



Crl.M.P.No.5739 of 2024

Crl.M.P.No.5739 of 2024
in Crl.O.P.No.14775 of 2022

G.K.ILANTHIRAIYAN, J.

This petitions has been filed to cancel the bail bonds executed by the second respondent herein before the Judicial Magistrate, Katpati, thereby releasing the second respondent, in connection with C.C.No.186 of 2023.

2. On the complaint lodged by the petitioner, the first respondent registered FIR in Crime No.6 of 2022 as against the second respondent for the offence under Section 420 of IPC. The case of the prosecution is that the second respondent, upon false promise to secure an Assistant Public Relationship Officer job for the petitioner's son, received a sum of Rs.22,00,000/- and thereafter, he failed to arrange the job and also refused to return the amount to the petitioner. Earlier, on the complaint lodged by the petitioner on 06.09.2021, enquiry was conducted by the respondent police, wherein the second respondent appeared and sought time for repayment and subsequently issued a cheque for a sum of Rs.20,00,000/-, and the same was returned as unpaid. Hence, the present complaint.

3. Initially this Court by an order dated 05.07.2022, granted



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anticipatory bail to the second respondent in Crl.O.P.No.14775 of 2022

on the following conditions :-

“6.Accordingly, the 1st petitioner is directed to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the defacto complainant by way of Demand Draft within a period of two weeks and on such payment and production of acknowledgment, the 1st Petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy is made ready, before the learned Judicial Magistrate No.II, Vellore, on condition that the 1st petitioner shall execute a separate bond for a sum of Rs.10,000 /- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the 1st petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the 1st petitioner shall pay a sum of Rs.20,00,000/- (Rupees Twenty Lakh only) to the defacto complainant by way of Demand Draft.

[c] the 1st petitioner shall report before the respondent



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police daily at 10.30 a.m for a period of four weeks and thereafter as and when required for interrogation.

[d] the 1st petitioner shall not tamper with evidence or witness either during investigation or trial.

[e] the 1st petitioner shall not abscond either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the 1st petitioner in accordance with law as if the conditions have been imposed and the 1st petitioner released on bail by the learned 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].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.”

4. However the second respondent could not able to comply the said conditions and filed petition for modification to modify the conditions imposed by this Court. Consideration the facts and circumstances, this Court by an order dated 24.08.2022, in Crl.M.P.No.13156 of 2022 in Crl.O.P.No.14775 of 2023, modified the order by deleting the conditions to pay the sum of Rs.20,00,000/- to the defacto complainant by way of Demand Draft.

5. Thereafter, the defacto complainant/petitioner filed petition



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in Crl.M.P.No.2183 of 2023 in Crl.O.P.No.14775 of 2022, to cancel the anticipatory bail granted to the second respondent on the ground that the second respondent suppressed the fact and behind his back filed petition for modification and obtained an order of modification by deleting the conditions imposed in the anticipatory bail. Considering the above submission, this Court cancelled the anticipatory bail granted to the second respondent and allowed the petition in Crl.M.P.No.2183 of 2023 by an order dated 09.08.2023. Further, this Court granted liberty to the first respondent police to secure the second respondent and proceed in accordance with law. Even then, the first respondent did not take any steps to secure the second respondent.

6. Thereafter, the second respondent himself surrendered before the learned Judicial Magistrate, Katpadi, on 10.11.2023 and his surrender was accepted. On the same day, the second respondent also produced sureties and the same were accepted and issued bail in favour of the second respondent. Aggrieved by the same, the petitioner filed the present petition with the above prayers.

7. On perusal of the order passed by the learned Judicial



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Magistrate, Katpadi, revealed that the second respondent was surrendered on 10.11.2023 under Section 88 of Cr.P.C., and also produced sureties. It is relevant to extract the provision under Section 88 of Cr.P.C., as follows:-

“88. Power to take bond for appearance:- When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.”

8. It is not at all applicable to the case on hand since, the petitioner's anticipatory bail already cancelled by this Court and directed the first respondent to secure the second respondent and proceed in accordance in law. However, the second respondent himself surrendered before the learned Judicial Magistrate and his surrender was duly accepted by the learned Judicial Magistrate. The acceptance of the sureties was in accordance with law. Thereafter mere production of sureties, the learned Judicial Magistrate accepted the same and issued



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bond as contemplated under Section 88 of Cr.P.C. It is not the case to issue bond for appearance of the accused by producing sureties. After surrender, the second respondent can file bail petition. However, without filing any bail application, he produced sureties and the same was also mechanically accepted by the learned Judicial Magistrate and released him on bail.

9. Therefore, the order dated 10.11.2023 passed by the learned Judicial Magistrate, Katpati, in connection with C.C.No.186 of 2023, is hereby set aside. The first respondent is at liberty to secure the second respondent and proceed in accordance with law.

10. Accordingly, the Criminal Miscellaneous Petition stands allowed.

19.06.2024

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