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Crl.O.P.No.17472 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

THE HONOURABLE MR. JUSTICE Dr. G. JAYACHANDRAN

Crl.O.P.No.17472 of 2023

and

Crl.M.P.No.14331 of 2023

Jaiganesh@Jayaganesh

... Petitioner

Vs.

1. State, Rep By
Inspector Of Police,
CCB1, Chennai.
(Cr.No. 23/2022)

2. N.R.Balaji,
Proprietor of N.R.Balaji Foods,
No 174/26, Thiruvottriyur High Road,
Tondairpet, Chennai.

(R2 impleaded as per order date 12/09/2023 in CRL. M.P. No.
14331/2023 in CRL. O.P. No. 17472/2023).

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order in Crl.MP.21545/2023 dated 22.6.2023 in Crime No.23/2022 on the file of the learned Metropolitan Magistrate (CCB and CBCID), Egmore and to set aside the order .



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For Petitioner : Mr.R.Vijaya Raghavan

For Respondents : Mr.Leonard Arul Joseph Selvam,
Government Advocate (Criminal Side),
(for R1)

M/s.M.Karthika (for R2)

ORDER

This Criminal Original Petition is filed to set aside the order in Crl.M.P.No.21545 of 2023, dated 22.06.2023, in Crime No.23 of 2022, on the file of the learned Metropolitan Magistrate (CCB and CBCID), Egmore, and to set aside the order.

2. The petition herein is filed by the accused who had suffered order of cancellation of the bail granted to him in view of the breach of undertaking. A short point in this case is that whether a conditional order to deposit the money, either on the order of the Court or by the undertaking given by the accused or somebody on his behalf, can be enforced or if such order passed while granting bail, if subsequently, breach be a ground for cancelling the bail.



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3. The Hon'ble Supreme Court has repeatedly said that there cannot be a conditional order while granting bail to deposit huge sum of money by way of recovery of the money alleged to have been cheated. Any onerous condition imposed for granting bail is non est.

4. However, in this case, this Court finds that when this accused was arrested for the alleged cheating of a sum more than Rs.1,30,00,000/- (Rupees One Crore Thirty Lakhs). The petitioner herein was taken into custody on 27.06.2022. When the bail petition was moved on his behalf, the parents of the petitioner had come forward to settle the due in a particular way. Already two properties in the name of the accused was transferred in favour of the de-facto complainant and both were registered in the name of the complainant, besides, they have come forward to pay a sum of Rs.50,00,000/- (Rupees Fifty Lakhs) in instalments. Out of Rs.50,00,000/- (Rupees Fifty Lakhs), Rs.10,00,000/- (Rupees Ten Lakhs) was paid by cash on 13.07.2022, for the balance, A1 had drawn post dated cheque for Rs.40,00,000/- (Rupees Forty Lakhs) at the Union Bank of India and had given to the complainant.



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5. In the light of this development, the de-facto complainant has made an endorsement that he had no objection to enlarge the accused on bail on receiving Rs.10,00,000/- (Rupees Ten Lakhs) in cash and two post dated cheques given to settle the balance of Rs.40,00,000/- (Rupees Forty Lakhs). The Court on taking these facts into consideration, granted bail to the petitioner.

6. The two post dated cheques for Rs.40,00,000/- (Rupees Forty Lakhs), given by the third party on behalf of the accused, did not meet the requirement when it was presented for collection. Thereafter, the de-facto complainant has moved before the Court seeking cancellation of Bail in view of the breach of undertaking. This Court had cancelled the bail and the petitioner was again secured on 05.04.2022. This time the petitioner moved before the Court for bail, narrating the earlier incident and contended that it was purely a business transaction and the dispute is in civil in nature. Therefore, the petitioner shall not be incarcerated in the prison endlessly.

7. The Metropolitan Magistrate, while considering the said



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application for cancellation of bail filed by the de-facto complainant in the Crl.M.P.No.21545/2023, reading down the earlier bail order and the other facts and circumstances of the case had cancelled the Bail. This order dated 22.06.2023, is under challenge herein.

8. The learned counsel appearing for the petitioner submitted that the Hon'ble Supreme Court has time and again held that criminal complaint followed by the Bail petition cannot be misused for recovering the money. While granting bail, the Court should not impose onerous conditions. He further submitted that already two valuable properties of the petitioner had been transferred to the de-facto complainant. A sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) were paid in 2 instalments. The balance Rs.25,00,000/- (Rupees Twenty Five Lakhs), which is alleged to not paid was not an undertaking emanated from the petitioner but by his relatives. The two cheques were also not given by the petitioner but by the third parties. Therefore, that cannot be a ground to cancel the bail.

9. Further, he submitted that there are five accused in this case. For the co-accused, without any condition of payment, the District Session Court has granted bail, whereas for this petitioner, the de-facto



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complainant wants to recover the money under the threat of the criminal prosecution, which is not permissible under law. More particularly, the payment of the money cannot be a condition for granting bail. Equally so, breach of the said undertaking cannot be a ground for cancellation of bail.

10. The learned counsel appearing for the de-facto complainant submitted that the petitioner was granted bail for the second time based on the memo filed by him, stating that he undertakes to settle the remaining balance amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs). While so, having filed a memo before the Court and obtained bail, there cannot be a breach of that undertaking, otherwise that will amount misleading the Court for granting bail and rightly, the Trial Court has cancelled the bail for that reason.

11. The counsel appearing for the petitioner states that except the memo of understanding filed while getting the bail for the first time, there was no undertaking memo filed when the second bail was sought.

12. The perusal of the order of the Metropolitan Magistrate granting bail for the second time in Crl.MP.No. 32442 of 2022 indicates that the de-



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facto complainant has filed an affidavit and on behalf of the petitioner who was in prison at that time, a memo was filed giving an undertaking that the balance amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs) will be settled.

13. In the light of the above fact, the Metropolitan Magistrate has recorded the memo and said that if the petitioner /accused violates the memorandum of understanding, the Bail petition will be automatically cancelled. Only thereafter, for non-payment of Rs.25,00,000/- (Rupees Twenty Five Lakhs), the second application for cancellation of the bail is taken. In that application recording the breach of memo of undertaking, the bail granted on 18.10.2022, was cancelled and warrant issue against the accused by order dated 22.06.2023.

14. It is a clear case that the petitioner had obtained bail promising to repay the money cheated in a particular manner but has not honoured his promise. Now he claims that the promise was not made by him, but by somebody on his behalf and the said promise amounts to onerous condition which cannot be imposed. This plea, after misleading and influencing the Court to grant bail by such promise cannot be equated as onerous



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conditions imposed by the Court on its own while granting bail. That apart, it is not the first time the petitioner has promised to pay certain sum within a certain period and committed breach. For the second time he has made the same promise, obtained bail but did not honour the same.

15. Be it as it may. While considering the other aspects, this is a case registered on 21.1.2022. This petitioner was first arrested on 22.6.2022 and released on Bail after 18 days. Again he was arrested for the second time on 3.10.2022 and realised on bail on 18.10.2022. Thereafter, the present petition for cancellation of Bail was filed and the same was allowed. However, due to intervention of this Court and the interim order, he has not been secured so far. Till date, final report has not been filed. Though, it is stated by the Investigating Officer that the investigation substantially completed and the final report will be filed soon, the purpose of securing a person and detaining him in judicial custody is for proper investigation and for collection of evidence.

16. Since the case against the petitioner has already been investigated and has reached its logical end, except filing of final report, further detention of the petitioner is no way going to help the investigation



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and is not necessary also. So, without averting to the other reasons which are now being canvassed for cancellation of Bail, this Court is of the opinion that the judicial custody of the petitioner is not required considering the the facts and circumstances of this case and hence, the bail granted already by the Trial Court vide order dated 18.10.2022 is not interfered.

17. With the above observations, the petition stands disposed of. Consequently, connected miscellaneous petition is dismissed.

11.12.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

1. Inspector Of Police,
CCB1, Chennai.

2. The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr. G. JAYACHANDRAN. J.,

(sha)

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