

K.Santhiya vs The Inspector Of Police on 23 August, 2018

Author: M.Dhandapani

Bench: M.Dhandapani

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2018

Delivered on : 02.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.22790 of 2018

K.Santhiya

Vs.

1.The Inspector of Police,
All Women Police Station,
Gingee, Villupuram District
(Crime No.12 of 2018)

2.Saravanan

Prayer: Petition filed under Section 439(2) read with Section of Cr.P.C., seeking to cancel the bail granted to respondent/accused herein in Crl.M.P.No.1095 of 23.08.2018 by the Court of Sessions, Mahila Neethi Mandram (Fast Track Court) Villupuram, Villupuram District.

For Petitioner : Mr.B.Karthikeyan

For Respondents : Mr.C.Iyyappa Raj for R1
Additional Public Prosecutor
Mr.K.Perumalswamy-R2

ORDER

The petitioner/ defacto complainant has filed this petition seeking to cancel the bail granted to second respondent/accused <http://www.judis.nic.in> herein in Crl.M.P.No.1095 of 2018 dated 23.08.2018 by the Court of Sessions, Mahila Neethi Mandram (Fast Track Court) Villupuram, Villupuram District.

2. The case of the petitioner is that she is residing at Gingee along with her mother and brother. She is studying B.Sc., (Chemistry) final year at Sangamam Arts and Science College. Her father died in a road accident. Thereafter, one Saravanan, who is friend of her father/accused herein, had illegal relationship with her mother and that intimacy came to the knowledge of the villagers, in spite of the same, the said Saravanan started to stay in their house. In 2015, the accused has given sexual assault to the petitioner. The petitioner was studying +2 Standard and therefore, she did not disclose it to any one. In June, 2018, when the petitioner came from the College, accused abused her and indulged in resorting to sexual assault on her. Hence, the petitioner lodged a complaint before the respondent Police. Upon registration of a case, the accused/second respondent herein filed an anticipatory bail before the Court of Sessions, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram. The lower Court granted anticipatory bail on the ground that in the earlier occasion, in the year 2015, her mother viz., Usharani, filed a complaint before the respondent Police and a case was registered in Cr.No.229 of 2016 <http://www.judis.nic.in> against the petitioner and other accused. The allegation in the earlier FIR in Cr.No.229 of 2016 is that the petitioner's mother was subscribing chits and paid chit amount totally Rs.4,50,000/- on various dates in the denomination of Rs.1,50,000, 2,00,000 and, 1,00,000/- respectively. The chit matured on 10.10.2013, 10.10.2015 and 20.04.2016 respectively. The petitioner's mother demanded for payment of the matured amount on various dates through one Neelakandan. Even after maturity of the chits, the amount was not paid to the said Usharani. Apart from the above chit amounts, the accused collected jewels from the petitioner's mother and those jewels were also not returned. After the death of Neelakandan, she approached the accused to repay the amount, for which, the accused assured that he will pay within a period of six months. However, the accused failed to pay the amount and when it was demanded by the petitioner's mother, the accused abused her in filthy language, therefore, the mother of the petitioner lodged the complaint and a case was registered in Crime No.229 of 2016 dated 16.08.2016 for the offence punishable under Sections 147, 420, 294(b) and 323 of IPC. According to the petitioner, in spite of the antecedent of the accused, the lower Court granted anticipatory bail after discussing the earlier complaint and other grounds raised by the accused to conclude that the petitioner had not specifically mentioned the date of offence. <http://www.judis.nic.in> With regard to the commission of offence punishable under the POCSO Act the trial court arrived at a conclusion that in order to wreck vengeance with regard to money transaction, the complaint appears to have been filed. Accordingly, on 23.08.2018, the lower Court granted anticipatory bail in favour of the second respondent/accused.

3.The learned counsel for the petitioner would further submit that as per the provision of Section 12 of POCSO Act, no court is empowered to grant anticipatory bail to a person accused of the aforesaid offence. Apart from the above, at first instance, discussing the earlier complaint, giving benefit in favour of the second respondent/accused, the trial court granted bail which is unsustainable and unwarranted.

4.The learned counsel for the second respondent would submit that once bail is granted by the lower Court, it cannot be vacated in a mechanical manner, unless there is supervening circumstances which warrant the cancellation of bail. In the present case, the petitioner's mother earlier lodged a complaint with regard to non-payment of amount, after a lapse of three years, and the petitioner filed the present complaint alleging certain offence, which is unsustainable one. In the present case,

the Court has to consider whether any <http://www.judis.nic.in> supervening circumstances for cancellation of bail is made out or not. In support of his contention, the learned counsel for the second respondent relied upon the following decisions:

1.The decision rendered by the Hon'ble Supreme Court in the case of BHAGIRATHSINH V. STATE OF GUJARAT – (1984) 1 SCC 284.

2.The decision rendered by the Hon'ble Supreme Court in the case of DOLAT RAM AND OTHERS V. STATE OF HARYANA – (1995) 1 SCC 349.

3.The decision rendered by the Hon'ble Supreme Court in the case of SUBHENDU MISHRA V. SUBRAT KUMAR AND ANOTHER – 2000 SCC (Cri) 1508.

4.The decision rendered by the Hon'ble Supreme Court in the case of MAHANT CHAND NATH YOGI AND ANOTHER V. STATE OF HARYANA – (2003) 1 SCC 326.

5.The learned Additional Public Prosecutor appearing for the State would submit that though the earlier complaint was registered <http://www.judis.nic.in> against the second respondent filed by the petitioner's mother, there was no progress made in that case. Since the lower Court granted anticipatory bail to the second respondent, the Law Enforcing Agency is unable to conduct custodial interrogation. The investigation is not completed as there was no opportunity given for custodial interrogation of accused.

6.Considering the facts and circumstances of the case, though the Law Enforcing Agency registered a case for the offence punishable under Sections 12 of POCSO Act, 2012 and 354 A IPC and Section 4 of TN Prohibition of Harassment of Woman Act, 2002, the lower Court granted anticipatory bail to the second respondent on the ground that there is no specific averments in the complaint as to on what date the occurrence had taken place and by discussing the earlier complaint.

However, on perusal of the records, it reveals that the petitioner's father passed away in a road accident in March, 2008. Thereafter, the petitioner's mother come under the custody of the second respondent and thereafter, there was money transaction between them. Since the amount was not repaid earlier, the earlier complaint was lodged. The petitioner made the allegation that the second respondent taking advantage of her mother's relationship, misbehaved with her in the year 2015 onwards. In the event of repeated torture made by the <http://www.judis.nic.in> second respondent, she filed the present complaint in the year 2018 specifically mentioning that in June, 2018, the second respondent misbehaved her.

7.On perusal of the order dated 31.07.2018, the lower Court granted anticipatory bail in favour of the second respondent on condition that he shall appear before the Station House Officer, All Women Police Station, Gingee daily at 10.00 a.m. However, on perusal of the lower Court order, it is evident that the lower Court did not discuss the veracity of the complaint given by the petitioner,

however, noted that the earlier complaint was given by the mother of the petitioner and inferred that it was given to wreck vengeance and therefore granted anticipatory bail. Such heinous offence allegedly committed by the second respondent cannot be taken at lighter sense unless proper investigation is allowed to be conducted by the Law Enforcing Agency. Even on perusal of the Hon'ble Apex Court decision cited supra, the Hon'ble Apex Court held that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. In the present case, when sexual harassment was made against the petitioner, granting anticipatory bail <http://www.judis.nic.in> in favour of the second respondent is unsustainable one. Accordingly, this Court interferes with the anticipatory bail granted by the lower Court on the ground that there is impropriety in the order passed by the Sessions Court especially in the light of the specific allegation against the second respondent that sexual assault was made against the petitioner. This Court is of the view that unless the bail is cancelled, the protection of the petitioner and her family members will be in peril. Accordingly, this Court interferes with the order of the lower Court dated 23.08.2018 and accordingly anticipatory bail granted by the lower Court is cancelled.

8.In the result, this Criminal Original Petition is allowed and the anticipatory bail granted in favour of the second respondent in Crl.M.P.No.1095 of 2018 by the Court of Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram, is hereby cancelled.

02 .11.2018 Speaking Order/ Non Speaking Order Index: Yes/ No Internet: Yes/ No <http://www.judis.nic.in> To

1.The Inspector of Police, All Women Police Station, Gingee, Villupuram District.

2.The Public Prosecutor, High Court of Madras, Chennai 600 104.

<http://www.judis.nic.in> M.DHANDAPANI, J <http://www.judis.nic.in> Pre-delivery order in 02 .11.2018 <http://www.judis.nic.in>