



Crl.O.P(MD).No.15459 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P(MD).Nos.15459 and 15468 of 2023

Crl.O.P(MD).No.15459 of 2023

K.Krishnakanth

...Petitioner/De-facto complainant

vs.

1.The Sub-Inspector of Police,
Karur Town Police Station,
Karur.
Crime No.376/2023.

...1st respondent/complainant

2.Sasikumar

...2nd respondent/accused

Prayer : Petition filed under Section 439(2) r/w. Section 482 of Code of Criminal Procedure to cancel the impugned bail granted to the second respondent/accused in C.M.P.No.4001 of 2023 vide order dated 05.06.2023 by the learned Judicial Magistrate No.1, Karur.

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Gayathry

...Petitioner/De-facto complainant

vs.

1.The Inspector of Police,
Karur Town Police Station, Karur.
Crime No.377/2023.

...1st respondent/complainant



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2.Regan

3.Rajan

4.Saravanan

...Respondents 2 to 4
/accused 5 to 7

Prayer:Petition filed under Section 439(2) r/w. Section 482 of Code of Criminal Procedure to cancel the impugned bail order granted to the respondents 2 to 4/accused 5 to 7 in C.M.P.No.921 of 2023 vide order dated 01.06.2023 by the Additional Mahila Court, Judicial Magistrate Level, Karur.

For Petitioners : Mr.ARL.Sundaresan
in both petitions Senior Counsel for
Mr.A.P.Srinivas, Advocate

For R1 : Mr.B.Nambiselvan
in both petitions Additional Public Prosecutor

For R2 : Mr.S.Mahendrapthy, Advocate
in Crl.O.P(MD).No.15459 of 2023

For R2 to R4 : Mr.S.Mahendrapthy, Advocate
in Crl.O.P(MD).No.15468 of 2023

COMMON ORDER

The petitioners have filed the present petitions seeking to cancel the impugned bail orders granted to the private respondents/accused in C.M.P.Nos.921 and 4001 of 2023 dated 01.06.2023 and 05.06.2023 respectively by the Additional Mahila Court, Judicial Magistrate Level, Karur and the learned Judicial Magistrate No.1, Karur.



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2. The case of the prosecution is that the petitioners are working as Inspector of Income Tax (Investigation) and the Assistant Director of Income Tax (Investigation) respectively. A search warrant was issued on 25.05.2023 to carry out search in the premises of one Subramaniam and Ashok Kumar. On 26.05.2023, when the petitioners and other officials were executing the work, they were man-handled, physically assaulted and prevented from discharging their duty, by a mob of more than 50 people. They snatched away the search warrant, confidential documents and the office seal. Therefore, a complaint was made before the first respondent Police. Pursuant to the complaint, case in Crime Nos.376 and 377 of 2023 have been registered. Subsequently, the accused persons approached the trial Court seeking bail and the trial Court, without considering the gravity of offence committed by the accused, has granted bail to the accused persons. Challenging the same, the present petitions are filed.

3. The learned Senior Counsel appearing for the petitioners submitted that in respect of similarly accused persons, the complainants have filed petitions for cancellation of bail granted to them before this Court in Crl.O.P(MD).Nos.11106, 11108, 11110, 11111, 11112 and 11115 of 2023 and the same were allowed by this

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Court vide order dated 28.07.2023, thereby bail that was granted to the similarly accused persons was cancelled. Hence, he prays for similar relief of cancelling the bail granted to the private respondents herein/accused.

4. The learned counsel appearing for the private respondents submits that bail was granted by the trial Court to the private respondents on 01.06.2023 and 05.06.2023. After a lapse of seven months, the present petitions have been filed for cancellation of bail granted to the private respondents, without any valid reasons. He further submits that the private respondents are regularly complying with the conditions imposed by the trial Court. Hence, he prays for dismissal of these petitions.

5. Heard the learned counsel for the petitioners, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the private respondents 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 :-



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- 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.

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;



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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 granted to the accused.



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9. The facts in the present case and the manner in which the incident happened are not in dispute. Admittedly, the petitioners were prevented by the accused persons from carrying out their work and the accused persons have snatched away the search warrant and confidential documents. If such illegal activities are allowed, it is not feasible for the Officials to carry out the work allotted to them. Further, the fact remains that the co-accused persons were granted bail, after completing the statutory period. However, in the present case, within a short span of time, the private respondents were granted bail. As contended by the learned Senior Counsel, the bail granted to the co-accused persons was cancelled by this Court in Crl.O.P(MD). Nos.11106, 11108, 11110, 11111, 11112 and 11115 of 2023 on 28.07.2023 considering supervening circumstances and the relevant portions are extracted hereunder:

“19.No doubt that as mentioned earlier, if intrusion is made into the discharge of public duty in an unlawful manner, it must be viewed seriously, even while entertaining the bail application. The interest of the society at one end and individual liberty in another end.

20.Since already the accused have been granted regular bail, unless a strong case has been made out by the petitioners, this court cannot



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interfere into the order passed by the trial court.

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21.Before we go into the other aspects, let us extract the observation made by the Hon'ble Supreme Court in the judgment reported in the case of Neeru Yadav Vs. State of U.P (2014)16 SCC 508, as under:-

“...Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream, It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order as its own whims or caprice. It has to be guided by the established parameters of law.”

22.This observation guides us to decide the issue. The question boils down a single point as to whether the established parameters were taken into account by the

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trial court at the time of entertaining and admitting the bail application. Some of the parameters have been settled in plethora judgments.

23.In the judgment reported in the case of Bhoopendra Singh Vs. State of Rajasthan and others [AIR-2021-SC-5514], by referring the judgment rendered in Mahipal Vs. Rajesh Kumar (2020)2 SCC 118, it has been held as follows:-

“9...It is trite that this Court does not, normally, interfere with an order [Ashish Chaterjee v. State of W.B., CRM No.272 of 2010, order dated 11-1-2019 (Cal)] passed by the High Court granting or rejecting bail to the Accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basis principles laid down in a plethora of decisions of this Court on this point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i)whether there is any prima facie or reasonable ground to believe that the Accused had committed the offence;

(ii)nature and gravity of the accusation;

(iii)severity of the punishment in the event of conviction;

(iv)danger of the Accused absconding or fleeing, if released on bail;

(v)character, behaviour, means, position and standing of the Accused;



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- (vi)likelihood of the offence being repeated;
- (vii)reasonable apprehension of the witnesses being influenced; and
- (viii)danger, of course, of justice being thwarted by granting bail.

10.It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the voice of non-application of mind, rendering it to be illegal.”

24.According to the petitioners, not even a single sentence has been devoted to discuss about the facts and circumstances of the case.

25.The next aspect is, what are the limitation, while entertaining the cancellation of bail orders and parameters. Again, we can refer the Neeru Yadav's case.

'13.We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself of or some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether then an



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order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

10. 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.

11. 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

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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, the non-application of mind on the part of the trial court while granting bail to the accused definitely is a supervening circumstance, which should weigh in the mind of this Court, while dealing with the prayer of the petitioners for cancellation of the said bail. The gravity of the offence committed by the accused persons and taking into consideration the fact that investigation is still going on, the court below ought not to have enlarged the accused on bail on the ground of period of incarceration. The said ground alone would not suffice to grant bail to the private respondents.

12. In the above circumstances, this Court has no hesitation in arriving at a conclusion that the trial Court erred in enlarging the private respondents. Accordingly, the orders passed by the Additional Mahila Court, Judicial Magistrate Level, Karur and the learned Judicial Magistrate No.1, Karur, in C.M.P.Nos.921 and 4001 of 2023 dated 01.06.2023 and 05.06.2023 respectively, are set aside and the first respondent police is directed to take immediate steps in accordance with law to arrest the private respondents.



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13. With these directions, these Criminal Original Petitions are allowed.

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

ssb

TO

1.THE JUDGE, ADDITIONAL MAHILA COURT,
JUDICIAL MAGISTRATE LEVEL, KARUR

2.THE JUDICIAL MAGISTRATE NO.1, KARUR

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, KARUR.

4.THE INSPECTOR OF POLICE,
KARUR TOWN POLICE STATION, KARUR.

5.THE SUB-INSPECTOR OF POLICE,
KARUR TOWN POLICE STATION, KARUR.

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

+2 cc to MR.J.PAREKHKUMAR, Advocate SR-47,48(F) DATED 02.01.2024

+2 CC TO MR.S.MAHENDRAPATHY, Advocate SR-98,99(F) DATED 03.01.2024

ORDER IN

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Date :02/01/2024

RK/DD (03/01/2024) 13P / 11C

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