



CrI.R.C.(MD).No.580 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.R.C.(MD).No.580 of 2023

Marikannan

... Petitioner

Vs.

1.Maharajan

2.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli District.
(Crime No.402 of 2021)

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order dated 22.05.2023 made in CrI.M.P.No.14769 of 2023 in Crime No.402 of 2021, on the file of Judicial Magistrate Court No.I, Tirunelveli and set aside the same and allow above Criminal Revision by cancelling the Anticipatory Bail granted in order dated 01.07.2021 made in CrI.M.No.3790 of 2021 on the file of the Principal Sessions Judge, Tirunelveli.



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For Petitioner : Mr.M.Ajmal Khan (Senior Counsel) for
M/s.Ajaml Associates

For Respondent : Mr.M.Maharaja for R1

: Mr.R.Sivakumar
Government Advocate (CrI.Side) for R2

ORDER

This Criminal Revision Case has been filed against the order dated 22.05.2023 made in CrI.M.P.No.14769 of 2023, in Crime No.402 of 2021, on the file of Judicial Magistrate Court No.I, Tirunelveli, and set aside the same by allowing the Criminal Revision Case, by cancelling the Anticipatory Bail granted vide order dated 01.07.2021 made in CrI.M.No. 3790 of 2021 on the file of the Principal Sessions Judge, Tirunelveli.

2. The petitioner is the defacto complainant in Crime No.402 of 2021. According to the petitioner, the respondent police registered a case against the first respondent for the offence punishable under Sections 143, 341, 294(b), 323, 365, 342 and 506(i) of IPC. After registering the case, the first respondent has filed an Anticipatory Bail petition before the Principal



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District Court, Tirunelveli in Cr.M.P.No.3790 of 2021, the same was granted on 01.07.2021 with the following conditions:

“Considering all the above aspect and also the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner/accused herein subject to the following conditions:

a.That in the event of arrest or the petitioners/accused in Cr.M.P.No.3790 of 2021 appeared themselves before the learned Judicial Magistrate No.I, Tirunelveli within 15 days from the resumption of regular work in the Court and on their executing a bond for Rs.10,000/- each with two sureties for the like sum each to the satisfaction of the above said learned Judicial Magistrate. The Magistrate shall not demand the production of solvency certificate for arriving satisfaction.

b.That after furnishing sureties, petitioners/accused in Cr.M.P.No.3790 of 2021 shall sign before the respondent police daily once ie., at 10.30 a.m., until further orders.

c.That the petitioners/accused in Cr.M.P.No. 3790 of 2021 should make themselves available for



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interrogation as and when required by the respondent police;

d.That the petitioners/accused in Cr.M.P.No. 3790 of 2021 shall not directly or indirectly make any inducement treat or promise to any acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or to any police officer.

e.On breach of any of the aforesaid conditions, the Magistrate/Trial Court is entitled to take appropriate action against the petitioners in Cr.M.P.No.3790 of 2021 in accordance with law as if the conditions have been imposed and the petitioners/accused released on bail by the Magistrate/trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs.State of Kerala (2005) AIR SCW 5560)”

3. As per the above order, the respondent has not appeared before the learned Judicial Magistrate and furnished the surety. Hence, the petitioner filed the cancellation petition before the learned Judicial Magistrate. Pending the same, he filed petition to extend the time for



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complying the condition imposed in the Cr.M.P.No.3790 of 2021 before the learned Principal Sessions Judge, Tirunelveli. On 07.12.2022 the same was dismissed by passing the following order:

14. As discussed above, the petitioner has filed to comply the condition even after the resumption of Court work. The defcto complainant has filed the cancellation of bail order before the learned Judicial Magistrate. The reason adduced by the petitioner in the petition for extension of time is not acceptable and valid one. Moreover, the submission of Intervenor/ defacto complainant that after repeated summons for appearance of this petitioner/accused, the Judicial Magistrate has posted the hearing on 30.11.2022. Considering all these aspects, this Court comes to conclusion that the petitioner is not entitled for extension of time for complying the condition imposed on the petitioner in Cr.M.P.No.3790 of 2021 dated 01.07.2021. The point is answered accordingly.

15. In the result, Cr.M.P.No.12178 of 2022 the petition for seeking further time to comply the condition imposed in Cr.M.P.No.3790 of 2021 and Cr.M.P.No. 12177 of 2022 the petition to condone the delay of 457



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days in filing the petition for extension of time are dismissed. Cr.M.P.No.12584 of 2022 the petition filed by the Intervenor/defacto complainant is allowed.

4. In view of the dismissal of the above extension petition, the petition filed by the petitioner to cancel the bail in Cr.M.P.No.14769 of 2023, under Section 437(5) of Cr.P.C., came up for hearing before the learned Judicial Magistrate. The learned Judicial Magistrate issued notice to the accused namely the first respondent herein and heard him and passed the following impugned order declining to entertain the cancellation of bail:

6. In the result, the respondent/first accused not complied the conditions mentioned in Anticipatory bail order imposed by the Hon'ble Principal Sessions Court, Tirunelveli in Cr.M.P.No.3790 of 2021 and consequent extension of time petition filed by the respondent/first accused and also dismissed on 07.12.2022. So it is pertinent to note that the respondent/first accused not complied the condition imposed by the Hon'ble Principal District Sessions Court in Cr.M.P.No.3790 of 2021. The Investigation Officer is directed to carryout the investigation as per



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law and as per the dictum mentioned in the Hon'ble Supreme Court cases Arnesh Kumar and Saterndira Kumar Antil for the purpose of Investigation and file the Final Report before this Court as early as possible. With this direction this petition is closed.

Challenging the same, the petitioner filed this Criminal Revision Case on the ground stated in the memorandum of grounds of this revision.

5. The Mr.M.Ajmalkhan, learned Senior Counsel for the petitioner reiterated the grounds and elaborated his argument and made the following submissions:

5.1. The respondent is arrayed as an accused in Crime No.402 of 2021. On 01.07.2021, he obtained anticipatory bail in Cr.M.P.No.3790 of 2021, on the file of the learned Principal Sessions Judge, Tirunelveli. As per the order, he has to surrender before the learned Judicial Magistrate No-I, Tirunelveli, within a period of fifteen days from the date of order and furnish the sureties. But he has not surrendered and executed the sureties. Therefore, the learned Judicial Magistrate No-I, Tirunelveli ought to have cancelled the bail as per Section 437(5) of Cr.P.C. Apart from the provision



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of Section 437(5) of Cr.P.C., in the order there is a specific direction to the learned Judicial Magistrate No-I, to take action against the respondent in the event of non-compliance of the direction issued in the said Cr.M.P.No.3790 of 2021 on the basis of the Hon'ble Supreme Court Judgement in ***P.K.Saji Alias Thammanam Shaji Vs. State of Kerala*** reported in 2005 13 SCC 283. But, the learned Judicial Magistrate No-I, Tirunelveli, after recording a finding that the respondent has not complied the condition imposed by the learned Principal Sessions Judge, in Cr.M.P.No.3790 of 2021, closed the petition with a direction to the investigating agency to file the final report. The said approach of the learned Judicial Magistrate is not in accordance with law. Therefore, the learned Senior Counsel seeks to set aside the order passed by the learned Judicial Magistrate and also to cancel the bail granted to the petitioner.

6. Per contra, the learned counsel for the respondent/accused submitted that he is arrayed as A1 in the Crime No.402 of 2021. The said case was registered with false allegation and the allegation made in the said complaint that the petitioner has sustained injury is also not true. He is a



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practicing Advocate and he is the legal adviser of one Mr.Vaikundarajan. On that ground, he was falsely implicated in the above case. He further submitted that he was under the bona fide belief that the case was closed as mistake of fact and hence, there was no necessity to execute the surety bond and appear before the learned Judicial Magistrate No-I, Tirunelveli as per the direction of the learned Principal Sessions Judge, Tirunelveli. He further submitted that there is no legal grounds either pleaded or substantiated to cancel the bail granted in favour of him. The Judgment of the Hon'ble Supreme Court reported in 2005 13 SCC 283 is not applicable to the present case. Therefore, he seeks for dismissal of this Criminal Revision Case.

7. This Court heard the rival submissions made on the either side and perused the materials available on record and the precedents relied upon by them.

8. It is an admitted fact that the petitioner is said to have given a complaint against the first respondent herein and other accused to the second respondent. The respondent police registered the case in Crime No.



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402 of 2021 for the alleged offences under Sections 143, 341, 294(b), 323, 365, 342 and 506(i) of IPC. The respondent also filed the anticipatory bail petition before the learned Sessions Judge, Tirunelveli, in Cr.M.P.No.3790 of 2021 and the learned Principal Sessions Judge, also granted anticipatory bail with the above conditions by order dated 01.07.2021. But, the first respondent has not surrendered before the learned Judicial Magistrate No-I, Tirunelveli and executed the surety. The first respondent is a practicing advocate. He knows the procedure to be followed after obtaining the anticipatory bail in any criminal case. He should be a role model to the society and to obey the direction of the Court. Therefore, the petitioner rightly filed Cr.M.P.No.14769 of 2023, before the learned Judicial Magistrate No-I, Tirunelveli under Section 437(5) of Cr.P.C., to cancel the bail granted to him. Only after that the first respondent filed the petition to extend the time to comply the direction of the learned Principal Sessions Judge, Tirunelveli in Cr.M.P.No.3790 of 2021. Pending the said petition for cancellation of bail before the learned Judicial Magistrate No-I, Tirunelveli, the learned Principal Sessions Judge, Tirunelveli dismissed his petition for the extension of time. In all fairness, the first respondent is duty bound to



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challenge the said order and surrender and furnish the surety as per the order of the Court. But, he has not taken any steps. In the said circumstances, the learned Judicial Magistrate No-I, Tirunelveli has no other option but to cancel the bail as per Section 437(5) of Cr.P.C., and also in compliance with the direction of the learned Principal Sessions Judge, in Cr.M.P.No.3790 of 2021, which reads as follows:

e.On breach of any of the aforesaid conditions, the Magistrate/Trial Court is entitled to take appropriate action against the petitioners in Cr.M.P.No.3790 of 2021 in accordance with law as if the conditions have been imposed and the petitioners/accused released on bail by the Magistrate/trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs.State of Kerala (2005) AIR SCW 5560)”

But the learned trial Judicial Magistrate committed error in closing the cancellation of the bail petition without passing order of cancellation.

9. The learned counsel for the first respondent submitted that he was under the bona fide belief that his case was closed as mistake of fact. He has no right to take a decision on his own, when the Code of Criminal



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Procedure requires him to act in a particular manner after obtaining the anticipatory order copy and also when the Court directed him to surrender within a period of fifteen days in order to avoid arrest at the hands of the second respondent police. He must adhere to the law and direction of the Court. He may be an advocate. But, in view of the Court, he is an accused. The criminal case may be registered against him with false allegation and the same is not a ground to disobey the order of the Court. Hence, considering the above circumstances, this Court is inclined to exercise the power under Section 397 r/w 401 of Cr.P.C., on account of the perversity in the order of the learned Judicial Magistrate No-I, Tirunelveli in closing the cancellation of bail petition without cancelling the bail granted in favour of him under Section 437 (5) of Cr.P.C., and set aside the impugned order of the learned Judicial Magistrate in Cr.M.P.No.14769 of 2023 dated 22.05.2023 and allow this Criminal Revision Case.

10. Accordingly, this Criminal Revision Case is allowed on the following terms:

(i) The order of the learned Judicial Magistrate No-I, Tirunelveli



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in Cr.M.P.No.14769 of 2023 is hereby set aside.

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(ii) The anticipatory bail granted to the first respondent in Cr.M.P.No.3790 of 2021, on the file of the learned Principal Sessions Judge, Tirunelveli dated 01.07.2021 is hereby cancelled.

11.08.2023

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

sbm

Note:Issue Order copy on 20.12.2023

To

- 1.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli District.
- 2.The Judicial Magistrate Court No-I,
Tirunelveli.
- 3.The Principal Sessions Court,
Tirunelveli.



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K.K.RAMAKRISHNAN, J.

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