



Crl.M.P(MD) No.10959 of 2023

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

Monday, the Eighth day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

Crl.M.P(MD) No.10959 of 2023
in
Crl.O.P(MD) No.9661 of 2022

NIRAI ARUL SELVAN ... PETITIONER/DEFACTO COMPLAINANT

Vs

1 YASUVADIYAN DAVID BENZIER ...RESPONDENT/ ACCUSED NO.1

2 THE INSPECTOR OF POLICE
THATTRAMADAM POLICE STATION,
THOOTHUKUDI DISTRICT
CRIME NO.173 OF 2022. ... 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 granting anticipatory bail to the respondent no.1 in Crl.O.P.(MD)No.9661 of 2022 dated 09.03.2023.

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.MANOJ KUMAR.S, Advocate for the petitioner and of MR.P.KOTTAICHAMY, Government Advocate (Criminal Side) on behalf of the 2nd Respondent, the court made the following order:-

This Petition has been filed under Section 439(2) of Code of Criminal Procedure



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to set aside the order made in Crl.M.P.No.9661 of 2022 dated 09.03.2023 on the file of
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this Court and cancel the anticipatory bail granted therein.

2. The petitioner is a defacto complainant and he made a complaint before the respondent Police as if he purchased Derik Mahindra Pick Up Van bearing Registration No.TN 92 E 4038 and gave to the respondent accused for rent. The respondent accused neither paid rent nor returned the vehicle. Thereby, the petitioner made a complaint before the respondent Police. Thereafter, this Court granted anticipatory bail as if the respondent accused is illiterate and he returned the vehicle to the defacto complainant. However, in practical, no vehicle was returned to the petitioner/defacto complainant and by way of misrepresentation, anticipatory bail was obtained by the accused.

3. The learned Government Advocate (Crl.side) appearing for the State would submit that the respondent accused did not return the vehicle. However, the second respondent made a mis-representation before this Court. Further, he did not appear before the respondent Police for evading from the investigation.

4. Heard the learned counsel for the petitioner and perused the materials

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available on record. Though name of the respondent printed in the cause list and Legal Aid Counsel was also appointed for the respondent accused, no one is appeared.

5. 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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6. 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 place, given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified;



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

(Emphasis Supplied)

7. 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.

8. The issues arose in the present case is whether there is any supervening circumstance to cancel the anticipatory bail granted by this Court to the second respondent. The petitioner is the owner of the vehicle and he rented out his vehicle in favour of the accused. Thereafter, the accused did not pay rent and vehicle was not returned. This Court observed that vehicle was returned in Crl.O.P(MD) No.9661 of 2022. But however, the fact remains, the said vehicle was not returned.

9. 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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10. In the case on hand, neither returned the money nor returned the vehicle, he simply obtained anticipatory bail by way of mis-representation, 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 hereby cancelled.

11. Hence, the order passed by this Court in Crl.O.P(MD).No.9661 of 2023, dated 09.03.2023 is set aside and this Criminal Original Petition is allowed. Accordingly, the anticipatory bail was granted in favour of the respondent accused is hereby cancelled. The respondent Police is directed to secure the above said vehicle and hand over the same to the petitioner/defacto complainant.

sd/-
08/01/2024

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/01/2024

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

INDU



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TO

1 THE JUDICIAL MAGISTRATE,
SATHANKULAM.

2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.

3 THE INSPECTOR OF POLICE
THATTRAMADAM POLICE STATION,
THOOTHUKUDI DISTRICT.

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

ORDER

IN

CRL MP(MD) No.10959 of 2023

IN

CRL OP(MD) No.9661 of 2022

Date :08/01/2024

RK/DD (30/01/2024) 7P / 5C

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