



CRL.M.P(MD).No.1039 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.M.P(MD).No.1039 of 2024

in

CRL.O.P(MD).No.15757 of 2022

Fathima Rameeza

...Petitioner/Intervenor

VS.

1.Prabha

... 1st Respondent/Petitioner

2.The State rep.by

The Inspector of Police,

District Crime Branch,

Nagercoil,

Kanyakumari District.

Crime No.31 of 2022

... 2nd Respondent/Respondent

Prayer : Petition filed under Section 439(2) of Code of Criminal Procedure to cancel the bail granted to the first respondent/ petitioner in Crl.O.P(MD).No.15757 of 2022 dated 14.10.2022 by this Court.

For Petitioner : Mr.K.Rajeshwaran, Advocate

For R1 : Mr.G.Aravinthan, Advocate

For R2 : Mr.B.Nambiselvan
Additional Public Prosecutor



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ORDER

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The petitioner has filed this Petition seeking to cancel the bail granted to the first respondent in Crl.O.P(MD).No.15757 of 2022 dated 14.10.2022 by this Court.

2. The case of the prosecution is that the petitioner's father's friend, namely, Sivathanulingam, introduced one Prabha/first respondent with the petitioner's family and the first respondent promised to provide APRO Post to the petitioner and demanded a sum of Rs.1,00,00,000/- from the petitioner and the petitioner has paid a sum of Rs.1,00,25,000/- to the first respondent through bank account and thereafter, the first respondent failed to provide job to the petitioner and return the amount. Hence, the complaint.

3. The learned counsel appearing for the petitioner submitted that the first respondent has filed an application seeking bail before this Court in Crl.O.P(MD). No.15757 of 2022. Initially, the matter was referred to the Mediation for compromise and the first respondent/accused agreed to pay a sum of Rs.60,00,000/- for settling the dispute and based on the memo of compromise, this Court has granted bail on 14.10.2022 to the first respondent. However, the said order was not complied with by the first respondent. Hence, he prays for cancellation of bail granted to the first respondent on 14.10.2022 in Crl.O.P(MD).No.15757 of 2022.

4. The learned counsel appearing for the first respondent fairly submits that a



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sum of Rs.23,00,000/- was paid on 09.06.2023 and the balance amount of Rs.37,00,000/- has not been paid by the first respondent.

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5. Heard the learned counsel for the petitioner, the learned counsel appearing for the first respondent and the learned Additional Public Prosecutor appearing for the second respondent 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;
- 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. 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.
- 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



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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. It is trite that bail is the norm and jail is exception. However, it should not be lost sight of that while granting bail, the courts should weigh all the factors associated with the case while considering the 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.

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.



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11. In the present case, bail was granted to the first respondent on 14.10.2022 in Crl.O.P(MD).No.15757 of 2022, only based on the compromise entered between the parties, wherein, the first respondent has agreed to pay a sum of Rs.60,00,000/- to the petitioner. However, he has paid only a sum of Rs.23,00,000/- and the remaining amount of Rs.37,00,000/- has not been paid and the order of this Court has not been complied with by the first respondent, for which, the first respondent was called to appear before this Court. On 21.02.2024, the first respondent/accused appeared in person before this Court and stated that he will pay the balance amount of Rs.37,00,000/- to the petitioner on or before 20.03.2024. Despite the same, the first respondent has not paid the remaining amount as agreed by him so far to the petitioner and has not complied with the order of this Court. Hence, the bail granted to the first respondent in Crl.O.P(MD).No.15757 of 2022 on 14.10.2022 by this Court is hereby cancelled and the second respondent Police is directed to take immediate steps in accordance with law to arrest the first respondent.

12. Accordingly, this Criminal Miscellaneous Petition is allowed.

sd/-
20/03/2024

/ TRUE COPY /

/03/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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SSB

TO

1 THE JUDICIAL MAGISTRATE NO.I
NAGERCOIL

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.

3 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
NAGERCOIL,
KANYAKUMARI DISTRICT.

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

+1 CC to M/s.K.RAJESHWARAN, Advocate (SR-3486[I] dated 21/03/2024)

ORDER

IN

CRL MP(MD) No.1039 of 2024

IN

CRL OP(MD) No.15757 of 2022

Date :20/03/2024

SS/VR/SAR. /25.03.2024/7P/6C

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