



Crime No.369of 2021.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 27/09/2023

Pronounced on : 11/10/2023

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL.M.P(MD)Nos.9228 and 11489 of 2023

in

CRL.O.P(MD)Nos.3120 and 3112 of 2022

S.VALLIMAYIL

... PETITIONER/DEFACTO COMPLAINANT
IN BOTH CRL MP'S

Vs

1 State Rep.by
THE INSPECTOR OF POLICE
KOTTAMPATTI POLICE STATION,
MADURAI DISTRICT.
CR.NO.369/2021

... RESPONDENT/COMPLAINANT
IN BOTH CRL MP'S

2 V.RAJANGAM
3 V.ANDICHAMY

... RESPONDENTS/PETITIONERS/ACCUSED NO.1 & 2
IN CRL MP(MD).9228/2023 IN CRL OP(MD).3120/2022

2 THIYAGARAJAN

... RESPONDENT/PETITIONERS/ACCUSED NO.3
IN CRL MP(MD).11489/2023 IN CRL OP(MD).3112/2022

For Petitioner : Mr.R.Aravind Raj Advocate.
(in both petitions)

For Respondent : Mr.K.Sanjai Gandhi,
(in both petitions) Government Advocate (Crl.Side) for R1.
(in Crl.MP(MD)No.9228/2023) : Mr.S.Arunnithi, Advocate for R2 & R3
(in Crl.MP(MD)No.11489/2023) : Mr.S.Arunnithi, Advocate for R2

PETITIONS FOR CANCELLATION OF BAIL UNDER SEC 439 (2) R/W 482 OF
CR.P.C.



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Prayer in CRL MP(MD).9228/2023 :

To cancel the bail granted by this court in CrI.O.P.(MD).No.3120/2022 dated 17.02.2022.

Prayer in CRL MP(MD).11489/2023 :

To cancel the bail granted by this court in CrI.O.P.(MD).No.3112/2022 dated 17.02.2022.

ORDER : The Court made the following common order :-

These Criminal Miscellaneous Petitions have been filed under Section 439 (2) of Cr.P.C, seeking orders to cancel the bail granted in CrI.O.P(MD)Nos.3120 and 3112 of 2022, dated 17.02.2022 to the respondents 2 and 3/accused 1 and 2 and the 2nd respondent/3rd accused respectively in connection with the Crime No.369 of 2021 on the file of the Kottampatti Police Station, Madurai District.

2.The petitioner is the defacto complainant and on the basis of the complaint lodged by the petitioner, FIR came to be registered in crime No.369 of 2021 on 27.12.2021 against the three persons/accused 1 to 3 for the alleged offences punishable under Sections 294(b), 323, 324, 427 and 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2022. After the death of the petitioner/defacto complainant's mother, the case was altered into Sections 294(b), 323, 324, 427 and 506(ii) IPC and Section 4 of TNPHW Act and under Section 174 of Cr.P.C.

3.The accused 1 and 2 have filed an application in CrI.O.P.(MD)No.3120 of 2022



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and the third accused has filed an application in Crl.O.P.(MD) No.3112 of 2022, seeking bail and that this Court after hearing the learned senior counsel appearing for the accused and the learned Additional Public Prosecutor has granted bail to all the three accused vide order dated 17.02.2022, imposing some conditions.

4.The defacto complainant by alleging that the accused have been frequently threatening her; that one Sivasakthivel relative of the accused, while the accused were in jail, had threatened the witnesses through social media and a complaint was lodged by one Karupu of Kottampatti on 13.01.2022 to the District Collector, Madurai and the same was forwarded to the Superintendent of Police, Madurai for necessary action; that the accused after releasing on bail have threatened the defacto complainant on 20.11.2022 that they would kill her and the persons who are all supporting her; that since the complaint to the Police Officials were of no avail, the defacto complainant was constrained to send complaint to the higher authorities and thereafter, the case was registered in Crime No.122 of 2022 for the alleged offences under Sections 294(b), 336 and 506(ii) IPC and that the accused had the habit of threatening the defacto complainant and tried to tamper the witnesses and that therefore, the complainant is constrained to file the above applications for cancellation of bail as there was a possibility of tampering the witnesses.

5.The respondents/accused have filed a counter statement stating that there



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was some land dispute between the defacto complainant and the first accused and as there was a wordy quarrel between them on 26.12.2021, for which, the petitioner has filed a complaint before the respondent Police and the defacto complainant was treated an out-patient in Melur Government Hospital and she was discharged on the same day, but after enquiry, FIR was filed on 27.12.2021 in Crime No.369 of 2021; that the defacto complainant's mother was not involved in the above incident and she was not admitted in the hospital and that the complainant's mother had health issues and died on 03.01.2022 after seven days of the above incident.

6.In the counter, it has been further stated that since the first respondent did not alter the FIR in Crime No.369 of 2022, the petitioners were granted bail by this Court on 17.02.2022; that the petitioner has now come with a new story that she belongs to SC community, so they want to alter the FIR and further filed a petition for transferring the case; that the defacto complainant does not belong to SC community; that this Court passed an order to transfer the case to the Deputy Superintendent of Police to complete the investigation and file a final report within 12 weeks; that the second respondent filed a writ petition in W.P.(MD)No.26227 of 2022 for removal of encroachment against one Pakkiam and the High Court passed an order on 21.11.2023 and directed the officials to take necessary steps; that after filing of the above writ petition, several complaints were given before the respondent Police



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against the second respondent and his family members by different persons in the same village; that the writ petitioner got threat from Police Officials and others to withdraw the writ petition, but the second respondent was not ready to withdraw the petition; that the encroacher Pakkiam is a Government employee and trying to misuse her official capacity to threaten the 2nd respondent and his family members; that the said Pakkiam and her son Gopalakrishnan insisted the defacto complainant to give false complaint against the 2nd respondent and others to harass them and that they have sent representation to the Superintendent of Police, Madurai and Human Rights Commissions for taking action against the illegal acts of the respondent Police and others.

7.The first respondent Police has filed a counter that after registering the FIR on 27.12.2021, the respondent Police went to the occurrence place at about 10.00 am., and prepared rough sketch in the presence of witnesses and recorded the statements of the witnesses; that the defacto complainant was discharged from the hospital on 28.12.2021 and her mother was discharged from the hospital on 01.01.2022 and she died on 03.01.2022; that the respondent Police, after investigation, has altered the case on the same day and conducted inquest in the presence of Panchayathars and witnesses and post-mortem was conducted; that the accused were arrested and wooden stump was seized and confession statements were recorded; that there are



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no injuries found in the post-mortem conducted on the body of the defacto complainant's mother and there was no assault made against the deceased Lakshmi by the accused persons; that the defacto complainant filed a petition to transfer the investigation and accordingly, this Court directed the Deputy Superintendent of Police to investigate the case and file a final report within 12 weeks from the date of receipt of copy of that order and that subsequently, the respondent Police after completing the investigation has filed the final report on 06.07.2022.

8. Before entering into further discussion, it is necessary to refer Section 439(2) of Cr.P.C.

“439(2): A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

9.It is settled law that once bail is granted to any person, the same cannot be cancelled in a mechanical manner without there being supervening circumstances, which are not conducive for fair trial. The Hon'ble Supreme Court in State (Delhi Administration) Vs.Sanjay Gandhi reported in (1978)2 SCC 411, has specifically held that the power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection.

10. In the case on hand,the main ground canvassed by the defacto complainant



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for cancellation of bail is that the accused had been threatening the defacto complainant continuously and that already three cases came to be registered against the accused.

11. It is not in dispute that on the basis of the complaint given by the defacto complainant, FIR came to be registered in Crime No.122 of 2023 on 06.04.2023 against three accused for the alleged offence under Sections 294(b), 336 and 506(ii) IPC. It is also not in dispute that one Ramasamy has lodged a complaint against the accused 1 to 3 and on that basis, FIR was registered in Crime No.121 of 2023 on 06.04.2023 for the alleged offence under Sections 427 and 506(ii) IPC.

12. It is evident that originally the above two complaints came to be registered in CSR.No.840 of 2022 and 842 of 2022 and subsequently, two FIRs came to be registered on 06.04.2023 on the basis of the CSRs recorded earlier.

13. The case of the prosecution in Crime No.369 of 2021 is that there existed land dispute between the defacto complainant and the accused and due to that dispute, the accused had attacked the defacto complainant and her mother and also abused in filthy language and threatened them with dire consequences. The defacto complainant in her complaint has alleged that all the accused persons had kicked her mother on her chest and also attacked her and her mother with wooden log and pelted stones and that both of them had sustained grievous injuries.



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14. According to the defacto complainant, after first aid treatment in Primary Health Centre, both of them were referred to Government Rajaji Hospital, Madurai and after continuous treatment, her mother had died on 03.01.2022. But according to the prosecution, the defacto complainant's mother was not at all attacked in the incident allegedly occurred on 26.12.2021.

15. When the bail petitions were taken up for hearing on 17.02.2022, the learned Additional Public Prosecutor submitted that in the post-mortem certificate, the medical officer has observed that there was no trace of any violence or injuries on the body of the deceased and that they came to know from the CCTV footage that there was no assault on the defacto complainant's mother during the occurrence.

16. No doubt, as already pointed out subsequent to the death of the defacto complainant's mother, the case was altered into Section 174 Cr.P.C, this Court taking note of the above submission of the learned Additional Public Prosecutor and also the fact that the accused were in judicial custody from 06.01.2022 and 05.01.2022 respectively and that except the offence under Sections 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, all other offences are bailable in nature, this Court granted bail by imposing conditions, which includes that the accused were directed to pay a sum of Rs.5,000/- each to the credit of Government of Tamil Nadu without prejudice to their rights and contentions before the trial Court.



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17.The main contention of the accused is that since the second respondent has filed a writ petition for removal of encroachments against one Pakkiam and at the instance of the said Pakkiam and her son Gopalakrishnan, the above complaints came to be lodged against the respondents/accused.

18.When the matters were taken up on 18.08.2023, considering the submission of the learned Government Advocate (Criminal Side)that charge sheet has already been filed on 06.07.2023 before the Additional District Court (PCR Court) Madurai, the same was not taken on file, this Court directed the Registry to call for a report from the concerned Court as to whether charge sheet was filed and if filed, the reasons for not taking the charge sheet on file.

19. In pursuance of the directions of this Court, the learned Additional District and Sessions Judge has submitted a report, dated 25.08.2023 stating that no FIR in Crime No. 369 of 2021 has been received by their Court and no charge sheet has been filed.

20.When the mattes were taken up on 07.09.2023, the learned Government Advocate (Criminal Side) submitted that originally FIR in Crime No.369 of 2021 was filed for the offence under IPC and under TNPWH Act before the jurisdictional Magistrate Court and during the investigation, the case was altered invoking the provision of SC/ST (POA) Act and the charge sheet was filed before the III



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Additional District and Sessions Court (PCR), Madurai and that since FIR was not transferred to the said Court, the case was not taken on file.

21. Considering the above submissions, this Court directed the learned Judicial Magistrate, Melur, to send the FIR relating to the case in Crime No.369 of 2021 to the PCR Court and on receipt of FIR, the III Additional District and Sessions Court (PCR), Madurai to take the charge sheet on file, if it is otherwise in order and in pursuance of the said direction, the learned Judicial Magistrate, Melur has submitted a report dated 14.09.2023 stating that the entire records in Crime No.369 of 2021 of Kottampatti Police Station, have already been submitted to the III Additional District and Sessions Court, Madurai on 14.09.2023.

22. The learned III Additional District and Sessions Court, Madurai, has stated that though they have received the records from the concerned jurisdictional Magistrate Court, charge sheet has not been filed. Subsequently, the learned Government Advocate (Criminal Side) would submit that they have presented the final report through on-line mode and the case was taken on file in Spl.S.C.No.77 of 2023 on 27.09.2023 and the same is pending on the file of the III Additional District and Sessions Court(PCR Court), Madurai.

23. As already pointed out, subsequent to the present FIR and after releasing the accused on bail, at the instance of one Ramasamy, FIR in Crime No.121 of 2023



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came to be registered and at the instance of defacto complainant, another FIR in Crime No.122 of 2023 came to be registered against three accused.

24. The learned Government Advocate (Criminal Side) would submit that the investigation with respect to the subsequent FIRs are pending and as already pointed out, originally CSRs came to be registered in CSR.No.840 of 2022, FIR came to be registered on 06.04.2023.

25.It is not the case of the prosecution that they have collected materials or evidence to show that there existed prima facie case for the alleged threatenings.

26.Considering the above facts and circumstances of the case and also the fact that there existed civil disputes between the parties and taking note of the fact that the charge sheet has already been filed and the case was take on file and the same is pending on the file of the III Additional District and Sessions Court(PCR Court), Madurai, this Court is not inclined to cancel the bail at this point of time.

27.Except the registration of FIR, as rightly contended by the learned counsel appearing for the respondents/accused, the defacto complainant has not shown any other valid reason or ground to cancel the bail. Hence, this Court concludes that the above petitions are devoid of merits and the same are liable to be dismissed.



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28. In the result, both the Criminal Miscellaneous Petitions are dismissed.

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

das

TO

- 1 THE JUDICIAL MAGISTRATE, MELUR.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
- 3 THE INSPECTOR OF POLICE, KOTTAMPATTI POLICE STATION,
MADURAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.

+1 CC to M/s.S.ARUNNITHY, Advocate (SR-15073[I] dated 12/10/2023)

ORDER IN

CRL.M.P(MD)Nos.9228 and 11489 of 2023
in CRL.O.P(MD)Nos.3120 and 3112 of 2022

Date : 11/10/2023

RS/VR/SAR-(08.11.2023) 12P 7C

Madurai Bench of Madras High Court is issuing
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