



Crl.O.P.No.15410 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :08.07.2024

Pronounced on :12.07.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.No.15410 of 2024

Basha

.. Petitioner

/versus/

State represented by
Inspector of Police,
SID-CID, Coimbatore,
Coimbatore City.
Cr.No.7/2022

.. Respondent

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to set aside the impugned order dated 28.05.2024 passed in C.M.P.No.3071/2024 on the file of the Hon'ble Court Chief Judicial Magistrate, Coimbatore.

For Petitioner :Mr.I.Abdul Basith

For Respondent :Mr.S.Udaya Kumar

Govt.Advocate (Crl.Side)



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ORDER

The petitioner herein is the accused in Crime No.7 of 2022 which is under investigation by the respondent police.

2. The case against this petitioner is that on 22.09.2022 at about 08.00 p.m., he along with one Naveeth went in a two wheeler and had thrown petrol bombs at the textile shop of one Dinesh kumar at Uppannakara Street, Coimbatore. Initially, case was registered by Varsity Hall Police Station in Crime No.182 of 2022 under Sections 153, 285, 435 of IPC. Later, it was transferred to Special Investigation Team of CBCID and taken up for investigation in Crime No. 7 of 2022 for the offence punishable under Sections 153, 285, 435 of IPC @ Sections 307, 436, IPC and Section 3 of Explosive Substance Act.

3. In the course of investigation, this petitioner was arrested on 06.10.2022. Further investigation reveals that the two wheeler used by this accused and co-accused to proceed to the defacto complainant's shop was a Blue Colour, TVS Jupiter two wheeler bearing Reg.No.TN 66 AC



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3667. Further investigation with RTO Coimbatore disclosed that the vehicle stands in the name of Shifanath, the wife of the accused/petitioner.

4. The petitioner herein sought for bail under Section 167(2) of Cr.P.C before the trial Court. Since the police failed to complete the investigation within 90 days, the Judicial Magistrate granted bail on condition that the petitioner/accused should appear before the Investigating Officer on every Monday at 10.30 a.m. until further orders. When the petitioner sought for relaxation of the bail condition, it was opposed by the prosecution stating that the petitioner has failed to co-operate with the investigation. When the Investigating Officer sought to produce the vehicle used by the accused for commission of crime, the petitioner failed to produce the same. The trial Court recording the said fact dismissed the petition for relaxation of the bail condition. Thereafter, the Investigating Officer has filed a petition for cancellation of bail under Section 439(2) of Cr.P.C.

5. The petition in Crl.M.P.No.3071 of 2024 for cancellation of



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bail was taken up for consideration, the Court provided an opportunity to the petitioner/accused to produce the vehicle. However, the petitioner failed to produce the two wheeler. Therefore, taking note of the fact that the accused wantonly and voluntarily concealing the vehicle used for the crime held that if he is allowed to retain the vehicle and also permitted to enjoy the bail, there is every possibility of committing similar offence, the trial Court also observed that the petitioner and his wife intentionally concealing the vehicle because production of the vehicle will be incriminating the accused. Hence, the trial Court cancelled the bail.

6. Being aggrieved by the cancellation of the bail for the reason stated above, the present petition is filed under Section 482 of Cr.P.C stating that the petitioner was granted bail due to default of the Investigating Officer not filing the final report within 90 days. The only condition imposed while granting bail is to report before the Investigating officer on every Monday @ 10.30 a.m., until further orders. The said condition been scrupulously complied by the petitioner. Therefore, the petitioner's bail cannot be cancelled for any other extraneous reasons.



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Moreso, the reason for not producing the two wheeler is that if he produce, it will be used against him being self incriminating.

7. The learned counsel appearing for the petitioner submitted that the bail granted by the Court cannot be cancelled without valid reason. Forcing the accused to produce material which would be incriminating is prohibited under the Constitution. Relying upon the judgment of the Hon'ble Supreme Court in *State of Gujarat v. Shyamlai Mohanlal Choksi reported in AIR 1965 SC 1251*, the learned counsel submitted that there cannot be a testimonial compulsion on the accused person. Article 20(3) of Constitution protects the accused from testimonial compulsion. Directing the accused to produce the two wheeler tantamount to testimonial compulsion and for not production of the two wheeler, the bail granted cannot be cancelled.

8. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the Judicial Magistrate, after considering



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the submissions made by the learned counsels for the accused as well as the catena of judgments rendered by the Hon'ble Supreme Court regarding the power of the police summoning the accused under Section 91 of Cr.P.C, has held that withholding the material object which is necessary for investigation amounts to non-co-operation for the investigation. Therefore, the cancellation of bail is inconsonance with law.

9. Certain peculiar facts in this case necessitates to test whether the cancellation of bail is legally sustainable. Incident of bomb throwing occurred on 22.09.2022, at about 20.00 hours. The petitioner and his associates, who were the members of the banned association called as “Popular Front of India” had involved in this crime protesting the raid conducted at the office of PFI by the National Investigation Agency across Tamil Nadu. From the CCTV footage the petitioner and his associate were identified. The vehicle in which they came to the shop of the defacto complainant also identified. After the arrest of the petitioner, the Investigating Officer has collected information about the ownership of the vehicle in which the petitioner and the co-accused travelled to commit the



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crime. Since the information revealed that the vehicle stands in the name of the petitioner's wife, summons under Sections 160 and 91 of Cr.P.C., caused to the petitioner and his wife for production of the two wheeler.

10. Section 91 of Cr.P.C., reads as below:-

“Section 91: Summons to produce document or other thing-(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed--



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(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

11. The above said Section empowers the investigating officer to summons any person, who believe to be in possession of document or property to produce the same, at the time and place stated in the summons.

12. The learned counsel appearing for the petitioner states that the petitioner being the accused he has every right to refuse production of vehicle. He has a fundamental right to refuse production of self-incriminating material. For the said reason, the bail granted already cannot be cancelled.

13. Though the above said submissions superficially appears to



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be legally sustainable, on deep analysis of the bail order as well as the order passed on the petition filed for cancellation of bail, it can be seen that the Investigating officer has collected adequate material to show that the accused has used the two wheeler bearing Reg.No.TN 66 AC 3667 for the commission of crime. The said vehicle been purchased in the name of Shifanath, wife of the petitioner. Notice for production of the vehicle served on Shifanath on 15.12.2023. She has not produced the vehicle. She is none other than the wife of Basha, who is the petitioner/accused in this case. The reason for not producing the two wheeler as stated by the petitioner's wife is that the vehicle got lost when it was parked in a public place during the year 2022. In this regard, she claims that she had given a complaint to the District Collector on 18.12.2023 and therefore, the two wheeler is not in her possession. This explanation by the wife of the petitioner been rightly disbelieved by the Court below, since the alleged missing of two wheeler since 2022 been reported to the District Collector after one year only on 18.12.2023. Just 3 days after the summons to produce the two wheeler received by the petitioner on 15.12.2023.



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14. Thus, it is very clear that 3 days after receipt of the summons, the petitioner's wife has attempted to create document as if her vehicle got lost 1 ½ years ago for which she reports to the District Collector regarding missing of the vehicle. The conduct of the petitioner and his wife would clearly indicate that it is an attempt to screen the evidence and it is punishable independently.

15. Be that as it may, this Court also put to itself the question whether for the refusal to produce the vehicle or attempt to screen the evidence, can the bail granted be cancelled, if so, how long. For this question, this Court is of the view that the cancellation of bail for the purpose of refusal to co-operate with the investigation is legally sustainable, since it is the condition implicit. Whether the bail granted on merit or default, the accused is duty bound to co-operate for the investigation. The consequence of the refusal to produce the two wheeler is a strong inference against the petitioner. Moreso, when the police is in their possession of the CCTV footage which show that the petitioner and the co-accused travelling in the two wheeler bearing Reg.No.TN 66 AC



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3667 at the time of occurrence to the scene of crime. The said vehicle become an important material object for the case. For the said reason, having satisfied that the petitioner by not producing the two wheeler and is attempting to tamper the evidence, the trial Court has cancelled the bail, but one determining fact in this case is the failure of the police not filing the final report till date.

16. The learned Government Advocate (Crl.Side) reports that till date final report not filed since the two wheeler could not be traced. The non filing of the final report makes difference in this case.

17. On considering the right of the State to investigate and the right of the individual conferred under Article 21 of the Constitution of India, this Court holds that the conduct of the petitioner not producing the two wheeler can be a fact to draw adverse inference against him but that can not be a reason to cancel the bail granted, since his right to get default bail still available to him.



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18. Hence, this Criminal Original Petition is allowed. The cancellation of bail for the reasons stated above is set aside.

(i)The petitioner shall be set at liberty on executing a bond for Rs.25,000/- with two sureties each for a like sum to the satisfaction of the Chief Judicial Magistrate, Coimbatore.

(ii)The petitioner shall report before the Investigating Officer on every Monday at 10.30 a.m., until further orders.

12.07.2024

Index:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
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To

1.The Chief Judicial Magistrate, Coimbatore.



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2. Inspector of Police, SID-CID, Coimbatore, Coimbatore City.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J

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delivery Order made in
Crl.O.P.No.15410 of 2024

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