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Crl.M.P.Nos.15828 and 16932 of 2023

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in

Crl.O.P.No.17419 of 2023

C.V.KARTHIKEYAN, J.

Crl.M.P.No.15828 of 2023 has been filed by the defacto complainant in Crime No.362 of 2023 registered by the Inspector of Police, T-12 Poonamalee Police Station, Poonamalee, Thiruvalluvar District under Sections 294(b), 341, 323 and 506(i) IPC and Section 4 of TNPHW Act, 2002 seeking to cancel the bail granted by a learned Single Judge of this Court to the accused in Crl.O.P.No.17419 of 2023, by order dated 04.08.2023.

2. Even before proceeding, it must be stated that the defacto complainant is the wife of the accused.

3. The accused had earlier filed Crl.O.P.No.17419 of 2023 before this Court seeking anticipatory bail. In the said anticipatory bail application, it had been stated that the petitioner was apprehending arrest under the aforementioned Crime No.362 of 2023.



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4. It had been stated in that petition that the case of the prosecution was that the defacto complainant had lodged a complaint on 18.05.2023 stating that the petitioner/accused was a popular television actor by profession and had intimate chats with several women and on 26.04.2023 in the early morning at 02.00 a.m. was found to be in the company of an unknown woman in his flat when the defacto complainant/wife made a surprise visit along with officials attached with the respondent and when questioned, he verbally abused her and physically assaulted her injuring her right wrist and left abdominal area. The accused claimed that the said allegations were false and also alleged that his own wife, was diagnosed with medical condition termed as “Borderline Mental Disorder” and also that she suffered from delusion, insecurity, attention seeking, trust issues, impulsive, immaturity, stubbornness, self-harming, dangerous to others, etc., and that these were the observations made by psychiatrists and mental health professionals.



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5. It had been stated by the learned counsel for the accused that the accused deserved to be granted anticipatory bail. It had also been stated that the wedding between the defacto complainant and the accused had taken place on 27.12.2020 and that the accused was a popular artist working in Tamil Tele-serials.

6. It had been further stated that subsequently, observing the abnormal behavior of the defacto complainant, the accused questioned her parents and they said that she was diagnosed with Type 1 Diabetes as a child and they convinced him stating that her mental condition will improve.

7. It is also stated that the defacto complainant had also lodged a complaint with Perumbavoor Police on 06.05.2023, stating that on 20.09.2022, the accused and two others had physically assaulted her and demanded dowry of a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) and threatened to kill her and had also taken away 110 sovereigns of gold



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8. It was also stated that a learned Single Judge at Ernakulam had granted anticipatory bail in Crl.M.C.No.1820 of 2023 on 05.07.2023. All these facts had been stated and in Para No.10 of the petition, the accused had stated that he had not filed any similar bail petition either before this Court or before any other Court and that it was the first bail application before the Court.

9. This statement was false. This statement was false to the knowledge of the accused. This statement had been stated in all solemnity knowing that it was false.

10. On the basis of this particular application, filed suppressing a material fact that an anticipatory bail had been actually filed before the learned Principal Sessions Judge at Thiruvallur in Crl.M.P.No.2832 of 2023, a learned Single Judge of this Court, under the *bona fide*



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impression that the anticipatory bail petition in Crl.O.P.No.17419 of 2023 was the first anticipatory bail petition in Crime No.362 of 2023 had granted anticipatory bail to the accused by order dated 04.08.2023. This particular order is now sought to be cancelled by the defacto complainant.

11. Three grounds have been raised by the defacto complainant. The first ground is material suppression of the fact that the accused had earlier filed Crl.M.P.No.2832 of 2023 before the learned Principal Sessions Judge at Thiruvallur seeking anticipatory bail. It is contended that, that particular application was originally filed on 26.06.2023 and came up for consideration before the learned Sessions Judge on 03.07.2023 and the defacto complainant had also appeared before the learned Principal Sessions Judge and on noting that it was a dispute between two spouses, the learned Single Judge had referred the matter for Mediation and that the matter came up before the Court on 10.07.2023 and again on 17.07.2023 and again on 26.07.2023. Parallely the Mediation process also commenced and notice had been directed for the hearing on 07.08.2023. Knowing that the process of Mediation was to



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begin, the accused had withdrawn the Crl.M.P.No.2832 of 2023 on 26.07.2023 and the learned Principal Sessions Judge had dismissed it as withdrawn on 26.07.2023. Neither was this fact mentioned in the application seeking anticipatory bail in Crl.O.P.No.17419 of 2023 nor was any attempt made to settle the issues through Mediation, though the Mediation process were commenced before the learned Sessions Court at Thiruvallur.

12. Before this Court, a totally different picture was painted portraying the defacto complainant as a person suffering from Borderline Mental Disorder. It is to be noted that this description was given by a husband against his own wife. He had suppressed the fact that there was an attempt to mediate the issues between them by the learned Principal Sessions Judge. This is the first ground on which, the defacto complainant seeks interference and cancellation of the order granting anticipatory bail.

13. The second ground which is alleged by her is that there had



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been continued threats held out to the defacto complainant by the accused after the order granting anticipatory bail to the accused and it had been stated that the defacto complainant is being put to continuous threat. This is yet another ground on which the anticipatory bail sought to be cancelled.

14. The third ground on which the anticipatory bail is sought to be cancelled is that a notice was issued on behalf of the accused, dated 19.10.2023, seeking damages of Rs.15,00,000/- (Rupees Fifteen Lakhs Only). This was issued after the present application was filed for cancellation of anticipatory bail stating that by the filing of the petition, the accused had been put to much mental agony.

15. The learned counsel for the accused, however justified the filing of the petition without disclosing the earlier application filed before the learned Principal Sessions Judge. It was stated by the learned counsel for the accused that the said application had been dismissed as withdrawn and therefore, no judicial order was passed and therefore,



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there was no necessity for the accused to mention that fact. But one important fact which had been also suppressed is that there was a Mediation process which had been initiated by the learned Principal Sessions Judge. Once notice was issued for commencement of the Mediation process for the hearing date 08.08.2023, immediately, to circumvent that particular process, the accused had withdrawn the application before the learned Principal Sessions Judge on 26.07.2023 and later filed an anticipatory bail application before this Court very specifically stating that he had not filed any earlier application before any Court seeking anticipatory bail.

16. The anticipatory bail application before this Court in CrI.O.P.No.17419 of 2023 was filed on 28.07.2023, just two days after the dismissal by withdrawal of the application before the learned Principal Sessions Judge.

17. The learned counsel for the accused, further substantiated



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and justified his statement that suppression of that fact is not material by relying on a judgment of High Court of Punjab and Haryana at Chandigarh in the cases of *Kulwant Singh Vs. State of Punjab* and *Mandeep Singh Vs. State of Punjab* and *Akashdeep Singh Vs. State of Punjab* reported in (2022)208PLR518.

18. A learned Single Judge of the Punjab and Haryana High Court had examined as to what actually was meant by material suppression of fact. It was observed that pendency of bail applications before any other Court, would not amount to suppression of the material fact. The said judgment is distinguishable from the facts of this case. The issue in this case is about deliberate suppression of dismissal of an anticipatory bail application voluntarily withdrawn by the petitioner therein and later filing a separate anticipatory bail application within two days before this Court. This is also a clear case of forum shopping. When the learned Principal Sessions Judge had referred the matter to Mediation to avoid that process, the accused had withdrawn the petition and filed a fresh anticipatory bail petition claiming innocence and claiming ignorance



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and seeking indulgence of the Court. Indulgence had also been granted by the grant of the order of anticipatory bail.

19. The learned counsel for the accused also relied on a judgment of the Hon'ble Supreme Court in the case of ***Myakala Dharmarajam and Ors. Vs. The State of Telangana and Ors*** reported in ***AIR 2020 SC 317*** equivalent to ***(2020) 2 SCC 743***. In that particular case, the validity of the provision under Section 439(2) of the Code of Criminal Procedure was examined and the parameters for cancellation of bail was also examined. It must be noted that in that particular case, the appellant had been secured and thereafter, bail was granted by the learned Principal Sessions Judge and that bail order was sought to be cancelled.

20. Here, it is not a question of order of cancellation of grant of bail but the order of cancellation of anticipatory bail application. In an order granting anticipatory bail, bail is granted in the event of arrest. It is not an order releasing a person from custody. The order cancelling the



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granted anticipatory bail order would not infringe on the liberty of the accused. If an order is passed by cancelling the bail granted after arrest and directing the petitioner to be re-arrested, it would also be a direct interference of liberty granted to the said accused. The judgment is therefore distinguishable on that narrow but on very significant point.

21. The learned counsel for the accused had placed reliance on Para Nos.6 and 9 and let me extract those said paragraphs as follows :

“6. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the Accused with reference to the victim and witnesses, the likelihood of the Accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into



account by the Court. The Court has to only opine as to whether there is prima facie case against the Accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

9. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant-Respondent No.2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as



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perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence.”

It has to be noted that every case has to be examined on the basis of the records available and every offence is distinct and has to be viewed independent of any other offence.

22. In the instant case, the accused had acted by deliberately suppressing a material fact before this Court. In fact, the act of the accused has drawn a presumption that he is indulging in forum shopping and had gone over to the forum where it would be convenient for him. He had cunningly suppressed a material fact.

23. After obtaining anticipatory bail, it is to be noted that an affidavit had been filed by the defacto complainant before this Court about the threats held over by the accused.

24. It had also been stated that a notice had been issued seeking



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compensation only because the defacto complainant had filed this application seeking cancellation of the bail.

25. The principles laid down in the aforementioned judgment relating the cancellation of regular bail would not be directly applicable to the facts and circumstances of this case. It is also seen that the counsel who filed the earlier application seeking anticipatory bail had not filed the present application on behalf of the accused and have also not appeared before this Court. Another counsel who had been engaged to argue a fact about which he had no direct knowledge. The accused therefore also has a habit of changing counsels to suit his convenience.

26. The conduct of the accused is reprehensible and it cannot be condoned by this Court. The order granting anticipatory bail in CrI.O.P.No.17419 of 2023 by order dated 04.08.2023, therefore, stands cancelled.

27. The learned counsel for the accused also stated that the



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accused would settle the issue with the defacto complainant. It was the accused herein who was offered an opportunity to settle the issue through Mediation. He has now termed the defacto complainant as a person with Borderline Mental Disorder and has stated that she suffers from delusion, insecurity, attention seeking and stated that psychiatrists and mental health professional had examined her.

28. All these facts cannot be accepted by any Court of law. The conduct of the accused is condemnable. The order granting anticipatory bail stands cancelled. The applications stand dismissed.

29. A direction is hereby given to the Investigating Officer to secure the accused and report compliance. List CrI.O.P.No.17419 of 2023 for reporting compliance of arrest of the accused on 10.11.2023.

30. It is made very clear that strong strictures will be passed against the Investigating Officer, if he does not take the accused into custody. The Court will draw a direct inference that the Investigating



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Officer is hand in glove in collusion with the accused.

31. List the matter under the caption “for reporting compliance”
on 10.11.2023.

03.11.2023

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