



Crl.A(MD)No.453 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.07.2023

Pronounced on : 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.453 of 2023

Muthukaruppan

... Appellant/2nd Respondent

Vs.

1.The State rep by,
The Deputy Inspector of Police,
Manapparai Sub-Division,
Puthanatham Police Station.
(Crime No.70/2022).

.. 1st Respondent/Investigating Officer

2.The Inspector of Police,
Puthunatham Police Station,
Trichy District.
(Crime No.70/2022)

.. 2nd Respondent/Complainant

3.M.Abdullah

.. 3rd Respondent/Petitioner

PRAYER: Criminal Appeal filed under Section 14A(2) SC/AT(POA) Act, 1989, as amended by Act 1 of 2016, to cancel the order of bail granted to the 3rd respondent by the I-Additional District and Sessions Judge(PCR), Trichy in Crl.M.P.No.4593 of 2022 dated 11.10.2022.



Crl.A(MD)No.453 of 2023

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr. R.Sivakumar
Government Advocate(Criminal side)
for R1 & R2

Mr.Vinayak
for Mr.A.Joel Paul Antony for R3

JUDGMENT

The defacto complainant in Crime No.70 of 2022 on the file of the second respondent filed this petition to cancel the order of bail granted to the third respondent, namely, the accused in the above crime number for the alleged offence under Sections 294(b), 323, 506(i) IPC and 3(1)(r), 3(1)(s), 3(2)(va) of SC/ST(POA) Amendment Act, 2015.

2. The 3rd respondent/accused had the habit of sending anonymous complaints about Government officials and thereafter, he demanded money from them to withdraw the said complaints. The defacto complainant is working as a Noon-meal organiser. The 3rd respondent also made a complaint against the defacto complainant. He was suspended. Be that as it may, on 11.05.2022 at 8.30 a.m., the defacto complainant went to Kurumalaipatti to meet his friend namely, Krishnan



Crl.A(MD)No.453 of 2023

in his house and when he was conversing with his friend, the accused scolded the appellant and also abused him by calling his caste name and criminally intimidated him. Therefore, he made the complaint before the respondent police and the respondent police registered the above case.

3. The petitioner surrendered before the learned Special Judge for SC/ST (Prevention of Atrocities) Act cases, PCR Court, Trichy and filed the bail petition in Crl.M.P.No.4593 of 2022 and the learned Special Judge, after considering the said circumstances, granted bail to the third respondent herein by passing the impugned order dated 11.10.2022. Aggrieved over the same, the petitioner filed this petition to cancel the bail granted in favour of the third respondent.

4. The learned counsel for the petitioner made a specific allegation that after getting the order of bail, the accused/third respondent threatened him and therefore, he preferred another complaint before the jurisdictional police station and hence, this Court has jurisdiction to cancel the bail since it amounts to violation of the condition of the bond.



Crl.A(MD)No.453 of 2023

WEB COPY

5. The learned counsel for the petitioner also submitted that the petitioner is a history sheeted rowdy, but, the learned trial Judge, without considering the above aspect, granted bail to the petitioner. The learned counsel further submitted that the order passed by the learned trial Judge is not in accordance with law. Hence he seeks for the cancellation of the anticipatory bail.

6. The contention of the learned counsel for the petitioner is that the respondent frequently made complaint against the Government servant and used to ask from the said Government servants to pay him mamool. The said fact was clearly observed by this Court and the same was observed by the Hon'ble Division Bench judgement in W.P(MD)No. 4151 & 12648 of 2018. The Hon'ble Division Bench, also dismissed the petition with observation that the petitioner is a trouble monger and also imposed a cost of Rs.1,00,000/- to the 3rd respondent.

7. Per contra, the learned counsel for the respondent submitted that the petitioner committed several instances of misappropriation while holding the Office and hence, the third respondent made a complaint to



Crl.A(MD)No.453 of 2023

the District Collector and also he filed a writ petition to take appropriate action against the said defacto complainant, namely, the petitioner herein. On the basis of the direction given in the writ petition, FIR was registered and investigation was conducted by the concerned jurisdictional police.

8. The trial Court though not elaborately discussed the merits in the bail petition, but in the order, it has given its brief reasons. The learned trial Judge considered the age of the respondent and his illness and taking into consideration of his continuous knee pain and also the allegation that he only abused the appellant by using his caste name, granted bail. Therefore, there is no need to interfere with the order and the same amounts to infraction of Article 21 of the Constitution of India.

9. This Court has considered the rival submissions made on either side and perused the records and also the precedents relied upon by them.

10. The appellant filed this petition to set aside the bail order granted in Cr.M.P.No.4593 of 2022 and argued the case to cancel the



Crl.A(MD)No.453 of 2023

bail. Both “*to set aside the bail order*” and “*cancellation of bail*” have different connotations. In the prayer, he seeks to set aside the bail order granted by the Court below and in the memorandum of grounds of this appeal, he raised the grounds to cancel the bail. In view of the said overlapping issues, this Court framed the following questions:

1. Whether the appellant made out a case to set aside the bail order granted in favour of the 3rd respondent?
2. Whether the appellant's plea of cancellation of bail granted in favour of the 3rd respondent is sustainable?

11. It is well settled principle that there is a difference between *to set aside the bail order granted in favour of the accused* and *cancellation of the bail order*. In this aspect, it is relevant to note the following judgments:

(i) The Hon'ble Constitution Bench of the Hon'ble Supreme Court differentiate the same in the case of Sushila Aggarwal v. State (NCT of Delhi) reported in (2020) 5 SCC 1 as follows:

“85.9. The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not



Crl.A(MD)No.453 of 2023

consider material facts or crucial circumstances. [Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189]. This does not amount to “cancellation” in terms of Section 439(2) CrPC.”

(ii) 2022(3)SCC501 [Manoj Kumar Khokhar v. State of

Rajasthan]:

“29. Recently in Bhoopendra Singh v. State of Rajasthan [Bhoopendra Singh v. State of Rajasthan, (2021) 17 SCC 220 : 2021 SCC OnLine SC 1020] , this Court made observations with respect to the exercise of appellate power to determine whether bail has been granted for valid reasons as distinguished from an application for cancellation of bail i.e. this Court distinguished between setting aside a perverse order granting bail vis-à-vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118]

“16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a



Crl.A(MD)No.453 of 2023

person to whom bail has been granted.”

(iii) *Bharatbhai Bhimabhai Bharwad v. State of Gujarat*, (2020)

18 SCC 693:

*“8. Though the application has been filed before the High Court under Section 439(2) CrPC i.e. an application for cancellation of bail, by perusal of the grounds raised in the application, it is seen that the appellant has raised grounds challenging the exercise of discretion in granting bail to Respondents 2 and 3 under Section 439 CrPC and that the order granting bail is unsustainable in law. In effect, the application filed was only challenging the order of grant of bail on the ground that it was an arbitrary exercise of discretion. The Court while granting bail should exercise its discretion in a judicious manner by taking into consideration the relevant facts as held in *State of U.P. v. Amarmani Tripathi*, [(2005) 8 SCC 21)]”*

(iv) *Neeru Yadav v. State of U.P.*, reported in (2016) 15 SCC

422 :

“5. At the outset we are obliged to clarify that it is not an appeal seeking cancellation of bail in the strictest sense. It actually calls in question the legal pregnability of the order passed by the High Court. The prayer for cancellation of bail is not sought on the foundation of any kind of supervening circumstances or breach of any condition imposed by the High Court. The basic assail is to the manner in which the High Court has exercised its jurisdiction under Section 439 CrPC while admitting the accused to bail. To clarify, if it has failed to take into consideration the relevant material factors, it would make the order absolutely



Crl.A(MD)No.453 of 2023

perverse and totally indefensible. That is why there is a difference between cancellation of an order of bail and legal sustainability of an order granting bail.”

(v) 2022(9)SCC321[Jagjeet Singh v. Ashish Mishra] :

“28. Ordinarily, this Court would be slow in interfering with any order wherein bail has been granted by the court below. However, if it is found that such an order is illegal or perverse [Puran v. Rambilas, (2001) 6 SCC 338] or is founded upon irrelevant materials adding vulnerability to the order granting bail [Narendra K. Amin v. State of Gujarat, (2008) 13 SCC 584], an appellate court will be well within its ambit in setting aside the same and cancelling the bail”.

11.1. Bail is discretionary relief. It is the duty of the bail Court, to consider the materials and to exercise its discretion to grant bail. While considering the discretion, the bail Court is dutybound to consider the following conditions:

- (i) the nature of accusation and the severity of the punishment in case of conviction and the nature of the materials relied upon by the prosecution;
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;
- (iii) reasonable possibility of securing the presence of the accused



WEB COPY



Crl.A(MD)No.453 of 2023

at the time of trial or the likelihood of his abscondence;

(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

11.2. In this case, the allegation is that the 3rd respondent abused the appellant using his caste name and criminally intimidated him. The 3rd accused raised a plea that he made the complaint about the defacto complainant's illegality in discharging his duty as Noon-meal organiser to the District Collector. The District Collector suspended him. The learned trial Judge, without addressing the said plea, granted bail considering his age and his illness. In the above nature of the accusation, the learned trial Judge correctly exercised his discretion and granted bail. There is no other circumstances either pleaded or established to interfere with the impugned order. When the bail Court granted bail upon considering the materials and exercising its discretion, the Appellate Court's jurisdiction to interfere with the same is very much limited.



Crl.A(MD)No.453 of 2023

WEB COPY

11.3. In view of the above discussion and the appellant has not made out any ground to interfere with the order of granting of bail, the first question is answered against the appellant.

12.1. The appellant raised the following grounds to cancel the bail:

12.1.a. The 3rd respondent violated the bail condition.

12.1.b. The 3rd respondent threatened the appellant in violation of the condition imposed in the bail order.

12.1.c. The 3rd respondent has more than 10 cases to his credit and he was history sheeted rowdy.

12.2. The 3rd respondent made the following submissions:

The 3rd respondent duly complied the condition imposed by the learned trial Judge. The allegation that the 3rd respondent has number of previous antecedents is false. The 3rd respondent is a whistle blower and he made complaints about the illegalities in the Government Department. Therefore, number of false cases were initiated against him. In all cases, only allegation is that he threatened the accused. Out of 9 cases, 3 cases ended in acquittal, 3 cases were closed as 'mistake of fact',



Crl.A(MD)No.453 of 2023

WEB COPY

in one case FIR is closed, in another case, trial is pending and in one case, fine of Rs.200/- alone was imposed under Section 294 IPC. The allegation made against the 3rd respondent is that he made complaints and filed the writ petition to initiate action against the wrong-doer. In this case, the 3rd respondent made a complaint against the appellant with serious allegation of misappropriation. The said complaint was acted upon by the District Collector. The District Collector suspended him. Hence, he made this false complaint. Under the above circumstances, he seeks for dismissal of this petition.

13. This Court called for the report from the investigating agency about the threat made by the 3rd respondent during the pendency of this case after granting bail. The investigating agency submitted that the allegation is false and closed his complaint stating that no such occurrence took place. The investigating agency further submitted that the appellant complied the conditions regularly. The History Sheet was closed long back. In the said circumstances, this Court does not find any ground to invoke the power of cancellation of bail. It is settled principle that cancellation of bail deprives the personal freedom of the accused.



Crl.A(MD)No.453 of 2023

WEB COPY

Hence, the Hon'ble Supreme Court issued detailed guidelines to be followed before invoking the cancellation of bail in the case of **Deepak Yadav v. State of U.P.**, reported in **2022 (8)SCC559**, wherein it has been held as follows:

“31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

32.A two-Judge Bench of this Court in Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, [(1995) 1 SCC 349] laid down the grounds for cancellation of bail which are:

- (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 in any manner;*
- (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.*

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused



Crl.A(MD)No.453 of 2023

even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”

14. In this case, the appellant regularly complied the condition and the allegation of the appellant that the 3rd respondent made a threat to his life in violation of the condition imposed in the bail order is found to be false. Accordingly, question No.2 is answered against the appellant.



Crl.A(MD)No.453 of 2023

WEB COPY

15. Upon the above discussion, this Court holds that the appellant has not made out any case for either cancellation of bail or to set aside the grant of bail. Hence, this Criminal Appeal is dismissed.

19.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PJL

To

1. The I-Additional District and Sessions Judge(PCR),
Trichy.

2. The Deputy Inspector of Police,
Manapparai Sub-Division,
Puthanatham Police Station.

3. The Inspector of Police,
Puthunatham Police Station,
Trichy District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.A(MD)No.453 of 2023

K.K.RAMAKRISHNAN, J.

PJL

**Judgment made in
Crl.A(MD)No.453 of 2023**

19.10.2023