



Crl.O.P.No.32095 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM

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

Crl.O.P.No.32095 of 2023

A.S.Gajendran ...Petitioner / defacto complainant

Vs.

1. The State
Rep. by
The Inspector of Police
V-1, Villivakkam Police Station,
Chennai – 49.
Crime No. 368 of 2022

... 1st Respondent/Complainant

2. D.Gopi

... 2nd Respondent/ Accused

PRAYER:Criminal Original Petition is filed under Section 439(2) of Cr.P.C. praying to cancel the bail order dated 17.10.2022 in Crl.M.P.No. 32474 of 2022 by the learned XIII Metropolitan Magistrate, Egmore, Chennai in favour of the second respondent/accused.



Crl.O.P.No.32095 of 2023

For Petitioner : Mr. R.Perumal Raj

For 1st Respondent : Mr. S.Vinoth Raja
Government Advocate, Crl. Side

For 2nd Respondent : Mr.S.Arivazhagan

ORDER

This Petition had been filed under Section 439(2) Cr.P.C.

2. The petitioner is the defacto complainant. Originally Cr.No. 368 of 2022 had been registered by the second respondent/ Inspector of Police, Villivakkam Police Station, Chennai, for alleged offences under Section 406 of IPC. The second respondent herein was termed the accused.

3. It is the case of the prosecution of the second respondent herein / accused had received gold and cash from the petitioner herein/defacto complainant and had pledged those gold to the disadvantage of the defacto complainant. This led to lodging of the complaint and registration of FIR.



Crl.O.P.No.32095 of 2023

WEB COPY

4. The second respondent/ accused had been granted bail by the learned XIII Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No. 32474 of 2022 dated 17.10.2022. In the course of that particular order, the normal conditions had been imposed. It had been observed that the second respondent/accused had been taken into police custody for four days and it was also observed by the learned XIII Metropolitan Magistrate, Egmore, Chennai to produce surety and to appear before the first respondent/ investigation agency for a period of 30 days at 10.30 a.m., in the morning.

5. It is the case of the petitioner /defacto complainant herein that there has been violation of any of those conditions. If there had been any such violation, it would only attract the registration of FIR under Section 229-A IPC.

6. It is the contention of the petitioner herein/defacto complainant herein that the defacto complainant was a senior citizen, aged about 63 years and placing trust on the second respondent/accused,



Crl.O.P.No.32095 of 2023

had handed over cash and jewellery but that there has been no return of the same, but rather the accused had pledged the jewellery with yet another individual. These are issues for trial.

7. It is the probable grievance of the defacto complainant that no condition to deposit cash or return the gold had been imposed by the learned Metropolitan Magistrate before granting the order of bail. But there are some limitations under which conditions could be imposed. The conditions could be imposed as stipulated under the provision of law and conditions going beyond the same, would only arise if atleast to a little extent, a *prima facie* case is made out.

8. The learned counsel for the petitioner stated that my learned predecessor had referred the parties in this application to mediation. But however, mediation naturally had failed. It is for the petitioner herein/defacto complainant to adduce admissible evidence during the course of trial and ensure that all records are placed for consideration before the learned trial Judge. He should marshal the evidence bth oral and documentary during the course of trial.



Crl.O.P.No.32095 of 2023

WEB COPY

9. There are no specific complaint that one of any of the conditions had been violated. It is only insisted that further conditions should have been imposed but had not been imposed. This cannot be a ground for cancellation of bail when liberty had been granted to the second respondent and any order cancelling bail that would be interfered with. I am not able to convince myself to come to the rescue of the petitioner herein. Hence, this Criminal Original Petition stands dismissed.

Vsg

27.11.2023

To

1. XIII Metropolitan Magistrate, Egmore, Chennai.
2. The Inspector of Police
V-1, Villivakkam Police Station,
Chennai – 49.
3. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.32095 of 2023

C.V.KARTHIKEYAN, J.

vsg

Crl.O.P.No.32095 of 2022

27.11.2023