



Crl.O.P.(MD).No.21471 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH

CHANDIRA

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Dharmaraj

...Petitioner

Vs.

1.Sijin

2.Vijin

...Respondents/A2 & A3

3.The Inspector of Police,
Puttukadai Police Station,
Puttukadai,
Kanyakumari District.

4.Radhakrishnan
The Sub-Inspector of Police,
Puttukadai Police Station,
Puttukadai,
Kanyakumari District.

...Respondents

PRAYER: Criminal Original Petition filed under Section 439(2) of Cr.P.C., to cancel the bail granted by the fourth respondent to the first and second respondents/A2 and A3 in Crime No.148 of 2022 pending on the file of the third respondent.



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For Petitioner : Mr.C.Robert Bruce
For R1 & R2 : Mr.D.Christenson Jugunu
For R3 : Mr.A.Albert James
Government Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed to cancel the bail granted by the fourth respondent to the first and second respondents/A2 and A3 in Crime No.148 of 2022 pending on the file of the third respondent.

2.The learned counsel for the petitioner would submit that the petitioner has lodged a complaint on 18.05.2022 before the second respondent against one Selvanayagam S/o.Thangkamuthu and his two sons namely, Sujin and Vijin stating that they waylaid his car, abused him in filthy language, assaulted him, caused damage to his car and snatched his chain. The fourth respondent investigation officer did not register the case and only thereafter, the fourth respondent obtained his signature in a statement preferred by them and after five days, the fourth respondent registered a case in Crime No.148 of 2022 against the



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accused for the offences under Sections 147, 341, 294(b), 323, 427, 379 and 506(I) of IPC. After registration of the case, the fourth respondent fully supported the accused persons, hence the petitioner filed a writ petition before this Court in W.P.(MD)No.10945 of 2022 seeking transfer of investigation and the same was dismissed as premature in nature. Whileso the fourth respondent instead of handing over the investigation, he himself deleted Section 379 IPC and released the accused 2 and 3 on their own bond in the station itself. Thereafter, the first accused had filed an application for anticipatory bail before the District and Sessions Court, Nagercoil in Crl.M.P.No.2633 of 2022 and the same was allowed with a condition that he should appear before the Kanyakumari Police Station twice daily. He would further submit that it is a case where the gold chain of the petitioner was lost in the incident and if Section 379 IPC is deleted, the petitioner will lose his chain and further, Section 506(i) IPC, which is a non-bailable offence was deleted and thereby, the accused were let out on station bail. The acts of the fourth respondent was illegal and thereby, the petitioner has filed the petition seeking to cancel the bail granted to the respondents 1 and 2/A2 and A3.



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3.The learned counsel for the respondents 1 and 2/A2 and A3 would submit that the complaint had preferred on account of a previous enmity regarding the civil dispute, the petitioner had given a false complaint against him. He would further submit that the accused have not intimidated the de-facto complainant and an exaggerated complaint was given by the petitioner/de-facto complainant stating that the gold chain was lost. He would further submit that the petitioner had purposefully given a false complaint only to see that Non-bailable offences are registered against the accused. He would further submit that after due investigation was done by the respondent police, finding that the allegation of theft of gold jewels was false and that there was no criminal intimidation, had deleted those Sections and thereafter, filed the final report for the offences under Sections 341, 294(b), 323, 427 and 506(i) of IPC and since all these offences are bailable in nature, the accused appeared before the respondent and they were released on station bail. Now the final report has been taken on file and the case is pending in C.C.No.1021 of 2022 on the file of the learned Judicial Magistrate No.II, Kulithurai and the case now stands posted to 08.03.2022. He would further submit that the petition has been filed



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only to harass the respondents 1 and 2/A2 and A3 and thereby, he would seek for dismissal of the application.

4.The learned Government Advocate (Crl. side) appearing for the respondents 3 and 4 would submit that based on the complaint given by the petitioner, a case was registered in Crime No.148 of 2022 for the offences under Sections 147, 341, 294(b), 323, 427, 379 and 506(I) of IPC. Thereafter, the respondent police conducted an independent enquiry and during such time, it was found that an exaggerated complaint was given by the petitioner/de-facto complainant. Based on the enquiry conducted by the respondent police by summoning the accused, they found that no theft had been committed and hence, they had deleted Section 379 of IPC. He would further submit that it is the prerogative of the police officer to arrest or not to arrest the person and he has also relied on the Judgment of the Hon'ble Apex Court in the case of *Joginder Kumar Vs. State of U.P. and Others* reported in *(1994) 4 SCC 260*, wherein, it has held that no arrest can be made in a routine manner on a mere allegation of a commission of an offence made against a person and he would submit that the petitioner after



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receipt of the complaint, after thorough enquiry and being satisfied deemed it fit not to arrest the accused and thereby, they were let out on station bail. However, he would further submit that the Courts have repeatedly held that except in heinous offences, arrest must be avoided and it is sufficient that the police officer issues notice to a person to attend the Station House and not to leave the Station without permission would do and in this case, the respondent police issued notice for appearance and on notice being given to the accused, they have appeared before the police station and after enquiry they were let out on station bail. He would further submit that subsequently in ***Arnesh Kumar Vs. State of Bihar and Another*** reported in **(2014) 8 SCC 273**, the Hon'ble Apex Court has held that the police officer do not arrest the accused unnecessarily and Magistrate do not authorise detention causally and mechanically and the Courts have also issued slew of directions and only after following the said directions, the respondent police had taken such a step and thereby, he would seek for dismissal of the cancellation of bail application.

5.Heard. Perused the materials available on record.



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6.Taking into consideration the facts and the submissions and also being satisfied with the submissions made by the respondent police, this Court finds no merits in the petition seeking for cancellation of bail.

7.Accordingly, this Criminal Original Petition is dismissed.

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

1.The Inspector of Police,
Puttukadai Police Station,
Puttukadai,
Kanyakumari District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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A.D. JAGADISH CHANDIRA, J.

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