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CRL O.P. No.22111 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

Crl. O.P. No.22111 of 2024

G. Yasodharan S/o. Gurusamy Petitioner

VS

1. K. Jayaprakash S/o. M. Kuppusamy ... 1st Respondent / 1st
Accused

2. State represented by:

The Assistant Commissioner of Police,
Central Crime Branch-I, Vepery,
Chennai-600 007. ... 2nd Respondent / Complainant.

PRAYER: - The Criminal Original Petition is filed under Section 439(2)

of Criminal Procedure Code praying to cancel the bail granted to the 1st
respondent / 1st Accused vide order dated 11.06.2024 passed in Crl. M.P.

No.15494 of 2024 by the Sessions Judge, Chennai.

For Petitioner : Mr. Muthu Ganesa

For Respondents : Mr. C. Iyyapparaj for
Mr. A.P. Balaji [for R1]

Mr. S. Santhosh [for R2]
Govt. Advocate (Crl. Side)



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ORDER

This petition has been filed by the petitioner to cancel the bail granted to the 1st respondent vide order dated 11.06 .2024 in Crl. M.P. No.15494 of 2024 by the Sessions Judge, Chennai.

2. The learned counsel appearing for the petitioner would contend that he is the defacto complainant in the above said criminal complaint. He lodged a complaint before the 2nd respondent and based his complaint, FIR has been registered as against the 1st respondent and others in Cr. No.45 of 2024 under Sections 406, 420 and 120-B of IPC. The 1st respondent / 1st accused was arrested and remanded to judicial custody on 26.04.2024 and thereafter, he filed a bail application in Crl. M.P. No.15494 of 2024 by suppressing the material facts and obtained bail through an order dated 11.06.2024. In fact, the 1st accused pleaded in the bail application that the Educational Trust is said to have approached the 1st accused for sale of its properties and patta was obtained in the name of the Educational Trust, thereafter, it was transferred in favour of SIPCOT by way of acquisition and thereafter, the educational trust further represented that they will get restoration of patta



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in their name and the 1st accused paid a sum of Rs.45 lakhs as advance to the bank account furnished by the educational trust. The remaining amount of Rs.6 crores have to be paid after getting the patta in favour of the petitioner educational trust. Further, the petitioner filed a Suit for recovery of money in O.S. No.601 of 2023 on the file of Principal District Court, Erode and also lodged a complaint on 08.02.2024 and registered a case in Cr. No.24 of 2024 on the file of the 2nd respondent for the offences under Sections 406, 420 and 120-B of IPC and subsequently, it was dropped. Based on the 2nd complaint, the present FIR has been registered. In fact, the trial Court failed to consider the serious allegations made against the 1st accused. The petitioner educational trust verified the title deeds and all revenue records and encumbrance certificate and obtained legal opinion and thereafter, purchased the property. The 3rd accused stated about the involvement of accused 1 to 5 in agreement of criminal conspiracy to commit criminal breach of trust is made out and the accused have constantly with wilful and dishonest intention from the inception persuaded and persisted the petitioner Trust to pay the amount by inducement. But the Court granted



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bail to the 1st accused on the sole ground that arrest of 1st accused has been made without mandatory notice to the 1st accused before his arrest as required under Section 41-A of Cr.P.C. In fact, on 04.01.2024, the summons was issued for enquiry by the 2nd respondent requiring his presence and the 1st accused also attended the enquiry. Therefore, he suppressed the material facts and the offences are grave in nature. Therefore, the anticipatory bail granted to the 1st accused has to be cancelled.

3. The learned counsel appearing for the 1st respondent / 1st accused would contend that based on the complaint given by the petitioner, the 2nd respondent has registered the case in Cr. No.45 of 2024 for the offences under Sections 406, 420 and 120-B of IPC. In fact, the he has not committed any offence as alleged by the petitioner and the prosecution. The 2nd respondent arrested the 1st accused on 26.04.2024 and he also filed bail application before the Sessions Court, Chennai and after considering the period of incarceration, nature of offences and also considering the fact that notice under Section 41-A of Cr.P.C. was not issued by the investigation officer to the accused before his arrest and



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considering all the other factors, the Sessions Court granted bail to the 1st accused. Therefore, the Sessions Court has passed a reasoned order and therefore, the present petition is liable to be dismissed.

4. The learned Government Advocate (Criminal side) appearing for the 2nd respondent also would submit that based on the complaint given by the petitioner, the respondent police have registered a case in Cr. No.45 of 2024 for the offences under Sections 406, 420 and 120-B of IPC and thereafter, they conducted investigation. In the meanwhile, the Sessions Court, after hearing both sides and perusing the records, granted bail to the 1st accused on condition to report before the respondent police daily until further orders and the 1st accused has also complied the condition and thereafter, the condition was relaxed.

5. Heard both sides' arguments and perused the materials available on record.

6. This petition has been filed by the petitioner / defacto complainant to cancel the bail granted to the 1st respondent. The 2nd respondent, based on the complaint given by the petitioner, registered the case in Cr. No.45 of 2024 for the offences under Sections 406, 420



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and 120-B of IPC. Thereafter, they arrested the 1st respondent / 1st accused on 26.04.2024 and the Sessions Court, Chennai has granted bail on the ground that all the offences are punishable upto 7 years and fine and therefore, as per the judgments of Hon'ble Supreme Court of India in ***Satender Kumar Antil vs. Central Bureau of Investigation and another and AIR 2014-SC-2756 reported in Arnesh Kumar vs. State of Bihar*** and also considering all the other aspects. The main point urged by the petitioner to file this bail cancellation petition is that the Trial Court granted bail on the sole ground that notice under Section 41-A of Cr.P.C. was not issued by the investigation officer and thereby, granted bail.

7. This Court perused the order passed by the Sessions Court, Chennai. The Sessions Court, after referring the judgments of Hon'ble Supreme Court of India in ***Satender Kumar Antil vs. Central Bureau of Investigation and another and AIR 2014-SC-2756 reported in Arnesh Kumar vs. State of Bihar*** and also considering the other aspects, granted bail to the 1st respondent. It is observed in the order passed by the Sessions Court that the investigation officer is bound to issue Notice under Section 41-A of Cr.P.C. to the accused before making arrest, but



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no such notice was issued by the investigation officer. After registration of FIR, arrest was made without following the procedures and directions of the Hon'ble Supreme Court. Though the Sessions Judge, Chennai has granted bail on the ground of the non-issuance of notice under Section 41-A of Cr.P.C., the 1st respondent was in judicial custody from 26.04.2024 and no previous case is pending against the accused. Even according to the petitioner, huge amount was given for transfer of patta and the 2nd respondent police have also not taken the 1st respondent into their custody for custodial interrogation. An ordinary prudent man cannot expend such huge amount for transfer of patta. It is also an admitted fact that the petitioner is running a School and he very well knows about the transfer of patta procedures. Though, the Trial Court has granted bail to the 1st respondent on the ground that Section 41-A notice was not issued before arrest, this Court considered all the aspects discussed above and there are no grounds to cancel the bail and this petition has no merits and deserves to be dismissed.

8. Accordingly, the Criminal Original Petition is dismissed. No costs.



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index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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P.DHANABAL,J

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To

1. The Sessions Judge, Chennai.
2. The Public Prosecutor, High Court, Madras.
3. The Assistant Commissioner of Police,
Central Crime Branch-I, Vepery, Chennai-600 007.

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