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Crl.OP.No.28730 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28730 of 2023

Mohamed Nazeer
S/o.Akbar Ali

... Petitioner

Vs.

State represented by
The Inspector of Police,
Cyber Crime Police Station,
Central Crime Branch,
Vepery, Chennai - 600 007.
Crime No.194 of 2023

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C.,
pleased to set aside the order dated 13.12.2023 passed *vide*
Crl.M.P.No.54270 of 2023 by Additional Chief Metropolitan Magistrate
Court, Egmore, Chennai - 8.

For Petitioner : Mr.T.R.Sivaram

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



Crl.OP.No.28730 of 2023

ORDER

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2. Heard Mr.T.R.Sivaram, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondent.

3. A First Information Report came to be registered in Crime No.194 of 2023. The petitioner was arrayed as A3 in the First Information Report. The case of the prosecution is that the Bharthi Airtel Limited was providing telecommunication services to the subscribers in various telecom services. It came to light that several illegal telecom set ups were parallely run for nearly three months and this connectivity was used to receive calls from foreign countries to India. The SIM used in the SIM box was acting as a GSM VoIP gate way which was used to bridge foreign VoIP calls with the network in India. Accordingly, the illegal telecom set up was used to receive foreign calls at the Indian end. Considering the seriousness of the allegations made in the complaint and



Crl.OP.No.28730 of 2023

taking into account the national security, the investigation was commenced by the respondent police.

4. The petitioner was arrested by the respondent police on 27.07.2023 and he was remanded to judicial custody. Subsequently, the petitioner moved a bail petition in Crl.M.P.No.31654 of 2023 before the Additional Metropolitan Magistrate, Egmore, Chennai. Learned Magistrate, by order dated 03.08.2023, allowed the petition and enlarged the petitioner on bail by imposing certain conditions. One such condition that was imposed by learned Magistrate was that the petitioner will not tamper with the evidence or witness either during investigation or trial. The petitioner was also directed to appear before the Court as and when required.

5. The respondent police moved a petition before the Court below in Crl.M.P.No.54270 of 2023 seeking for cancellation of bail. The respondent took a stand that the petitioner (A3) had instructed A4 to direct his friend Sathish to hide the SIM boxes in a rented house in Saidapet. It was further alleged that the petitioner (A3) was giving shelter



Crl.OP.No.28730 of 2023

WEB COPY

to A4 to prevent his arrest in spite of the fact that the anticipatory bail of A4 was dismissed. That apart, when the above said Sathish was summoned and enquired u/s.41-A of Cr.P.C., he had admitted to the fact that A4 had given him such a direction pursuant to the instructions given by A3 and it is A3, who was giving shelter to A4 to prevent his arrest.

6. The Court below, on considering the grounds raised by the respondent, came to a conclusion that there are supervening circumstances to cancel the bail granted in favour of the petitioner (A3) and accordingly, the bail granted in favour of the petitioner (A3) was cancelled by order dated 13.12.2023. Aggrieved by the same, the present petition has been filed before this Court.

7. The short issue that arises for consideration in this petition is as to whether the petitioner has violated any of the conditions imposed by the Court below while enlarging the petitioner on bail and whether the petitioner has involved himself in certain acts which can be considered to be supervening circumstances resulting in the cancellation of the bail granted in favour of the petitioner.

8. There is no dispute with regard to the fact that the petitioner was



Crl.OP.No.28730 of 2023

enlarged on bail on 03.08.2023. The allegation as against the petitioner is to the effect that he was giving shelter to A4 and he had further instructed A4 to direct his friend Sathish to hide the SIM boxes, which had taken place even before the petitioner was enlarged on bail.

9. Insofar as the cancellation of bail is concerned, the conduct of the accused person pursuant to his enlargement on bail alone should be considered. There is a marked difference between cancelling the bail and challenging the bail order on the ground that it suffers from illegality since the vital materials were not considered at the time of passing the order. For cancellation of bail, the Court has to see if there are supervening circumstances that have arisen after the accused was enlarged on bail or the accused person is misusing the liberty granted by not complying with the conditions after he was enlarged on bail. A bail can never be cancelled for those incidents which took place before the accused was enlarged on bail. The materials that were relied upon for those incidents which took place before the accused person was enlarged on bail, can only give a cause of action for the prosecution to file a petition questioning the legality of the bail order. This differentiation was



Crl.OP.No.28730 of 2023

brought out by the Hon'ble Apex Court in the judgment in ***Mahipal v. Rajesh Kumar @ Polia & another [(2019) 3 MWN (Crl.) 491]***.

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10. The Court below while cancelling the bail granted in favour of the petitioner had taken into account certain incidents that had taken place before the petitioner was enlarged on bail. That can never be a criteria for cancellation of bail. At the best, it can only give a cause of action to question the legality of the bail order. That apart, it was also brought to the notice of this Court that the bail that was granted in favour of A5 and A6 was also cancelled. Subsequently, these two persons were enlarged on bail.

11. In the light of the above discussion, the order passed by the Court below requires the interference of this Court. Accordingly, the order passed in Crl.M.P.No.54270 of 2023, dated 13.12.2023, is hereby set aside. However, considering the nature of allegations found in the complaint and the seriousness of the case, this Court is inclined to direct the petitioner to appear before the respondent police daily at 05.30 p.m. until further orders. To that extent, one of the condition that was imposed



Crl.OP.No.28730 of 2023

by the Court below while granting bail to the petitioner to appear before the Court as and when required, stands modified.

In the result, this Criminal Original Petition is allowed in the above terms.

09.01.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1.The Additional Chief Metropolitan Magistrate Court,
Egmore, Chennai - 8.

2.The Inspector of Police,
Central Crime Branch,
ACP – II, Team – I,
Tambaram Police Commissioner Office,
Sholinganallur, Chennai – 119.

3.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J.



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Crl.OP.No.28730 of 2023

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Crl.O.P.No.28730 of 2023

09.01.2024