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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03/08/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.10779 of 2023

The Inspector of Police,
CBCID,
Ramanathapuram.
(Crime No.01 of 2023)

: Petitioner/Respondent

Vs.

Sigamani

: Respondent/ A1

PRAYER:-Criminal Original Petition filed under Section 439(ii) of Cr.P.C., to cancel the bail granted to the respondent/A1 by the Sessions Judge (Fast Track Mahila Court), Ramanathapuram, in Crl.M.P No.904 of 2023, dated 03/05/2023.

For Petitioner : Mr.B.Nambiselvan
Additional Public Prosecutor

For Respondent : Mr.R.Sreerangan, Advocate

ORDER

This criminal original petition has been filed seeking cancellation of the bail granted to the respondent/A1 by the Sessions Judge (Fast Track Mahila Court), Ramanathapuram, in Crl.MP No.904 of 2023, dated 03.05.2023.

2.Heard both sides.



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3.Originally, the case was registered in Crime No.1 of 2023. During the course of investigation finding that two separate occurrences were taken place, separate final reports have filed. The date of occurrences are stated to be 26/12/2022 and 13/02/2023. In respect of the occurrence said to have been taken place, on 26/12/2022, the respondent herein is A1 and one Annalakshmi @ Uma and Kayalvizhi were A2 and A3.

4.So far as the occurrence took place, on 13/02/2023, in respect of the very same victim girl, the accused are Prabhakaran @ Pudhumalar Prabhakaran, Raja Mohammed, Annalakshmi @ Uma and Kayalvizhi.

5.The bail was granted to the respondent herein, by order, dated 03/05/2023 in Cr.MP No.904 of 2023 by the trial court. The above said order of the trial court came up for the following disapproval by this court, while hearing CrI.OP(MD)No.9219 of 2023, which was filed by the co-accused Raja Mohammed.

"5.The learned Senior Counsel for the petitioner would submit that A1 was already granted bail by the District Court.

6.It is seen that A1 was already granted bail by the District Court and on perusal of the order passed by the District Court, the reasons stated by the District Court is not satisfied for grant of bail to the accused."

6.According to the learned Additional Public Prosecutor, the above said observation of this court has led the prosecution to file this petition to cancel the bail.



This is the secondary ground.

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7.The primary ground is that after coming out of the bail, the respondent herein influenced or won over the victim, who is aged about only 15 years and this caused the victim girl to turn hostile at the time of trial. This is the primary reason, according to the learned Additional Public Prosecutor.

8.Per contra, the learned counsel appearing for the respondent/A1 would submit that after considering the factual aspect, more particularly, delay on the part of de-facto complainant in lodging the complaint and contradictory statements given by the victim girl, while examining under section 164(3) Cr.P.C, in the complaint, the bail order has been passed. And the duration of custody has also taken into consideration, while granting bail. According to him, absolutely, no post bail conduct, which is illegal in nature or violation of the condition has been brought on record by the prosecution to cancel the bail.

9.The criteria and parameter which has to be taken into account, while cancelling the bail, he would also rely upon the number of judgments:-

(1)Myakala Dharmarajam and others Vs. State of Telangana and another [(2020) 2 SCC 743];

(2)Bhuri Bai Vs. State of Madhya Pradesh (2022(3) MWN (Cr.)337 (SC);

(3)Jitendra Taneja Vs. State of Uttar Pradesh and other [(2021)5 SCC 308];



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(4)State Through Central Bureau of Investigation Vs. T.Gangi Reddy alias Yerra Gangi Reddy [(2023)4 SCC 253];

(5)Abdul Basit alias Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another [(2014)10 SCC 754];

(6)Rameshwar Sharma Vs. Director of Revenue Intelligence [(2018)11 SCC 713];

(7)S.Siva Vs. Genguraj and 4 others (2008(5)CTC 633.

(8)X vs. State of Telangana and others (2018)2 MWN (Cr.)332(SCC).

(9)State Vs. Muthunarayanan [2016(2)MWN(Cr.)312].

(10)Manjith Prakash and others Vs. Shobha Devi and another (2008(2)MWN (Cr.) 292(SC)].

(11)Central Goods and Services Tax Delhi East Vs. Sh.Naval Kumar and others (CrI.M.C.231/2021, dated 04.06.2021).

(12)Uma Maheshwari and others Vs. The State (CrI.RC(MD)Nos.253, 254 of 2016, dated 13/06/2016].

13.Dolat Ram and others Vs. Stte of Haryana [1995(1)SCC 349];

14.Sharad Vs. State of Maharashtra (2019(4)Criminal CC 63].

15.Arnab Monoranjan Goswami Vs. The State of Maharashtra and others (2021) 2 SCC 427);

16.Satender Kumar Antil Vs. Central Bureau of Investigation and others (2022)



17.Aandaraj vs. State by Inspector of Police (2022(1) MWN (Cr.) 574(DB)].

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10.No doubt that while considering the cancellation of bail order, not only the post-bail conduct of the accused can be taken into account for consideration, but also in deserving cases, the very legality or correctness of the order passed by the trial court can also be taken into account to see whether the settled parameters have been followed, while entertaining the bail application. This is the settled proposition of law. We need not elaborate on this point by extensively quoting the observation made by the Superior Courts in the above said judgments.

11.According to the learned Additional Public Prosecutor, the gravity of offence, which ought to have been taken into account by the trial court, but that was not done.

12.Perusal of the records submitted by the trial court shows that the victim girl turned hostile. The reason for turning against the prosecution has not been elicited by the prosecution by requesting the court to treat her as hostile. Why the above said lapse has been committed by the prosecution, while at the time of examining the victim is not answered properly. So, there is lapse on the part of the prosecution also.

13.But from the very fact that the victim girl turned hostile, disowning her statement recorded during the course of 164(3) Cr.P.C statement, the complaint, give some indication that something had happened at the time of commencing trial. What

is the reason for turning hostile can be a matter for consideration by the trial court.



So, when serious offence is alleged and the victim turned hostile, naturally presumption will arise against the accused that they might have won over the witness. That cannot be completely ruled out. So, this is the first disturbing feature in this matter.

14. The next disturbing feature is that while considering the bail application of one Annalakshmi @ Uma, who has been arrayed as A3 in Special SC No.33 of 2023, the following conclusion and reasoning was given:-

"6. The prosecution case relates to sexual exploitation of a 15 years old girl by A1 and A2 and it was A3 and A4 who offered the victim girl to A1 and A2. The case was transferred to CBCID and the investigating officer has filed two final reports. The final reports against Sigamani, Annalakshmi @ Uma and Kayalvizhi has been taken on file as Spl.S.C.33/2023. The final reports against the petitioner herein, A-1 Prabhakaran @ Puthumalar Prabhakaran, A-2 Raja Mohamed, the petitioner/A3 and A4 Kayalvizhi has been assigned Spl.SC.No.34/2023. As rightly pointed out the learned Special Public Prosecutor, the charges against A1-A2 face charges U/s.5(g) of POCSO Act for allegedly committing gang rape on the victim girl. The petitioner has abetted the commission of the offence. The case in Spl.SC.34/2023 is pending in the stage of trial. The victim has not yet been examined. The petitioner is the real perpetrator. The more graver the offence, there is higher possibility of an attempt or hamper the trial process. Upon consideration, this Court is of the view that the petitioner has not made out a prima facie case for release on bail. Hence this Court is not



inclined to grant bail and this petition stands dismissed accordingly.

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In the result, the petition is dismissed.”

15. In the light of the above, now we can narrate the facts in brief for further discussion.

16. The accused Anna Lakshmi @ Uma was a neighbour to the victim. She was friendly with her. Through Annalakshmi @ Uma, the co-accused namely Kayalvizhi also known to her. Kayalvizhi was doing real estate brokerage business. The victim was taken by Kayalvizhi and Annalakshmi @ Uma to A1 through his car. On 26/12/2022 at about 03.30 pm, the victim was subjected to sexual assault by A1 Sigamani in KST Mahal Lodge. Similarly on 12/02/2023 at about 04.00 pm, the above said Kayalvizhi and Annalakshmi @ Uma took the victim girl in a Car which belongs to one Raja Mohammed. The accused Pudumalar Prabahkaran Raja Mohammed subjected the victim girl to sexual intercourse in the very same Lodge repeatedly. When the above said illegal act was informed by the victim to her mother, she was taken to the police station, on her complaint a case in Crime No.1 of 2023 was registered.

17. During the course of investigation, two separate final reports have been filed and taken cognizance in Special SC Nos.33 and 34 of 2023.



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18.The said Raja Mohammed has moved CrI.OP(MD)No.9219 of 2023, seeking bail. In that order only, the above said observation has been made by this court. So, when we peruse the order now under challenge and the order passed in Cr.MP No.1262 of 2023 in Spl.SC No.34 of 2023, we find entirely change of mind.

19.No doubt that the order now under challenge has been passed in the month of May-2023. The order in Cr.MP No.1262 of 2023 was passed, on 23/06/2023. This change of mind of the trial court clearly indicates that it is conscious about the seriousness of allegation. The extracted portion is sufficient enough to see that the order passed, by enlarging the respondent on bail, is not correct. The gravity of the allegation has not been taken into account, at the time of passing the order. On that sole ground, the order of granting bail is liable to be set aside. Accordingly, it is set aside.

20.Coming to the another ground, the learned counsel appearing for the respondent has stated that he was staying 100 kms away from the occurrence place. So, absolutely, there is no possibility for him, either to contact the victim or the victim's mother. But, as mentioned earlier, it is a matter for consideration by the trial court at the appropriate time. I am not going to that aspect now.

21.On perusal of the entire records, another disturbing feature is one, which missed the notice of both the parties was found. The victim was examined as PW1, on 03/07/2023, in Special SC Nos.33 and 34 of 2023. After preliminary assessment as per



the procedure, examination was undertaken. The mother of the victim was permitted to be seated with the victim. After the preliminary test, the trial court satisfied that the victim is fit for giving evidence and proceeded to record the evidence. But while recording the evidence, one important statutory provision was omitted to be followed, which as follows.

“Procedure and Power of the Special Courts and Recording of evidence.

33.Procedure and powers of the Special Court:-

(1)...

(2)The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the Child.”

22.Reading of the above said section shows that direct examination of the victim namely the child, either by the prosecution or the accused is totally prohibited.

23.According to that, the question intended to ask to the victim has to put before the presiding officer, who in turn to put the same to the victim girl. So, this is the procedure. This procedure has its own purpose, meaning and reason.

24.A report has been called for from the trial court as to whether, it has noticed any abnormal behaviour on the apart of the victim girl, while under examination. The trial court has submitted report stating that no such abnormal or unnatural conduct



was noticed, she was smooth and in normal state of mind. But, how this important aspect, while recording the evidence was missed by the trial court is not explained. So, this is also another important disturbing feature, which shows that the trial court has not taken up the matter in a serious manner as it deserves.

25.Now, we reach the conclusion point. This court is of the considered view that fair trial may not be possible, if the petitioner is on bail. The seriousness of the offence was not taken into account by the trial court while granting bail. More particularly, in the light of the observation made by this court. The above said bail granted to the respondent/A1 is hereby liable to be cancelled and accordingly, it is cancelled. He has to surrender before the trial court immediately.

26.In view of the non-observation of the proper procedure of law, I am of the considered view that the trial must also be transferred to some other competent court. On that account, the entire trial process in Special SC Nos.33 and 34 of 2023 pending on the file of the Sessions Judge, Fast Track Mahila Court, Ramanathapuram stands transferred to the **Special Court for POCSO Act cases, Srivilliputhur**. Now, the trial court is directed to transfer the entire records to the transferee court immediately. The transferee court may assign new number, intimate the parties and proceed with the case in accordance with law. Since, proper procedure has not been followed, while examining the victim girl, *de novo* trial is ordered. The transferee court is directed to take up the trial process from the stage of framing of charges. The entire trial process,



in both matters, shall be completed within a period of five months from the date of receipt of the records from the trial court.

27. With the above said, this criminal original petition stands **allowed**.

sd/-
03/08/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

- 1 THE SESSIONS JUDGE
(FAST TRACK MAHILA COURT), RAMANATHAPURAM DISTRICT.
- 2 THE JUDGE, SPECIAL COURT FOR
POCSO ACT CASES, SRIVILLIPUTHUR.
- 3 THE JUDICIAL MAGISTRATE NO.1,
SRIVILLIPUTHUR.
- 4 DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 5 THE INSPECTOR OF POLICE,
CBCID, RAMANATHAPURAM.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



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1 THE REGISTRAR(JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

2 THE SECTION OFFICER,
CRIMINAL RECORDS,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.SREERANGAN, Advocate (SR-11754[I] dated 03/08/2023)

ORDER
IN
CRL OP(MD) No.10779 of 2023
Date :03/08/2023

SS/MMS/09/08/2023/12P/10C

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