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Crl.M.P.No.14845 of 2023

in

Crl.O.P.No.26332 of 2019

C.V.KARTHIKEYAN, J.

This petition has been filed seeking to cancel the anticipatory bail granted to the accused in Crime No.1226 of 2017 registered by the 1st respondent under Sections 420, 468 and 471 IPC.

2.The anticipatory bail was granted to the accused by an order dated 17.10.2019. By the said order, this Court had granted anticipatory bail imposing normal conditions of appearance before the 1st respondent police daily at 10.30 a.m., until further orders and to disclose relevant details and to co-operate during the investigation. It was also stated that, if the Investigation Officer comes to a conclusion that the accused are not co-operating, then the prosecution is at liberty to cancel the order.

3.The case of the prosecution is that the defacto complainant claimed that she had inherited the property and that without her



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knowledge, the accused have purchased the property and had also taken possession in the year 2012. A civil suit is also pending in O.S.No.363 of 2012 before the District Munsif Court at Coimbatore. That suit had been filed seeking protection of possession and for permanent injunction restraining interference with the peaceful possession of the defacto complainant.

4.This Court had granted anticipatory bail with the object to enable the investigation to proceed, since the FIR had been registered in the year 2017 and after two years, the accused had approached the Court seeking anticipatory bail. After the grant of anticipatory bail, the accused had also filed an application seeking to relax the conditions imposed about appearance before the respondent police and the Court had also relaxed the said condition. In view of the same, the accused are no longer appearing before the respondent.

5.A status report had been filed by the respondent police. In the same, it had been stated that after investigation, a final report had been filed on 04.11.2020, stating that further action was dropped in the case. A copy was also served on the defacto complainant in RCS.No.15 of 2022. Thereafter, the learned Judicial Magistrate – V, Coimbatore, had



taken on record, the petition in CrI.M.P.No.9129 of 2022 which had been filed by the defacto complainant seeking to conduct further investigation and to reject the final report. Orders were passed by the learned Judicial Magistrate, Additional Mahila Court, Coimbatore and further investigation was directed and the petition was allowed.

6.It is stated that the Investigation Officer, who had now taken up investigation had called over the defacto complainant four times over phone, but for some reason, the defacto complainant had avoided appearance. It is however stated that all relevant materials have been sent by post to the Investigating Officer.

7.The main ground on which the order granting anticipatory bail is sought to be cancelled is that, the petitioner herein / defacto complainant was not heard before the order granting anticipatory bail was passed. It is therefore contended that, had opportunity been granted, the facts would have been presented pointing out the reasons, why anticipatory bail should not be granted by the Court.



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8.The position of law, as on date, is the judgment of the Hon'ble Supreme Court reported in **(2023) 7 SCC 461, *Ramesh Kumar Vs. State of NCT of Delhi***, wherein the Hon'ble Supreme Court held as follows:

“32. Before concluding, we need to dispose of IA No. 94276 of 2023. It is an application for intervention at the instance of the complainants, who seek to assist the Court on the ground that any order passed on the appeal without giving opportunity of hearing to them would cause grave prejudice.

33. We hold that at this stage, the complainants have no right of audience before this Court or even the High Court having regard to the nature of offence alleged to have been committed by the appellant unless, of course, a situation for compounding of the offence under Section 420IPC, with the permission of the court, arises.”

9.At any rate, there has been much change in circumstances, since the grant of anticipatory bail. The respondent police have now been



directed to investigate further, under the directions of the learned Judicial Magistrate – V, Coimbatore.

10. In view of that particular fact, at this stage, instead of cancelling the anticipatory bail, I will pass directions, directing the accused to appear before the respondent police everyday at 10.30 a.m., until further orders. The other condition that they must co-operate during the course of investigation are retained and the further condition that if they do not co-operate during investigation, the respondent / Investigating Officer can seek cancellation of the anticipatory bail is also retained.

11. The defacto complainant, may also appear before the respondent police, if notice in writing is issued to the defacto complainant. Since she is a lady and senior citizen, permission is granted for her to be accompanied by her son Mr.D.Nithyanandan, who is qualified to practice as an advocate.



12.Let further investigation proceed. Let final report be filed before the learned Judicial Magistrate -V, Coimbatore. The learned Judicial Magistrate – V, Coimbatore, may monitor the investigation and ensure that proper investigation is conducted taking into consideration all aspects of the case.

13.A copy of this order may be forwarded to the learned Judicial Magistrate – V, Coimbatore.

14.In view of the above observations, the anticipatory bail granted is not cancelled, but since conditions are imposed on the accused, this Criminal Miscellaneous Petition stands disposed of.

20.12.2023

smv

Note: The Registry is directed to forward this order to the learned Judicial Magistrate – V, Coimbatore.



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