigation had not been completed and again dismissed the application by an order dated 30.01.2023.

5. It must be pointed out that by these orders, the High Court had consistently refused to grant bail to the second respondent by



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observing the stage of investigation, namely, that it had not been completed and that there were further witnesses whose statements have to be recorded by the Investigating Officer.

6. The learned counsel for the petitioner then pointed out a further order passed with respect to the application seeking bail by the second respondent. This order was in Crl.M.P.No. 338 of 2023. By an order dated 01.02.2023, two days after the order of dismissal of the bail application by this Court, the learned Principal Sessions Judge at Krishnagiri had granted bail to the second respondent herein. It is that particular order which is now sought to be cancelled.

7. The learned counsel pointed out that on 30.01.2023 the learned Single Judge had observed that there were nine witnesses whose statements were to be recorded during the course of investigation on 01.02.2023 and two days later, it has been observed by the learned Principal Sessions Judge that the investigation had been completed. The learned counsel for the petitioner pointed out the improbability of such



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an event.

8. As a matter of fact, the learned Government Advocate (Crl.Side) today represented that the investigation has still not been completed vicera report will have to be received and final report has not yet been filed before the Judicial Magistrate No.I, Krishnagiri. Thus, even after more than ten months, when the learned Principal Sessions Judge had observed that the investigation has been completed, investigation in reality has not yet been completed. Obviously, the second respondent had employed deceit to mislead the Principal Sessions Judge to grant bail.

9. Notice had been directed to the second respondent and the learned counsel had entered appearance.

10. The learned counsel stated that there could be three situations alone wherein bail granted could be cancelled by a Court. There must be a gross abuse of the conditions granted. There could be abuse of process of law and there could be violations of any of the



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conditions particularly threatening witnesses and interfering with the investigation process. But one supervening circumstance which this Court will have to consider is the obtaining of bail by suppressing a material fact, namely that the High Court had dismissed the bail application by the second respondent on two separate occasions and approaching the Sessions Judge in the teeth of dismissal of the petitions seeking bail and seeking bail before the Principal Sessions Court. The rule of law will have to be maintained by the Courts otherwise there would not be uniform applicability of principles. When the High Court had applied its mind on two separate occasions and had dismissed the bail application and this fact had been suppressed from the knowledge by the learned Principal Sessions Judge, the order granting bail can be stated to be non est in law and having been obtained by deceit and by suppression.

11. In ***S.P.Chengalvaraya Naidu (Dead) Vs. Jagannath (Dead), by Lrs. And others***, reported in ***(1994) 1 SCC 1***, the Hon'ble Supreme Court held as follows:-



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“6. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.”

12. The Hon'ble Supreme Court had examined the concept of fraud played on Courts and had stated that suppression of a material fact and obtaining an order is fraud. Fraud vitiates every solemn proceeding. Any order obtained by deceit or by fraud will have to be necessarily interfered with. More over, when the High Court had dismissed the applications for bail, any order granting bail by any Court subordinate to the High Court cannot withstand judicial scrutiny.

13. It is clear that the second respondent had played a game



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and by suppressing a material fact had obtained an order. It is only appropriate that rule of law is upheld and the order granting bail by the learned Principal Sessions Judge is cancelled by this Court.

14. The learned counsel for the second respondent stated that this Court can impose any conditions as is deemed fit and that the second respondent would abide by such conditions.

15. I really wonder as to what conditions could be imposed on a litigant, who suppresses material facts and obtains an order. The order granting bail to the second respondent by the learned Principal Sessions Judge at Krishnagiri by order dated 01.02.2023 in Crl.M.P.No. 338 of 2023 is hereby cancelled.

16. Accordingly, this Criminal Original Petition stands allowed. The second respondent is directed to surrender before the respondent within a period of 10 days from the date on which this order is uploaded in the website of High Court, failing which a direction is



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issued to the first respondent to secure the second respondent without any further directions from this Court.

Vsg

21.12.2023

Index: Yes/No

Internet: Yes/No

To

1. Principal District Judge, Krishnagiri.
2. The Inspector of Police
Town Police Station
Krishnagiri
3. The Public Prosecutor,
High Court, Madras.

C.V.KARTHIKEYAN, J.



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