



CRL MP(MD) No.1170 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twenty Sixth day of March Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI
CRL MP(MD) No.1170 of 2024
in
CRL OP(MD)No.19108 of 2018

P.JAMBULINGAM

... PETITIONER/DEFACTO COMPLAINANT

Vs

1 THE INSPECTOR OF POLICE
CITY CRIME BRANCH,
TIRUCHIRAPPALLI CITY,
TIRUCHIRAPPALLI DISTRICT.
(CR.NO.38/2018)

... 1st RESPONDENT/1st RESPONDENT

2 SANTHANAM

... 2nd RESPONDENT/PETITIONER

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Cancel the Anticipatory Bail order passed by this Honourable Court in Crl.O.P.(MD). No.19108/2018 dated 08.02.2019.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.ARUNRAJ.K, Advocate for the petitioner and of Mr.P.KOTTAICHAMY, Government Advocate(Crl.side) on behalf of the 1st Respondent and MR.M.RAGUL, Advocate for the 2nd respondent, the Court made the following order:-

This Petition has been filed under Section 439(2) of Code of Criminal Procedure to set aside the order made in Crl.O.P(MD).No.19108 of 2018 dated 08.02.2019 on the file of this Court and cancel the anticipatory bail granted therein.

2. The case of the prosecution is that the petitioner is a defacto complainant and

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he made a complaint before the respondent Police as if the second respondent is running a gas agency in the name and style of Sathiyas Gas Agency at Mannarpuram and he induced the petitioner to invest money to the credit of the said Gas Agency. Accordingly, the petitioner invested a total sum of Rs.97,00,000/-. Thereafter, the second respondent/accused neither returned the money nor paid the share amount, for which defacto complainant lodged the present complaint. Against which, the respondent/accused preferred anticipatory bail before this Court on 08.02.2019.

3. This Court had granted anticipatory bail on 08.02.2019, wherein, in paragraph No.3, the learned counsel for the second accused/petitioner submitted that the petitioner was ready to deposit a sum of Rs.12,00,000/- within a period of four weeks therefrom. Based on the above submission only, this Court granted anticipatory bail to the second accused/ petitioner on condition to deposit a sum of Rs.12,00,000/- to the credit of Crime No.38 of 2018 before the Court below within a period of four weeks therefrom. Further, this Court issued a direction to the concerned Judicial Magistrate to accept the sureties on receiving the receipt for the payment of Rs.12,00,000/- and on such deposit, the learned Judicial Magistrate shall disburse the said amount to the defacto complainant within a period of two weeks therefrom. Thereafter, the second respondent paid Rs.6,00,000/- to the defacto complainant directly on 19.03.2019. He filed a petition in CrI.M.P(MD) No.5568 of 2019 in CrI.O.P



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(MD) No.19108 of 2018 seeking extension of time to pay a sum of Rs.6,00,000/-, in which cost of Rs.3,000/- was imposed upon the second respondent herein on 25.06.2019 and on 02.07.2019, a direction was issued to the second respondent herein to pay Rs.6,00,000/- on or before 12.07.2019, however, the second respondent did not comply the condition imposed upon him, hence the petition seeking extension of time was dismissed on 22.07.2019. It is a clear violation of the order passed by this Court, vide order dated 08.02.2019. Hence, the petitioner herein preferred a petition for cancellation of anticipatory bail.

4. The learned counsel for the second respondent would submit that the second respondent/accused could not mobilise the funds for complying the condition imposed upon him by this Court.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent/accused and perused the materials available on record.

6. Section 439 (2) of Cr.P.C. clothes the Court with the power to deal with issue relating to cancellation of bail. The Supreme Court has enumerated the following supervening factors that justify cancellation of bail :-

- i) Interference or attempt to interfere with the due course of administration of justice;
- ii) Evasion or attempt to evade the due course of justice;



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iii) Abuse of the concession granted to the accused;

iv) Possibility of the accused absconding;

v) Likelihood of/actual misuse of bail;

vi) Likelihood of the accused tampering with the evidence or threatening witnesses;

vii) Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.

7. The courts should be more rigid in its examination of violation and proof of violation in matters relating to cancellation of bail. Various decisions of the Hon'ble Apex Court vests the courts with power and discretion to cancel bail even when there are no supervening circumstances and broadly classified, they could be brought under the following heads :-

i) Where the court granting bail ignores relevant material and takes into account irrelevant material of substantial nature and not trivial nature;

ii) Where the court granting bail overlooks the position of the accused qua the victim especially if the accused is in some position of authority such as a policeman and there is prima facie, a misuse of position and power, including over the victim.



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iii) Where the court granting bail ignores the past criminal record and conduct of the accused while granting bail;

iv) Where bail has been granted on untenable grounds;

v) Where the order granting bail suffers from serious infirmities resulting in miscarriage of justice;

vi) Where the grant of bail was not appropriate in the first place, given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified;

vii) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

(Emphasis Supplied)

8. From the above, it is amply evident that even if there are no supervening circumstances, even then the Courts are empowered to cancel the bail granted to the accused.

9. The petitioner is the defacto complainant and he invested Rs.97,98,000/- to the gas agency, which is owned by the second respondent/accused. Thereafter, the second respondent neither returned the amount nor paid the share amount, thereby, the petitioner made the complaint. Further, while granting of anticipatory bail, the condition was imposed upon the second respondent to deposit a sum of



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Rs.12,00,000/- before the concerned Court. As per the direction, the second respondent paid Rs.6,00,000/- to the defacto complainant and failed to pay another Rs.6,00,000/-. Even in the order, it is clearly mentioned in paragraph No.6(i) that if the second respondent/accused failed to deposit Rs.12,00,000/- before the concerned Court within the period of four weeks, the order of anticipatory bail shall automatically stands vacated.

10. The decision of the Hon'ble Supreme Court in the case of Daulat Ram - Vs - State of Haryana (1995 (1) SCC 349) comes to the aid of this Court, wherein the Hon'ble Supreme Court has held that once supervening circumstances are brought to the notice of the Court, then the Court is clothed with power to revisit the bail granted to an accused.

11. In the case on hand, the second respondent/accused obtained anticipatory bail by made false promise that he is ready to deposit Rs.12,00,000/- within a period of four weeks, however, he paid only Rs.6,00,000/- to the defacto complainant directly and he failed to pay another Rs.6,00,000/-, even though time was periodically extended for five months therefrom, which itself is a supervening circumstance, which should weigh in the mind of this Court while dealing with the prayer of the petitioner for cancellation of the said anticipatory bail. In view of the above supervening circumstances, the anticipatory bail granted to the respondent accused is



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hereby cancelled.

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12. Hence, the anticipatory bail granted by this Court in CrI.O.P(MD).No.19108 of 2018, dated 08.02.2019 is vacated and this Criminal Miscellaneous Petition is allowed. Accordingly, the anticipatory bail was granted in favour of the second respondent/accused is hereby cancelled.

sd/-

26/03/2024

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/05/2024

Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

INDU

TO

1 THE JUDICIAL MAGISTRATE NO.II, TIRUCHIRAPPALLI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUCHIRAPPALLI DISTRICT.

3 THE INSPECTOR OF POLICE, CITY CRIME BRANCH, TIRUCHIRAPPALLI CITY,
TIRUCHIRAPPALLI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.1170 of 2024

IN CRL OP(MD) No.19108 of 2018

Date :26/03/2024

RS/GS/SAR-(06.05.2024) 7P 5C

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