



CRL MP(MD) No.2775 of 2024

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This petition has been filed to cancel the anticipatory bail granted to the second respondent vide order of this Court dated, 16.11.2023 in Crl.O.P.(MD)No.20559 of 2023.

2.The case of the prosecution is that the marriage between the petitioner and the second respondent was solemnized on 26.03.2020 in the presence of the elders of both families at Pasupatheeswarar Prasanna Bharathi Marriage Hall at Irulappapuram, Nagercoil. At the time of marriage, Rs.7 lakhs and 108 sovereigns of gold jewels and household articles worth about Rs.3 lakhs were given as sridhana to the second respondent. After marriage, the second respondent's family members harassed the petitioner by mentioning the childless situation and demanded more dowry. On 22.11.2021, when the petitioner and the second respondent went to the funeral ceremony of the petitioner's uncle, the second respondent left the petitioner in her uncle's house and never took back her to his home. Thereby, the petitioner made a complaint before the first respondent police. Hence, the case.

3.The learned counsel for the petitioner would submit that initially, the second respondent moved anticipatory bail application before the learned Principal Sessions



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Judge, Kanyakumari District at Nagercoil in Crl.M.P.No.3037 of 2023 and the learned Sessions Judge granted interim anticipatory bail to the second respondent on 13.06.2023 on condition to handover the petitioner's gold jewels and also referred the matter before the Mediation Centre, Nagercoil. However, the second respondent has returned only 69 sovereigns of gold jewels, out of 108 sovereigns of gold, and other sridhana articles were not returned. Thereby, the trial Court cancelled the interim anticipatory bail granted to the second respondent in Crl.M.P.No.2860 of 2023 on 02.11.2023. Prior to that, the very same second respondent filed anticipatory bail before this Court in Crl.O.P.(MD)No.11380 of 2023 and this Court vide order dated 26.06.2023 dismissed the anticipatory bail with a cost of Rs.5,000/- and thereafter the second respondent filed the second application for anticipatory bail before this Court in Crl.O.P.(MD)No.20559 of 2023, this Court vide order dated 16.11.2023 granted anticipatory bail to the second respondent, however, without discussing about the earlier dismissal order and the earlier observations made by the trial Court with regard to the non-refund of the sridhana articles to the petitioner. In view of the supervening circumstances, this Court may cancel the anticipatory bail.

4.The learned counsel for the second respondent did not dispute the said facts

submitted by the learned counsel for the petitioner. He would submit that all those

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materials were produced before this Court in CrI.O.P(MD)No.20559 of 2023.

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However, this Court has not discussed anything with regard to the materials supplied by the second respondent at the time of filing the anticipatory bail, for which, the second respondent is not responsible and there is no supervening circumstance arises for cancellation of anticipatory bail. Hence, he prayed for dismissal of this petition.

5.Today, the petitioner appeared in person before this Court and stated that she is ready to live with the second respondent. However, the second respondent did not accept the request made by the petitioner and stated baseless allegation against the petitioner without any material.

6.This Court has perused the materials available on record.

7.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;



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- 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.

8.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



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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)

9. 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.



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10.It is seen from the records that this Court granted anticipatory bail to the second respondent without discussing the earlier dismissal order and the earlier observations made by the trial Court with regard to the non-refund of the sridhana articles to the petitioner.

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.

13.In view of the above circumstances, this Court has no hesitation to cancel the anticipatory bail granted to the second respondent. Accordingly, the anticipatory bail

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granted to the second respondent in CrI.O.P.(MD)No.20559 of 2023, dated 16.11.2023,

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is hereby cancelled and this criminal miscellaneous petition is allowed.

sd/-
18/03/2024

/ TRUE COPY /

/03/2024

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

sjj

TO

- 1 THE ADDITIONAL MAHILA JUDGE
NAGERCOIL.
- 2 THE SUB INSPECTOR OF POLICE
AWPS POLICE STATION,
KANYAKUMARI,
KANYAKUMARI DISTRICT..
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO

THE PRINCIPAL SESSIONS JUDGE,
KANYAKUMARI DISTRICT @ NAGERCOIL.

+1 CC to M/s.S.SURESH KUMAR, Advocate (SR-3299[I] dated 18/03/2024)

+1 CC to M/s.V.BALAJI RAJARAM, Advocate (SR-3364[I] dated 19/03/2024)

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ORDER
IN
CRL MP(MD) No.2775 of 2024
IN
CRL OP(MD) No.20559 of 2023
Date :18/03/2024

RK/GS(25/03/2024) 9P /7C

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