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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 15/09/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)Nos.4871 and 4873 of 2023

(1)Crl.OP(MD)No.4871 of 2023:-

S.Shahin

: Petitioner/De-facto
Complainant

Vs.

1.State rep. by
The Inspector of Police,
All Women Police Station,
Thilagar Thidal.
(Crime No.04 of 2023)

: R1/Complainant

2.Sheik Abdullah
3.Roshini
4.Shiek Sarthar
5.Shiek Imran
6.Zahirdheen
7.Salavudheen

: R2 to R7/ A2 to A7

PRAYER:- Criminal Miscellaneous Petition has been filed under section 439(2) of Cr.P.C. seeking cancellation of anticipatory bail granted by order passed in Crl.M.P No.685 of 2023, dated 31/01/2023 by the Principal Sessions Judge, Madurai to the respondents 2 to 4 and 6 & 7 in connection with Crime No.04 of 2023 pending on the file of the 1st respondent police and pass such suitable orders.

For Petitioner : Mr.V.G.S.Murugan, Advocate

For 1st respondent : Mr.S.Manikandan

Government Advocate (Criminal side)



For R2 to R4, R6 & R7 : Mr.K.S.Durai Pandian, Advocate

For 5th Respondent : Mr.S.Rajasekar
for M/s.Lajapathi Roy Associates, Advocate

(2)Crl.OP(MD)No.4873 of 2023:-

S.Shahin : Petitioner/De-facto
Complainant

Vs.

1.State rep. by
The Inspector of Police,
All Women Police Station,
Thilagar Thidal.
(Crime No.04 of 2023) : R1/Complainant

2.Sheik Abdullah
3.Roshini
4.Shiek Sarthar
5.Shiek Imran (R5/ Accused in Crl.C.M.P
No.760/2023)

6.Zahirdheen
7.Salavudheen : R2 to R7/ A2 to A7
Accused in Crl.MP
No.685 of 2023

PRAYER:- Criminal Miscellaneous Petition has been filed under section 439(2) Cr.P.C seeking cancellation of anticipatory bail granted by order passed in Crl.M.P No.760 of 2023, dated 31/01/2023 by the Principal Sessions Judge, Madurai, to the 5th respondent in connection with Crime No.04 of 2023 pending on the file of the 1st respondent police and pass such suitable orders.

For Petitioner : Mr.V.G.S.Murugan, Advocate
For 1st respondent : Mr.S.Manikandan
Government Advocate (Criminal side)



For R2 to R4, R6 & R7 : Mr.K.S.Durai Pandian, Advocate

For 5th Respondent : Mr.S.Rajasekar
for M/s.Lajapathi Roy Associates, Advocate

COMMON ORDER

These Criminal Miscellaneous Petitions are filed seeking cancellation of anticipatory bail granted to the private respondents.

2.The facts in brief:- The de-facto complainant is the wife of A1, who is the petitioner in both the petitions. In 2012, the marriage between herself and A1 was performed in the presence of the elders. Due to marriage, they had a children. At the time of marriage, she was provided with jewels, apart from house hold articles. Under the guise of starting business, her gold jewels were received. When enquired, it was stated that the above said jewels are in the hands of their relatives namely Zahirudheen and Salavudheen. She was compelled to get more jewels by the accused, otherwise a separate residence may be arranged. Since trouble was made by the accused, she came to her parental home and living with her childrens. There was a compromise talk in the presence of the elders. At that time, she received a portion of the jewels. The younger daughter suddenly become ill and admitted in Madurai Meenakshi Mission Hospital. At that time, the husband did not provide any financial assistance. Even at that time of the complaint, A1 stated that if he is willing to live



and by putting up a separate residence, he will take care of the childrens. Even after putting up of the separate residence, the childrens were not taken proper care. On 27/03/2022, she was assaulted and humiliated. In the meantime, the younger daughter also died, on 06/04/2022. Because of the attitude of the husband, she was also compelled to sign in the talaq document. She was locked in the house, demanding consent for mutual divorce. She was rescued by the neighbours with the help of the police.

3.With these allegations, she filed a complaint, over which a case in Crime No.04 of 2023 was registered for the offences under sections 498(A), 406 and 506(ii) IPC.

4.All the accused persons moved anticipatory bail, before the Principal District Judge, Madurai and that was also allowed, on 31/01/2023.

5.So far as the 4th respondent namely Sheik Imran is concerned, that petition was dismissed as not pressed. Others were granted anticipatory bail. Over which, two separate petitions were filed by this petitioner seeking cancellation of anticipatory bail.



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6. So far as CrI.OP(MD)No.4871 of 2023 is concerned, it has been stated that the jewels are in the hands of the respondents 2 to 7 and they were also responsible for the death of the younger daughter. Now she is living without any help from any one and her husband was already married to one Mariyam Beevi. That was also the reason for harassment. The husband was also issued Talaq by sending Rs.5,000/-.

7. So far as CrI.OP(MD)No.4873 of 2023 is concerned, it is stated the very same ground which has been stated in the above said petition. Since two separate petitions have been filed by the petitioner before the Principal Sessions Judge, Madurai in Cr.MP Nos.684 and 760 of 2023, those two separate applications have been filed.

8. When the matter was heard, by order, dated 30/03/2023, concerning the respondents 3 to 7, it was dismissed. So far as A2 is concerned namely the husband, the matter was referred to the Mediation. In spite of repeated adjournments, no settlement could be reached between the parties. So the matter was referred back to the Court. Even this court made enquiry with the parties about the issue and possibility of settlement. Before this court also, both the husband and wife indulged in making allegations against each other.



9. The wife says that because of the attitude of the husband, she was forced to live separately without any financial or other support. The husband is responsible for the death of the younger daughter. Even without any maintenance, she is living in a helpless condition. Her jewels have not been returned by the accused so far.

10. Per contra, it is the counter allegation of the husband that the wife is responsible for the death of the child. He was harassed, insulted. According to him, there is no possibility for reunion.

11. With regard to the conduct, absolutely nothing is available on record for cancellation of anticipatory bail. Not only the post bail conduct of the parties, but also the ground on which, the petition was ordered may be taken into account.

12. Here I find absolutely no such circumstance is made out by the petitioner to cancel the anticipatory bail, since allegation and counter allegation have been made. Which one is true is a matter for investigation. When issue comes between the husband and wife, it is natural for the parties to make allegation and counter allegation. So it may not be a reason for cancelling the anticipatory bail.



13. The learned counsel appearing for the petitioner would also rely upon two judgments viz., (1) Manwinder Singh Vs. State of Punjab [(2011) 4 AICLR 83 : (2011) 3 RCR (Criminal) 137 and (2) Bhuri Bai Vs. The State of Madhya Pradesh (2022 LiveLaw (SC) 956).

14. No doubt that cogent reason must be given for the order under section 439(2) Cr.P.C. But at the same time, it must also be taken into account that now the petitioner is in a helpless condition without any financial and marital support from any one, She is also having a child. The child and the wife financial requirement must be taken care by the husband, who is the second respondent herein. So far, it appears that no process was taken by wife for claiming maintenance.

15. So, I am of the considered view that a direction may be issued to the husband/second respondent herein to pay maintenance amount of Rs.10,000/- to the wife and Rs.5,000/- to the children till appropriate order is passed by the competent court. The above said amount must be directly credited in the account of the petitioner. The Bank Account details must be furnished by the petitioner or it may be deposited before the trial court. The petitioner is at liberty to withdraw the above said amount. The above said maintenance amount must be paid regularly on or before 5th



day of every month. If any violation is noticed, the petitioner is at liberty to take appropriate action in the manner known to law.

16. With the above said liberty and observation, both criminal original petitions are dismissed.

sd/-
15/09/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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To

1. The Principal Sessions Judge,
Madurai.
2. The Inspector of Police,
All Women Police Station,
Thilagar Thidal,
Madurai City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.M.KADHAR, Advocate (SR-13754[I] dated 15/09/2023)



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ORDER
IN
Crl.O.P.(MD)Nos.4871 and 4873 of 2023
Date :15/09/2023

SSA/DD/06.10.2023/9P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023