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Crl.O.P.(MD)No.21247 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.21247 of 2023

Malathi

... Petitioner/3rd Party/Defacto Complainant

Vs.

1.Chithra

... 1st Respondent/Petitioner/ Accused

2.State represented by

The Inspector of Police,
Thanjavur DCB Police Station,
Thanjavur District.

(Crime No.17 of 2023)

... 2nd Respondent/Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 439(2) of the Code of Criminal Procedure, to cancel the anticipatory bail granted in favour of the first respondent/first accused by the learned Sessions Judge,(Special Court under POCSO Act), Thanjavur/Principal Sessions Judge, Thanjavur (I/C) in Cr.M.P.No.5280 of 2023 by order dated 21.08.2023.

For Petitioner : Mr.K.M.KARUNAKARAN, Advocate

For R1 : Mr.M.KARUNANITHI, Advocate

For R2 : Mr.P.KOTTAICHAMY,
Government Advocate (Crl. Side)

ORDER

This criminal original petition has been filed to cancel the anticipatory bail granted in favour of the first respondent/first accused by the learned Sessions Judge,

<https://www.mhc.tn.gov.in/judis>



Crl.O.P.(MD)No.21247 of 2023

(Special Court under POCSO Act), Thanjavur/Principal Sessions Judge, Thanjavur
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(I/C) in Cr.M.P.No.5280 of 2023 by order dated 21.08.2023.

2.The learned counsel appearing for the petitioner/defacto complainant would submit that the first respondent herein received a sum of Rs.7,00,000/- from the petitioner for arranging job in Railway Department and thereafter failed to arrange any job and also refused to return the money. He would further submit that the first respondent filed a petition for anticipatory bail before the Court below and the same was allowed on condition to deposit a sum of Rs.50,000/- whereas the first respondent received a sum of Rs.7,00,000/-. Therefore, the petitioner filed the present petition to cancel the anticipatory bail granted to the first respondent.

3.The learned counsel appearing for the first respondent/accused would submit that after considering all aspects elaborately, the Court below imposed the condition and the first petitioner also complied with all the condition. Hence, he prayed to dismiss the present petition.

4.The learned Government Advocate(Crl.side) appearing for the second respondent would submit that as of now, there is no violation of the condition imposed by the Court below.

5.Heard the learned counsel on either side and perused the materials available in the record.



Crl.O.P.(MD)No.21247 of 2023

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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.

7. The courts should be more rigid in its examination of violation and proof of violation in matters relating to cancellation of bail/anticipatory bail. Various decisions of the Hon'ble Apex Court vests the courts with power and discretion to cancel bail/anticipatory bail even when there are no supervening circumstances and broadly classified, they could be brought under the following heads :-



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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;

vii) When the order granting bail is apparently whimsical,



Crl.O.P.(MD)No.21247 of 2023

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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/anticipatory 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 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.

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. In the case on hand, non-compliance of the conditional order passed by this Court definitely 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.

11.It is alleged that the first respondent received money from the petitioner for



Crl.O.P.(MD)No.21247 of 2023

arranging job and thereafter, failed to do so. Therefore, the petitioner made a complaint before the second respondent, based on which a case in Cr.No.17 of 2023 was registered. Hence, the first petitioner preferred a petition for anticipatory bail and the same was allowed on condition to deposit a sum of Rs.50,000/-. All the conditions imposed by the Court below were duly complied with by first respondent.

12.In view of the above, this Court finds no supervening circumstances to cancel the anticipatory bail granted to the first respondent. Accordingly, this criminal original petition is dismissed.

sd/-
19/02/2024

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

GNS
TO

1 THE SESSIONS JUDGE,
(SPECIAL COURT UNDER POCSO ACT), THANJAVUR /
PRINCIPAL SESSIONS JUDGE, THANJAVUR (I/C).

2 THE INSPECTOR OF POLICE,
THANJAVUR DCB POLICE STATION,
THANJAVUR DISTRICT.

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



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Crl.O.P.(MD)No.21247 of 2023

ORDER
IN
CRL OP(MD) No.21247 of 2023
Date :19/02/2024

SA/VR/SAR. /05.03.2024/7P/4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.