



Crl.RC.(MD)No.771 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.09.2024

Pronounced on : 04.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

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D.R.Prem Chandar

... Petitioner

Vs.

1.Periyasamy @ Saminathan

2.The Inspector of Police,
Nagamalaipudukottai Police Station,
Madurai District.
(Crime No.81 of 2023)

... Respondents

Prayer : This Criminal Revision Case filed under Section 438 r/w 442 BNSS, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.VI, Madurai in Crl.M.P.No.2767 of 2024 dated 18.07.2024 and set aside the same and consequently cancel the order granting bail to the first respondent in Cr.M.P.No.689 of 2024 dated 27.03.2024 by the above said learned Magistrate in connection with the case in Crime No.81 of 2023 pending on the file of the second respondent.

For Petitioner : Mr.R.Anand



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For R1 : No Appearance
For R2 : Mr.K.Sanjai Gandhi,
Government Advocate(Crl.side)

ORDER

This criminal revision case is directed against the order passed in Crl.M.P.No.2767 of 2024 dated 18.07.2024 on the file of Court of the Judicial Magistrate No.VI, Madurai dismissing the petition filed under Section 480(5) BNSS for cancellation of bail.

2.On the basis of the complaint lodged by the petitioner, FIR came to be registered in Cr.No.81 of 2023 for the offences under Sections 294(b), 406, 420 and 506(i) IPC against three persons including the first respondent herein. The first respondent / A1 has filed a petition in Crl.M.P.No.689 of 2024 claiming bail before the Court of Judicial Magistrate No.6, Madurai and the learned Magistrate, after enquiry and on hearing the accused, defacto complainant and the prosecution, has passed an order dated 27.03.2024 granting bail by imposing conditions. The learned Magistrate, by relying on the joint compromise memo filed by the



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accused and the defacto complainant and taking note of fact that the accused was in judicial custody from 18.03.2024 and also taking note of the undertaken given by the accused that he will abide by the conditions to be imposed by the Court, has granted bail.

3.In the joint compromise memo, it has been stated that a sum of Rs.1,00,000/- has been transferred from the Bank Account of the accused's son to the Account of the defacto complainant and the accused has agreed to repay the balance amount of Rs.4,00,000/-, within 60 days and that both the parties have agreed to settle their dispute amicably, after the accused is coming out on bail. The defacto complainant by alleging that the accused has not paid Rs.4,00,000/-, within 60 days as agreed by him and thereby, he has not complied with the directions of the learned Magistrate, has filed a petition under Section 480(5) BNSS, seeking cancellation of bail granted to the first respondent/accused and the said petition was taken on file in Crl.M.P.No.2767 of 2024. The learned Magistrate has passed the impugned order dated 18.07.2024 dismissing the said petition on the ground that no such condition was imposed, as stated by the defacto complainant.



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4.The learned counsel appearing for the petitioner would submit that the first respondent has given an undertaking to pay the amount for availing the benefits of bail and the same was considered as important criteria for granting bail by the learned Magistrate, that since the first respondent has admittedly breached the undertaking, which was given in the form of memo on 27.03.2024, the learned Magistrate ought to have cancelled the bail, that the learned Magistrate by placing reliance of the joint compromise memo has granted bail, that the learned Magistrate has not even taken note of any of the points raised by the petitioner, that in the petition for cancellation of bail, the learned Magistrate has passed cryptic order without any reasonings and that therefore,the petitioner was constrained to file the present revision challenging the impugned order of dismissing the petition for cancellation of bail.

5.No doubt, as already pointed out, the learned Magistrate has relied on the joint compromise memo filed by the petitioner and the first respondent where-under, the first respondent has agreed to pay a sum of Rs.4,00,000/-, within a period of 60 days. It is also pertinent to note that



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the first respondent has paid a sum of Rs.1,00,000/- to the petitioner and the same came to be recorded in the joint compromise memo itself. No doubt, as rightly contended by the learned counsel for the petitioner, the learned Magistrate has relied on the joint compromise memo filed by both the parties. But as rightly contended by the learned Government Advocate (Crl.side), the learned Magistrate has not imposed any conditions in the bail order directing the first respondent to pay a sum of Rs.4,00,000/- within 60 days.

6.At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of **BIMLA TIWARI Vs. STATE OF BIHAR & ORS** reported in **2023 LiveLaw (SC) 47** wherein the Hon'ble Supreme Court, has reiterated the legal position that process of criminal law cannot be utilized for arm-twisting and money recovery, while opposing the prayer for bail and that there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail or regular bail, the person apprehending arrest or the person in prison ought to make payment. In the above said case, the High Court, taking note of the offer made by the accused making payment of



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Rs.75,000/- to the defacto complainant and having regard to the facts and circumstances of the case pertaining to the offence under Sections 406, 420 IPC and Sections 3 & 4 of the Dowry Prohibition Act, granted anticipatory bail to the accused subject to the offered payment. Moreover, when one of the accused, while seeking anticipatory bail had paid a sum of Rs.6,00,000/- through Bank Draft in favour of the complainant and he was granted anticipatory bail. The Hon'ble Supreme Court has observed as hereunder:-

9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for armtwisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the



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accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.

7. As rightly observed by the Hon'ble Supreme Court, recovery of money is essentially within the realm of civil proceedings. The above decision is squarely applicable to the case on hand. In the case on hand also since the first respondent/accused has offered to make payment, within a stipulated time and by taking note of the same and other aspects, bail came to be granted to him. As rightly observed by the Hon'ble Supreme Court, the Court cannot act as recovery agent and it is for the defacto complainant to seek remedy before the competent Civil Court. Just because the first respondent / accused has not paid amount in pursuance of the compromise memo, that by itself is not a ground to



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cancel the bail. The petitioner is at liberty to enforce the compromise memo and seek recovery of amount before the competent Civil Court. No doubt as rightly pointed out by the learned counsel for the petitioner, the learned Magistrate has passed one line cryptic order while dismissing the petition. But, the decision of the learned Magistrate in dismissing the petition for cancellation of bail cannot be found fault with. Hence, this Court concludes that this revision is devoid of merits and the same is liable to be dismissed.

8.In the result, this criminal revision is dismissed.

04.10.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

- 1.The Judicial Magistrate No.VI,
Madurai.
- 2.The Inspector of Police,
Nagamalaipudukottai Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
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