



WEB COPY



Crl.M.P.(MD)No.15224 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/09/2023

CORAM

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP (MD)No.15224 of 2023

Seetha : Petitioner/3rd Party/
PW2

Vs.

1.Kaleeswaran : R1/Petitioner/A2

2.State through
The Inspector of Police,
Kalayarkovil Police Station,
Sivagangai District.
(Crime No.333 of 2000) : R2/Respondent/
Complainant

PRAYER:-Criminal Original Petition has been filed under section 439(2) r/w 482 of the Criminal Procedure Code, seeking cancellation of anticipatory bail granted in favour of the 1st respondent in Cr.MP No.698 of 2018 in SC No.118 of 2015 on the file of the Principal Sessions Judge, Sivagangai, dated 20/03/2018 and pass such further or other orders.

For Petitioner : Mr.V.Kathirvelu
for Mr.M.Rajarajan

For 1st respondent : Mr.S.Rajasekar
for Mr.Lajapathi Roy Associates

For 2nd Respondent : Mr.S.Manikandan
Government Advocate
(Criminal side)



Crl.M.P.(MD)No.15224 of 2023

O R D E R

This Criminal Miscellaneous Petition is filed seeking cancellation of anticipatory bail granted to the first respondent/A2.

2. Brief facts:-

The petitioner is the daughter of one Kangeyavel. He is the de-facto complainant in Crime No.333 of 2020. In the complaint, Kangeyavel has stated that one Panneerselvan was the Panchayat President. He misappropriated funds. So he was removed from that post and over the above said misappropriation, the de-facto complainant's son-in-law namely Jeyasubramanian @ Palani was making enquiry, objections. Because of that there was enmity between two family members. On 13/06/2020 at about 07.00 am, after purchasing some articles, the deceased and his own brother namely Sudhagar returned to the village. On their way to the village, at about 01.30 pm, the accused persons namely Paneerselvan, Kaleeswaran, Ramu, Mani, Muthu @ Muthuvairavan, Pacha Pillai, Stalin and others waylaid them and caused severe assault to Pannerselvan. On seeing the above said brutal attack, the de-facto complainant, Sudhagar and Geetha tried to prevent the attack, they were criminally intimidated. In the above said process, Sudhagar and one Palani were also



WEB COPY



Crl.M.P.(MD)No.15224 of 2023

severally assaulted. Both of them fell with severe injuries. But Palani died on the spot, Sudhagar was taken to the hospital. After completing the investigation, final report was filed, taken cognizance in SC No.5 of 2005 implicating several persons including the first respondent herein. The first respondent was granted bail. While on bail, the accused persons committed another murder in Thiruvarur District. They also threatened the petitioner and her father not to give any evidence against them. On the basis of the complaint given by the petitioner, no action was taken. Later, at the instance of this court in Crl.OP(MD)No.17582 of 2012, by order, dated 20/12/2012, the bail was cancelled in respect of all the accused persons, on the basis of the report submitted by the Principal District Judge, Sivagangai.

3.Because of the continuous absence of some of the accused persons, the case was split up in SC No.118 of 2014. After chief examination was over, at the time of cross examination, the accused persons threatened by one Jeevanandham, who is the brother of A1 and a practising advocate. Because of that, the above said ended in acquittal.



WEB COPY



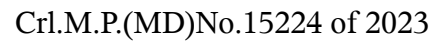
Crl.M.P.(MD)No.15224 of 2023

4. So far as the first respondent is concerned, the case was split up and because of the non appearance, NBW was issued. Suppressing the earlier order, he preferred bail application and that was allowed.

5. Seeking cancellation of bail, Crl(MD)MP No.2 of 2013 in Crl.OP(MD) No.223 of 2013 was filed. A direction was given to enforce the earlier order. Whatever it may be, A1 filed bail application by way of Cr.MP No.698 of 2018 in SC No.118 of 2015 before the Principal Sessions Judge, Sivagangai, suppressing all the earlier orders. Bail was granted.

6. Not stopping with that, again threat was made and attempt was also made upon the life of the petitioner, upon which, a case in Crime No.127 of 2023 was registered. Now the first respondent has been remanded to judicial custody, on 03/07/2023 and the bail petition filed by the first respondent was dismissed by the Principal Sessions Judge, Sivagangai, on 09/08/2023.

7. Due to continuous threat, the petitioner filed transfer application before this court in Crl.OP(MD)No.503 of 2013 and the trial now has been stayed. Because of the continuous threat that has been



8. Heard both sides.

9. After hearing the learned Senior counsel appearing for the petitioner, the learned counsel appearing for the first respondent has submitted that now the case is of the year 2015 and he is also ready to file any undertaking that may be demanded by this court and cooperate with the trial court to complete the process of trial. On that account, he wants this petition to be dismissed.

10. Per contra, the learned Senior counsel appearing for the petitioner would submit that the first respondent is facing not only the present murder case, but also involved in 14 previous cases. The list of cases are furnished in the petition itself.

11. Reading of the above said list shows that most of the cases are either robbery or dacioty, Arms Act, attempt to murder, etc., pending on the file of the Kerala Police Station. Now some of the cases are under



WEB COPY



Crl.M.P.(MD)No.15224 of 2023

trial and some other committal process etc. So according to him, the antecedents of the first respondent has not been taken into account by this court while granting the above said bail. It also suffers from suppression of fact, which was not taken properly into account.

12.For better appreciation of facts, let us extract the order that was passed in Crl.OP(MD)No.17582 of 2012, dated 12/12/2022. The operative portion reads as under:-

"6.From the report sent by the learned Sessions Judge, Sivagangai, it appears that most of the accused are involved in other crimes also and the accused, one after another, are absconding before the trial Court and NBWs are pending against some of the accused are in prison in connection with the case in S.C No.5 of 2025/ The 6th accused has been present before the trial Court.

7.The first accused already died. Under the said circumstances, except 6th accused, bail granted to all other



Crl.M.P.(MD)No.15224 of 2023

accused Nos.2 to 5, 7 to 9 is now cancelled by this Court for speedy disposal of the sessions case. The bail granted to the accused was misused by all the accused. The respondent police is directed to take effective steps to execute the warrant pending against some of the accused and the accused who is produced on PT warrant from the prison shall be remanded to custody in this case by the learned Sessions Judge. The Sessions Court is directed not to grant bail to any one of the accused till the disposal of the case."

13.The observation that has been made by this court in MP(MD)No.2 of 2023 in Crl.OP(MD)No.223 of 2023, dated 04/09/2014, reads as follows:-

"8.The order passed in Crl.OP(MD)No.223 of 2013 shows that the first respondent had suppressed the earlier order passed by this court in Crl.O.P(MD)No.17582 of 2022, dated 20.12.2012 and also suppressed the fact that he was not in judicial custody, on the date of the order, I.e., on 18th February 2013. The conduct of the first



WEB COPY



Crl.M.P.(MD)No.15224 of 2023

respondent would clearly establish that he has interfered with the administration of justice, he has also abused the process of the law and played fraud on the court.

9.This court, by taking into account that the case was registered in the year 2002, but the accused were dragging on the case, by abusing the process of court, had cancelled the bail granted to all the accused on 20.12.2012. It is not in dispute that the order has reached finality, as the accused did not file any appeal against that order.

10.Considering the above facts, this court is of the considered view that the petitioner made out a case for cancellation of bail. Hence, the petition is allowed and the bail granted to the 1st respondent/A2 in Crl.O.P(MD)No.223 of 2013, dated 18.02.2013 is cancelled.

11.In this case, it is agony to note that the poor victim of murder has been repeatedly knocking the doors of the doors of this court to get justice. But the accused by hook or crook have been successfully dragging on the case for more than 13 years.



WEB COPY



Crl.M.P.(MD)No.15224 of 2023

12.The order passed by this court in Crl.OP(MD)No.17582 of 2012 has to be enforced in letter and spirit. In the above said factual situation, this court direct the Superintendent of Police, Sivagangai District to implement the order in Crl.OP(MD)No. 17582 of 2012 forthwith to ensure the speedy disposal of the case.”

14.The above said observation was relied on by the trial court. But how this missed notice is not understandable.

15.A report has been called for the from the trial court and the report has been submitted. Wherein it has been stated that the case was originally posted for trial, on 01/04/2020. Because of the pandemic situation, further progress was not made. On 05/12/2022, the de-facto complainant namely Kangayavel filed a memo stating that the brother of the Accused Kaleeswaran and one Jeevanandham, Advocate, criminally intimidated him and the witnesses. The copy of the complaint was forwarded to the Superintendent of Police, for further action. Later, Crl.OP(MD)No.503 of 2023 was filed by the de-facto complainant seeking transfer of trial to some other court and now, it is stated to be pending.



16.By pointing out the above said development, the learned Senior counsel appearing for the petitioner would submit that even though, the parent case ended in acquittal, one of the injured namely Sudhakar was not examined for unknown reasons. Even though, the de-facto complainant and others turned hostile, so far as this petitioner is concerned, he has given a clear evidence. So, she wanted to proceed against the first respondent herein.

17.Perusal of the records also shows that even though the de-facto complainant and other eye witnesses have given clear evidence against the accused during the course of the examination, later turned hostile during the course of cross examination. This, according to the learned Senior counsel, was because of the criminal intimidation and threat made by the first accused and his brother Jeevanandham.

18.Now whatever it may be, even without cross examining the injured, who is also one of the eye witness to the occurrence, the parent case was proceeded and ended in acquittal. The manner in which the above said proceedings were undertaken not only by the prosecution, but also by the trial court cannot be appreciated. It is



Crl.M.P.(MD)No.15224 of 2023

a case of murder in the presence of the eye witness, who is also an injured. So the injured ought to have been examined in the parent case, but they failed. But however, I am of the considered view that the same mistake should not be committed by the trial court.

19.As mentioned above, the first respondent is facing several criminal cases including murder, attempt to commit murder, dacoity, etc. If such a person is enlarged on bail, again every likelihood of causing threat to the witnesses, making the entire trial process as a mockery. So this should not be permitted.

20.How the trial court has missed this important aspect while granting bail is not clear on record. Now whatever it may be, at the time of hearing the petition for cancellation of bail, not only the post conduct of the accused, but also the very nature of the order.

21.Here, as mentioned above, since the parent case ended in acquittal, it appears that the bail granted to A1 by the trial court, which I am of the considered view may not be proper, in the light of the present and subsequent development.



CrI.M.P.(MD)No.15224 of 2023

WEB COPY

22.As mentioned above, the trial court reported that based upon the complaint given by the de-facto complainant, the case was registered against A1 and others for having caused threat and criminal intimidation. Such person, if released on bail, certainly justice will not be rendered to the victims. So the undertaking given by the first respondent cannot be taken into at all.

23.So not only on the basis of the post-conduct behaviour of the first accused, but also on the very unreasonable nature of the bail requires interference. Accordingly, this petition is liable to be allowed by cancelling the bail granted to the first respondent.

24.In the result, this criminal original petition is **allowed**. The order of bail granted by the Principal Sessions Judge, Sivagangai, in SC No.118 of 20215, dated 20.03/2028 to the first respondent is hereby cancelled. The trial court depending upon the out of CrI.OP(MD)No.503 of 2023, may go on with the trial process.

Index:Yes/No
Internet:Yes/No
er

19/09/2023



Crl.M.P.(MD)No.15224 of 2023

WEB COPY To,

- 1.The Principal District & Sessions Judge,
Sivagangai.
- 2.The Inspector of Police,
Kalayarkovil Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.M.P.(MD)No.15224 of 2023

G. ILANGO VAN, J

er

CrI.OP (MD) No.15224 of 2023

19/09/2023



WEB COPY



CrI.M.P.(MD)No.15224 of 2023