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Crl.M.P.Nos.18241-18248-18251/2022

CRL. M.P. NOS. 18241, 18248 & 18251 OF 2022

IN

CRL. O.P. NOS. 15694, 15698 and 15700 of 2021

M.DHANDAPANI, J.

Vide order dated 07.09.2021, this Court had granted anticipatory bail to the petitioners in Crl. O.P. Nos.15694, 15698 and 15700 of 2021. The apprehension of the petitioners therein was with regard to the offences u/s 409 and 420 IPC and Section 76 r/w 4 of the Chit Fund Act, 1982 in Crime No.7/2021.

2. The sum and substance of the allegation against the petitioners therein is that the accused, who were the Secretary and Deputy President of the Ambattur Nadargal Dharma Paripalana Sangam, induced the defacto complainant to subscribe to the chit run by their association on a false promise that it would be repaid on demand made by the defacto complainant. On the basis of the said promise, the defacto complainant deposited a sum of Rs.4,24,525/-, but due to the differences between the office bearers of the Association, the monthly subscription was stopped and when the defacto complainant demanded repayment, only a sum of Rs.2,00,000/- was paid and the balance was not paid, resulting in the complaint.



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3. When the matter was taken up for hearing on 7.09.2021, learned counsel for the petitioners/accused, while submitted that the accused have not committed any offence, as alleged, however, to show their bona fides, for the purpose of saving their reputation, filed an affidavit signed by the petitioners/accused, stating that they are ready and willing to settle the amount to those who have subscribed to the chits so far in their association within a reasonable time as fixed by this Court.

4. Upon hearing the learned Government Advocate (Crl. Side) and also with a view to find out the bona fides of the petitioner/accused, and also in larger public interest, so as to enable the persons, who have lost their money, to recover the same, this Court was inclined to appoint Justice N.Kirubakaran, Judge (Retd.), as Commissioner to take over the entire affairs relating to settlement of claims made by the depositors.

5. However, in view of the fact that the accused have not kept up their undertaking before this Court to settle the amounts to the various depositors, the present petitions for cancellation of anticipatory bail was filed. When the matter came up on 14.12.2022, it was pleaded on behalf of the accused that since the assumption of office by the new office bearers, they are not willing to sell the



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property which stands in the name of the temple and if the property is sold, the entire issued will be settled. Therefore, this Court, to enquire into the veracity of the said statement, directed *suo motu* impleadment of K.Mariappa Nadar, S.Ponraj Selvam and D.Jayakumar as respondents 3 to 5.

6. A perusal of the affidavit filed by the petitioners, who seek cancellation of anticipatory bail reveals the following :-

“7. The petitioners humbly submit that this Hon’ble Court appointed Hon’ble Mr. Justice N.Kirubakaran, as Judge Commissioner to settle the claims of all the subscribers. The Hon’ble Commission after issuing publication in newspaper held 12 sittings which was attended by all the 6 accused persons and also the subscribers. But the accused persons did not come forward to settle the amounts, on the other hand they denied the liability and they were indulging in blame game. Such stand taken by the accused persons before the Hon’ble Commission is in stark contrast to the undertaking given before this Hon’ble Court.

8. The petitioners humbly submit the Hon’ble Commission on the last sitting held on 05.09.2022 concluded that it is a futile exercise to proceed further in the matter and therefore submitted failure report before this Hon’ble Court of passing appropriate orders. In the report the Hon’ble Commission observed that the accused persons, the office bearers of the said Sangam including the respondents 2 & 3 have not come



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forward to repay the amount collected by them from the subscribers in the name of monthly chit. The Hon'ble Commission further observed that it is open to the Investigation Officer to make further investigation and to find out the flow of money and persons involved in commission of offences and make them as accused and identify and attach properties in his discretion as per law."

7. When the matter was listed before this Court on 09.11.2023, after said impleadment, it was submitted on behalf of the law enforcing agency that the 2nd accused alone had deposited a sum of Rs.50 Lakhs and the other accused have not deposited any amount. It was further submitted on behalf of the accused that several persons are involved in the offence and, therefore, prayed this Court to conduct an enquiry by the law enforcing agency. Accordingly, this Court directed the law enforcing agency to conduct investigation and file a status report. Pursuant to the said directions, aA status report is filed on behalf of the law enforcing agency in which it is stated as under :-

"8. It is submitted that during the course of investigation on 9.11.2023, I sent the 41 (A) Cr.P.C. notice to A-2 for his appearance on 14.11.2023, on the said day (i.e.) 14.11.2023, the accused A2/Kanji Rajan who was appeared before me and given a written statement as follows :-

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10. It is submitted that during interrogation of the Mariappa Nadar who was impleaded suo motu respondent by the order of this Hon'ble Court, he had stated that he filed O.S. No.159/2020 on the file of District Munsif Court at Ambattur for the relief of not alienating the property against 1.C.Kanchirajaj, 2. M.Sermakani, 3. Baskaran, 4. Manogaran. No the case is pending before the court.

11. It is submitted that Mariappa Nadar had stated that he is going to convene a meeting of the trustee to take a decision to settle the amount to the depositors and he and other trustee gave a written willing letter to settle the amount to the depositors except Kasirajan during interrogation. Further Mariappa Nadar assured that he is going to withdraw the O.S. No.159/2020 filed by him.”

8. In the above said backdrop, the law enforcing agency, on the basis of the aforesaid status report, pleads that the anticipatory bail granted may be cancelled, as the accused are not inclined to settle the amount to the depositors, but playing a hide and seek game between the erstwhile office bearers and the present office bearers.

9. Learned counsel appearing for the accused submitted that all out efforts is being taken by the accused to settle the amount to the depositors and this Court may grant some time for them to settle the amount, as the dispute



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between the office bearers is the reason for the delay in settling the amount.

Therefore, this Court may not cancel the bail granted to the accused.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel for the accused and also perused the materials available on record, including the report of the Hon'ble Commissioner as also the status report of the law enforcing agency.

11. The power of the court to cancel bail flows from Section 439 (2)

Cr.P.C. and for better appreciation, the said provision is extracted hereunder :-

“439. Special powers of High Court or Court of Session regarding bail.- (1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that subsection;

(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified :

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life,



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give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

(Emphasis Supplied)

12. Section 439 (2) of Cr.P.C. clothes the Court with the power to deal with issue relating to cancellation of bail. The Supreme Court has enumerated the following supervening factors that justify 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.*

13. The courts should be more rigid in its examination of violation and



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proof of violation in matters relating to cancellation of bail. Various decisions of the Hon'ble Apex Court vests the courts with power and discretion to cancel bail even when there are no supervening circumstances.

14. The Hon'ble Supreme Court in *Daulat Ram's case (supra)*, has clearly held that bail, once granted, the same shall not be cancelled unless supervening circumstances are brought to the notice of the Court. Equally, it is the ratio laid down in the said decision that the mere fact that no supervening circumstances are pointed out, does not negate the power of the Court to cancel the bail, if the said bail had been granted on extraneous and untenable reasons and the relevant materials are not taken into consideration for granting the bail and the position of the victim *qua* the accused also is material, which has to be looked into.

15. From the above proposition of law laid down by the Hon'ble Supreme Court, it is crystal clear that this Court is clothed with power to cancel the bail granted, irrespective of the oft quoted saying that “*Bail is the norm and Jail is exception*”, when the facts in the case reveal that bail ought not to have been granted to the accused even at the earliest point of time.



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16. On the basis of the ratio laid down with regard to cancellation of bail, a careful perusal of the materials available on record, more especially the report of the Hon'ble Commissioner, which clearly details the steps taken for settlement reveals that inspite of the best efforts of the Hon'ble Commissioner to settle the depositors, as had been undertaken by the accused before this Court, while seeking anticipatory bail, the accused had not cooperated with the settlement process and had, in fact, denied their liability to pay the amount to the depositors.

17. Further, the status report of the law enforcing agency also reveals that a deep and sinister game is being played by the erstwhile office bearers and the current office bearers with regard to settlement of the amount to the depositors, by casting blame on each other for not settling the depositors, but ultimately, the sufferer being the depositors and the enjoyer being the accused. The above act of the accused is clearly a supervening circumstance, falling within the ambit of evasion or attempt to evade the due course of justice and also abusing the concession granted to the accused. Such an act on the part of the accused cannot render this Court a mute spectator, which otherwise would defeat the ends of justice. Further, for more than a year, the accused are



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enjoying the benefit of anticipatory bail, without being arrested or detained, with the depositors not getting their money back inspite of the undertaking. So definitely this Court has to interfere by invoking its power u/s 439 Cr.P.C. to cancel the anticipatory bail granted to the accused.

18. Accordingly, these miscellaneous petitions are allowed and the anticipatory bail granted to the accused in Crl. O.P. Nos. 15694, 15698 and 15700 of 2021 vide order dated 07.09.2021 are cancelled forthwith. The 1st respondent is directed to proceed with the investigation of the case in accordance with law and take necessary action against the offenders, including the accused and other persons, connected with the affairs of the Ambattur Nadargal Dharma Paripalana Sangam, as also other persons, who are connected with the offence, if need be by taking them into custody for the purpose of investigation and interrogation, and complete the investigation and file final report before the court of competent jurisdiction in accordance with law.

22.11.2023

SP/GLN

Note to Office :

Issue Order copy on 23.11.2023



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