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

Monday, the Nineteenth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL MP(MD) No.720 of 2024

IN

CRL OP(MD) No.18744 of 2023

SHANMUGASUNDARAM

... PETITIONER/DEFACTO COMPLAINANT

Vs

1 U.PRABHAGARAN

... 1st RESPONDENT/PETITIONER

2 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH-III,
MADURAI CITY,
MADURAI.

(CRIME NO.NOT KNOWN OF 2023)

... 2nd RESPONDENT/RESPONDENT

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 order of anticipatory bail granted in CrI.O.P.(MD).No.18744 of 2023 dated 18.10.2023 on the file of this Honble Court.

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.ANAND.R, Advocate for the petitioner and of none appeared either in person or through by an advocate on behalf of the 1st Respondent and MR.P.KOTTAICHAMY, Government Advocate(Crl.side)for the 2nd respondent, the Court made the following order:-



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This criminal miscellaneous petition has been filed to cancel the anticipatory bail granted to the petitioner in CrI.O.P.(MD)No.18744 of 2023 dated 18.10.2023 on the file of this Court.

2.The case of the prosecution is that one S.Ganesan created forged general power of attorney deed in respect of property belongs to the defacto complainant and fraudulently sold the property in favour of the first respondent herein. Hence, the case. Thereafter, the first respondent filed a petition for anticipatory bail in CrI.O.P.(MD)No.18744 of 2023 and the same was ordered on 18.10.2023. To cancel the same, the present petition came to be filed by the petitioner/defacto complainant.

3.The learned counsel appearing for the petitioner would submit that the petitioner and his jointly purchased land in Resurvey No.16/4 situated at Anaiyur, Madurai North from one Varadharajan, Ananth and two others through sale deed in Doc.No.8622/2004. Thereafter, they mutated the revenue records in their name. On 10.03.2008, they settled the property in favour of their daughter through settlement deed in Doc.No.1772 of 2008 on the file of the Sub-Registrar Office, Chokkikulam, Madurai. He would further submit that for the purpose of availing loan only they



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settled the above land in favour of their daughter. Since the loan process did not fetch any fruitful results, they dropped the said loan proposal. Thereafter, the daughter of the petitioner settled the property in favour of the petitioner herein through settlement deed in Doc.No.872/2012 dated 16.12.2011 on the file of the Sub-Registrar Office, Chokkikulam, Madurai and thereafter, the petitioner is in peaceful possession and enjoyment of the property. While being so, the accused persons created a forged power of attorney and sale deed by impersonating the daughter of the petitioner herein.

4.The learned counsel appearing for the petitioner would also submit that pursuant to the complaint given by the petitioner, an enquiry was initiated by the second respondent herein. In the meantime, the first respondent filed a petition before this Court for anticipatory bail in CrI.O.P.(MD)No.18744 of 2023 and the same was ordered on 18.10.2023. He would further submit that the first respondent failed to execute sureties within a period stipulated by this Court and also he failed to appear before this Court despite notice was served on him and thereby, he prayed to cancel the anticipatory bail granted to the first respondent.



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5. The learned Government Advocate (Crl. side) appearing for the second respondent would submit that anticipatory bail was granted to the first respondent on 18.10.2023, however, till date sureties were not executed as directed by this Court. He would further submit that though notice was served on the first respondent and name also printed in the cause list, no one appeared on behalf of the first respondent. Therefore, he would pray to pass orders on merits.

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;
- 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.



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7. The courts should be more rigid in its examination of violation and proof of violation in matters relating to cancellation of bail/anticipatory bail. Various decisions of the Hon'ble Apex Court vests the courts with power and discretion to cancel bail/anticipatory 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.
- 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/anticipatory bail granted to the accused.

9.It is alleged that the accused persons created forged power of attorney and executed sale deed in respect of the property belongs to the petitioner herein. Based on the complaint given by the petitioner/de-facto complainant, present case was registered.

10.In the above backdrop, a perusal of the order passed by this Court court reveals that the sole ground on which the accused has been enlarged on anticipatory bail seems to be the fact that no case was registered as against the first respondent till the date of granting anticipatory bail. On perusal of records reveals that now a case has been registered in Cr.No.1 of 2024 for the offences punishable under Sections 120(b), 419, 420, 465, 467, 468, 471 IPC.



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11. It is trite that *bail is the norm and jail is exception*. However, it should not be lost sight of that while granting anticipatory bail, the courts should weigh all the factors associated with the case while considering the anticipatory bail application of the accused. *Prima facie* satisfaction should be based on the hypotheses of just and reasonableness and not on mere *ipsi dixit* of the court.

12. 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. In the case on hand, non-compliance of the conditional order passed by this Court definitely 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.

13. Considering the facts and circumstances of the case and considering the fact that the anticipatory bail was granted by this Court on 18.10.2023, however, till date sureties was not executed by the first respondent, this Court is inclined to cancel the anticipatory bail granted to the first respondent. Accordingly, anticipatory bail



granted by this Court in favour of the first respondent in CrI.O.P.(MD)No.18744 of
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2023 dated 18.10.2023, is hereby cancelled.

14.In the result, this criminal miscellaneous petition is allowed.

sd/-
19/02/2024

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/02/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

GNS

TO

- 1 THE JUDICIAL MAGISTRATE NO.I
MADURAI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.
- 3 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH-III,
MADURAI CITY,
MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



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ORDER
IN
CRL MP(MD) No.720 of 2024
IN
CRL OP(MD) No.18744 of 2023
Date :19/02/2024

SS/GS/SAR- /28/02/2024/9P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023