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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2023

CORAM:

THE HON'BLE MR JUSTICE G.K.ILANTHIRAIYAN

Crl.OP(MD)Nos.8290 and 9607 of 2023

Crl.OP(MD)No.8290 of 2023

P.S.Binu ... Petitioner/Defacto Complainant

vs.

1.S.Selvin ... Respondent/Accused No.1

2.The Inspector of Police,
All women Police Station,
Kanyakumari.
(Crime No.36 of 2021) ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to cancel the bail granted to the first respondent in Crl.MP(MD)No.1091 of 2021 dated 04.01.2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Kanyakumari at Nagercoil.

For Petitioner : Mr.A.Mohamed Hashim

For R1 : Mr.E.V.N.Siva



For R2

: Mr.B.Thanga Aravindh

Government Advocate (Crl.Side)

Crl.OP(MD)No.9607 of 2023

P.S.Binu

... Petitioner/Defacto Complainant

vs.

1.R.Sundaralingam

... Respondent/Accused No.2

2.The Inspector of Police,
All women Police Station,
Kanyakumari.
(Crime No.36 of 2021)

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to cancel the bail granted to the first respondent in Crl.MP(MD)No.8 of 2022 dated 07.01.2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Kanyakumari at Nagercoil.

For Petitioner

: Mr.A.Mohamed Hashim

For R1

: Mr.E.V.N.Siva

For R2

: Mr.B.Thanga Aravindh

Government Advocate (Crl.Side)



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COMMON ORDER

These petitions are filed to cancel the bail granted to the first accused in Cr.M.P.No.1091 of 2021 and the second accused in Cr.M.P.No.8 of 2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Kanyakumari at Nagercoil, vide order dated 04.01.2022 and 07.01.2022 respectively.

2.The case of the prosecution is that the petitioner is the defacto complainant, who is the mother of the victim girl. On the complaint lodged by the petitioner, the second respondent registered a case in Crime No.36 of 2021 for the offence under Section 366 of IPC with the allegation that her second daughter was found missing on 29.09.2021. During investigation, the respondent police found that the first accused, who was aged about 31 years at the time of occurrence fell in love with the victim girl aged about 17 years. On 29.09.2021, at about 12.00 noon, the first and the second accused went to the house of the victim girl and kidnapped her with the help of the second accused and taken her to the Poultry Farm belongs to the third accused, where the first accused had



committed aggravated penetrative sexual assault on the victim girl for a period of 7 days. Thereafter, the victim girl was rescued. Initially, case was registered for the offence under Section 366 of IPC. Thereafter, on the statement of the victim girl, it was altered into the offences under Sections 366 of IPC and 5(1), 6(1) and 17 of POCSO Act.

3.Unfortunately, the respondent police failed to file a final report. As such, both the accused persons were granted default bail. After obtaining default bail, the first and second accused sent their friends to the victim's house and threatened her with dire consequences and compelled her to withdraw the complaint. In fact, the then Investigating Officer has also supported the accused persons and examined L.W.5 to L.W.8 with sole intention to vitiate the entire trial. Therefore, they wantonly dragged the investigation and helped the accused persons to come out on default bail. Due to repeated threaten made by the accused persons, the petitioner also lodged a complaint and she was issued CSR by the respondent police. They also sought for police protection by her representation dated 21.06.2022. Even then, the respondent police did not



take any steps to provide adequate police protection. Therefore, the petitioner was constrained to file a petition in W.P.(MD)No.24894 of 2022 before this Court for police protection. This Court by its order dated 15.11.2022, disposed the petition with the following observations:-

“4.The responsibility to provide protection to the Petitioner and her daughter rests on the Superintendant of Police, Kanniyakumari. If what is stated by the Petitioner is accepted, accepting the written instruction to the learned Additional Public Prosecutor, if something untoward happens to the witness including the Petitioner and her daughter herein, the Inspector of Police, All Women Police Station, Kanniyakumari District, should be held responsible for the consequence. The Superintendant of Police, Kanniyakumari District, is directed to provide Police protection to the Petitioner herein and to her daughter. Also, the Superintendant of Police, Kanniyakumari District, is directed to hold an enquiry regarding the conduct of the Inspector of Police, All Women Police Station, Kanniyakumari District, regarding the contents of the affidavit filed by the mother of the victim before this Court in the Writ Petition.”

4.On 08.01.2023, when the petitioner was returning from work to home, the second accused waylaid the petitioner and abused her in filthy language and threatened her with dire consequences and also



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compelled her to withdraw the case. Immediately, the petitioner called 100 and sought for help of the police. Immediately, the second accused ran away from that place. However, no action has been taken as against him. Therefore, it is crystal clear that the respondent police has supported the accused persons and did not take any action against them. Therefore, on the said allegation, the Investigating Officer was transferred to some other Police Station. Now, the present Investigating Officer is providing adequate police protection to the petitioner. Even after filing final report, the accused have threatened the petitioner. Hence, he prays for cancel the default bail granted to the first and second accused.

5.The learned counsel for the first and second accused submitted that after granting default bail, they are complying with the conditions as directed by the Court below and they never indulged in any such activities as alleged by the petitioner. In fact, the accused persons are ready and willing to stay away from the house of the defacto complainant.



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6.The learned counsel for the Government Advocate (Crl.Side) submitted that on the complaint lodged by the petitioner, FIR has been registered in Crime No.38 of 2023 and counter complaint has been registered against the petitioner in Crime No.39 of 2023. In both cases investigation was completed and charge sheet was filed before the concerned Court and it is ripe for trial.

7.Unfortunately, it is stated that when the petitioner alleging so many serious allegations against the accused persons and also L.W.7, the respondent police registered counter case as against the petitioner and she has facing ordeal of the trial. It is a sorry state of affairs that the police, who is duty bound to maintain the interest of the victim joined with the hands of accused persons and harassed the victim and her family members.

8.The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in the case of **State through Central Bureau of Investigation Vs. T.Gangi Reddy @ Yerra Gangi**



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Reddy reported in 2023 LiveLaw (SC) 37 which held as follows:-

“11. Therefore, there is no absolute bar as observed and held by the High Court in the impugned judgment and order that once a person is released on default bail under [Section 167\(2\)](#) Cr.P.C., his bail cannot be cancelled on merits and his bail can be cancelled on other general grounds like tampering with the evidence/witnesses; not cooperating with the investigating agency and/or not cooperating with the concerned Trial Court etc.

12. As such, we are in complete agreement with the view taken by this Court in the aforesaid decisions. The submission on behalf of the respondent – original Accused No. 1 and the view taken by the High Court in the impugned judgment and order that once an accused is released on default bail under [Section 167\(2\)](#) Cr.P.C., his bail cannot be cancelled on merits is accepted, in that case, it will be giving a premium to the lethargic and/or negligence, may be in a given case of deliberate attempt on the part of the investigating agency not to file the charge sheet within the prescribed time period. In a given case, even if the accused has committed a very serious offence, may be under the NDPS or even committed murder(s), still however, he manages through a convenient investigating officer and he manages not to file the charge sheet within the prescribed time limit mentioned under [Section 167\(2\)](#) Cr.P.C. and got released on default bail, it may lead to giving a premium to illegality and/or dishonesty. As observed hereinabove, such release of the accused on default bail is not on merits at all, and is on the eventuality



occurring in proviso to sub-section (2) of [Section 167](#). However, subsequently on curing the defects and filing the chargesheet, though a strong case is made out that an accused has committed the very serious offence and non-bailable crime, the Court cannot cancel the bail and commit the person into custody and not to consider the gravity of the offence committed by the accused, the Courts will be loathe for such an interpretation, as that would frustrate the justice. The Courts have the power to cancel the bail and to examine the merits of the case in a case where the accused is released on default bail and released not on merits earlier. Such an interpretation would be in furtherance to the administration of justice.”

9. Thus, it is made clear that once a person is released on default bail under Section 167(2) of Cr.P.C., his bail cannot be cancelled on merits and his bail can be cancelled in other general grounds like tampering with the evidence/witnesses.

10. On perusal of statement recorded under Section 164 Cr.P.C reveals that the accused persons had committed serious and heinous offence against the minor victim girl. The first accused had committed aggravated penetrative sexual assault on the victim girl with the help of



second accused for a period of 7 days in a Poultry Farm. Even after filing final report, they threatened the victim girl and the defacto complainant and as such, this Court also provided police protection to them. Now, the trial is going to be begin and as such, again if the accused persons are released on bail they will indulge in same kind of activities. Therefore, the defacto complainant and the victim girl will not be able to give proper evidence and the other rest of witnesses are also under the threat of the accused persons. Therefore, the petitioner has made out a case for cancellation of bail, which was granted to the first and second accused.

11. Accordingly, the orders passed by the Special Court for Exclusive Trial of Cases under POCSO Act, Kanyakumari at Nagercoil, in Cr.M.P.No.1091 of 2021 and Cr.M.P.No.9607 of 2022, dated 04.01.2022 and 07.01.2022, are set aside and bail granted to the first and second accused herein is cancelled and the second respondent is directed to secure the first and second accused and proceed further in accordance with law.



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12. In view of the above, these Criminal Original Petitions are allowed.

15.06.2023

Index : Yes/No
Internet: Yes
Speaking/Non-Speaking order
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Note : Issue order copy on 16.06.2023 before 02.00 P.M

To

1. The Special Court for Exclusive Trial of Cases under POCSO Act,
Kanyakumari at Nagercoil.
2. The Inspector of Police,
All women Police Station,
Kanyakumari.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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Crl.OP(MD)Nos.8290 and 9607 of 2023

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