

Babu Florence Debora vs The Inspector Of Police on 12 July, 2016

Author: V.M.Velumani

Bench: V.M.Velumani

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl.O.P(MD)Nos.2868 of 2016 to 2870 of 2016

Crl.O.P(MD)No.2868 of 2016:

Babu Florence Debora : Petitioner/
De facto complainant

Vs.

1.The Inspector of Police,
Sathankulam Police Station,
Tirunelveli District.
(Crime No.60 of 2013)

: First
Respondent/Respondent

2.Thavasi Palam Samuvelraj

3.Selvarani

4.Jothi : Respondents
2 to 4/Accused 5,6 and 8

Prayer: Criminal Original Petition is filed under Sections 439(2) read with 482 of the Criminal Procedure Code praying to cancel the anticipatory bail granted in Cr.M.P.No.4046 of 2015, dated 22.12.2015 on the file of the Principal Sessions Court, Tuticorin.

!For Petitioner : Mr.M.P.Senthil

For Respondent No.1 : Mr.P.Kannithevan,
Government Advocate (Crl.side).

For Respondent Nos.2 to 4 : Mr.M.Alagappan

Crl.O.P(MD)No.2869 of 2016:

Babu Florence Debora : Petitioner/
De facto complainant

Vs.

1.The Inspector of Police,
Sathankulam Police Station,
Tirunelveli District.
(Crime No.60 of 2013)

: First
Respondent/Respondent

2.Prince Anantharaj

: Second
Respondent/Accused No.1

Prayer: Criminal Original Petition is filed under Sections 439(2) read with 482 of the Criminal Procedure Code praying to cancel the anticipatory bail granted in Cr.M.P.No.4047 of 2015, dated 22.12.2015 on the file of the Principal Sessions Court, Tuticorin.

For Petitioner : Mr.M.P.Senthil

For Respondent No.1 : Mr.P.Kannithevan,
Government Advocate (Crl.side).

For Respondent No.2 : Mr.M.Alagappan

Crl.O.P(MD)No.2870 of 2016:

Babu Florence Debora : Petitioner/
De facto complainant

Vs.

1.The Inspector of Police,
Sathankulam Police Station,
Tirunelveli District.
(Crime No.60 of 2013)

: First
Respondent/Respondent

2.Gnana Deepam

3.Joshep Gnanaraj

4.Jacob Suresh

: Respondents
2 to 4/Accused 2,3 and 4

Prayer: Criminal Original Petition is filed under Sections 439(2) read with 482 of the Criminal Procedure Code praying to cancel the anticipatory bail granted in Cr.M.P.No.3967 of 2015, dated 17.12.2015 on the file of the Principal Sessions Court, Tuticorin.

For Petitioner : Mr.M.P.Senthil

For Respondent No.1 : Mr.P.Kannithevan,
Government Advocate (Crl.side).

For Respondent Nos.2 to 4 : Mr.M.Alagappan

: C O M M O N O R D E R

These petitions have been filed praying to cancel the anticipatory bail granted in favour of the accused Nos.1 to 6 and 8, who have been shown as respondents 2 to 4 in Crl.O.P(MD)No.2868 of 2016, second respondent in Crl.O.P(MD)No.2869 of 2016 and respondents 2 to 4 in Crl.O.P(MD)No.2870 of 2016, vide orders dated 22.12.2015 and 17.12.2015 made in Crl.M.P.No.4046, 4047 and 3967 of 2015 by the learned Principal Sessions Judge, Tuticorin.

2.It is averred in the petitions that the petitioner is the de facto complainant in Crime No.60 of 2013 on the file of the first respondent. She lodged a complaint before the first respondent and the same was registered for the offences under Sections 498(A) IPC and Section 4 of TNPHW Act. All the accused have filed Crl.O.P(MD)No.7828 of 2013 before this Court for anticipatory bail. The petitioner herein also filed an intervening petition in M.P(MD)No.1 of 2013. During pendency of the same, on the representation made on the side of the petitioners/accused that they will settle the matter, this Court referred the matter to the Mediation and Conciliation Centre attached to this Bench and granted interim anticipatory bail to them. During mediation, the accused persons did not appear before the Mediation Centre and since there was no co-operation on the side of the accused, failure report was filed and the matter was referred back to the Court. After taking several adjournments, on 03.06.2014, they sought permission to withdraw the said petition and this Court granted permission and accordingly the same was dismissed as withdrawn. Thereafter, when the first respondent police has not shown any interest in investigating the case, the petitioner filed a petition in Crl.O.P(MD)No.13555 of 2014, seeking transfer of investigation and this Court vide order dated 24.04.2015 directed the Superintendent of Police, Thoothukudi to transfer the investigation of the case from the first respondent to any one of his jurisdictional police station and further directed him to monitor the investigation. Pursuant to the same, the investigation of the case has been transferred to the Inspector of Police, Tiruchendur. Thereafter, the accused 1 to 6 and 8 suppressing all the aforesaid facts, filed Crl.M.P.Nos.4046, 4947 and 3967 of 2015 before the learned Principal Sessions Judge, Tuticorin and in the said petitions, they specifically mentioned that no other petition filed before any other Court. The learned Principal Sessions Judge without considering the abovesaid facts, granted anticipatory bail to the accused. Therefore the petitioner has come up with the present petitions for cancellation of the anticipatory bail granted in favour of the accused 1 to 6 and 8 by the learned Principal Sessions Judge, Tuticorin.

3.The learned counsel for the petitioner/de facto complainant has reiterated the averments made in the petition and further submitted that the petitioner is not living with A.1 and false statement was made before the learned Principal Sessions Judge and the accused suppressed the fact that they already filed a petition for anticipatory bail before this Court and after several hearings, the same was dismissed as withdrawn on 21.10.2013.

4. When the matter was taken up for hearing on 30.06.2016, there was no representation on the side of the petitioner and respondents 2 to 4 in Crl.O.P(MD)No.2868 of 2016, second respondent in Crl.O.P(MD)No.2869 of 2016 and respondents 2 to 4 in Crl.O.P(MD)No.2870 of 2016 and therefore the matter was posted today under the caption for dismissal. Today also there was no representation on the side of the respondents 2 to 4 in Crl.O.P(MD)No.2868 of 2016, second respondent in Crl.O.P(MD)No.2869 of 2016 and respondents 2 to 4 in Crl.O.P(MD)No.2870 of 2016. Therefore, these petitions are disposed of considering the arguments advanced on the side of the petitioner and the learned Government Advocate (Criminal side).

5. The learned Government Advocate (Criminal side) submitted that the accused 1 to 6 and 8 suppressed the fact that earlier they filed a petition for anticipatory bail before this Court and on their representation, the matter was referred to the Mediation and Conciliation Centre attached to this Bench and failure report was filed and the matter was referred back to the Court and after several hearings the learned counsel for the respondents/accused 1 to 6 and 8 sought permission to withdraw the petition and accordingly the said petition was dismissed as withdrawn and thereafter they moved petitions for anticipatory bail before the learned Sessions Judge and obtained anticipatory bail.

6. It is seen from the order passed by the learned Principal Sessions Judge that anticipatory bail was granted to the accused 1 to 6 and 8 on the ground that the petitioner herein and her husband A.1 are living together happily. According to the petitioner/wife, this is a false statement. The learned Principal Sessions Judge failed to see the earlier petition for anticipatory bail filed before this Court and its dismissal and also the petitioner/wife did not live with A.1.

7. It will be useful to refer the following Judgments rendered by the Hon'ble Supreme Court and the High Court of Delhi and the High Court of Bihar.

(i) 2012 (12) SCC 180 [Kanwar Singh Meena Vs. State of Rajasthan and another], wherein in paragraphs 17 and 18, it has been held as follows:-

?17. In any case, the order passed by the High Court releasing the accused involved in a heinous crime on bail, ignoring the relevant material, is legally not tenable. It suffers from serious infirmities. The High Court has exercised its discretionary power in an arbitrary and casual manner. We have also noticed that the incident took place on 19-5-2009 and the accused could be arrested only on 1-6-2011. His two attempts to get anticipatory bail, one from the Sessions Court and the other from the High Court, did not succeed. Assuming that the accused is not likely to flee from justice or after release on bail he has not tried to tamper with the evidence, that is no reason why a legally infirm and untenable order passed in arbitrary exercise of discretion releasing the accused involved in a gruesome crime on bail should be allowed to stand. This order needs to be corrected because it will set a bad precedent. Besides, it will have adverse effect on the trial.

18. Taking an overall view of the matter, we are of the opinion that in the interest of justice, the impugned order granting bail to the accused deserves to be quashed and a direction needs to be given to the police to take the accused in custody.?

(ii)2015 Cri. L.J. 4862 [Neeru Yadav Vs. State of Uttar Pradesh and another], wherein in paragraphs 15 and 18, it has been held as follows:

?15.This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighted with the High Court is the doctrine of parity. A history- sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

18.Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order.?

(iii)Crl.M.C.No.3589 of 2014, dated 20.05.2015 [Priyanka Vs. State and another], wherein in paragraphs 19 and 20, it has been held as follows:-

?19.In Dolat Ram (supra), it was observed that bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstance 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 trial. In this case, anticipatory bail was granted to the appellants. State of Haryana filed a petition for cancellation of anticipatory bail which was allowed. Thereafter the matter went to Hon'ble Supreme Court. It was observed that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail, already granted. Generally speaking the grounds for cancellation of bail broadly (illustrative and not exhaustive) are:- interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due process of justice or abuse of the concession granted to the accused in any manner. Bail once granted should not cancelled in a mechanical manner. In State of U.P through CBI v. Amarmani Tripathi, (2005) 8 SCC 21, it was observed that in an application for cancellation of bail, conduct subsequent to release

on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant u/s 439 read with Section 437 continue to be relevant.

20. In view of the fact that the orders of the learned Metropolitan Magistrate granting bail to the accused was in violation of the provisions incorporated u/s 437 of the Cr.P.C., the same is set aside. However, respondent no.2 is enjoying the benefit of bail since 26.04.2014 as such, while allowing this petition and setting aside the order impugned, respondent no.2 is permitted to apply for regular bail in the Sessions Court where the case has been committed for trial within a week. If any such application is filed, the same shall be disposed of on its own merits, failing which learned Additional Sessions Judge who is seized of the matter is directed to take him in custody. The petition is accordingly disposed of.?

(iv)2006 Cri. L.J. 4435 [Usha Devi Vs. The State of Bihar and others], wherein in paragraph 25, it has been held as follows:

?25.Bearing in mind the aforesaid principle when I proceed to examine the merit of the case, I find that earlier a case under Section 363 and 365 of the Indian Penal Code was registered and after investigation, it has been found that a child aged about four and half years has been kidnapped for ransom and the petitioner had dominant role in that. Not only that the investigation had disclosed graver offence but offence of such nature that no Court would had granted bail to her. As such, the learned Judge rightly did not allow her to continue on bail granted earlier on default, after the submission of the charge sheet.?

A reading of the abovesaid judgments clearly shows that while granting bail, the Court must consider the gravity of offence and antecedents of the accused and possibility of accused absconding or indulging in similar offences, if he is enlarged on bail. The learned Principal Sessions Judge, Tuticorin, while granting anticipatory bail to the respondents 2 to 4 in Crl.O.P(MD)No.2868 of 2016, second respondent in Crl.O.P(MD)No.2869 of 2016 and respondents 2 to 4 in Crl.O.P(MD)No.2870 of 2016, who have been shown as accused Nos.1 to 6 and 8, has failed to consider the principles for granting bail enunciated in the judgments of this Court and the Hon'ble Supreme Court. The learned Principal Sessions Judge, Tuticorin, has failed to consider the gravity of the charges levelled against them.

8.Considering the abovesaid facts, this Court is inclined to cancel the anticipatory bail granted in favour of the respondents 2 to 4 in Crl.O.P(MD)No.2868 of 2016, second respondent in Crl.O.P(MD)No.2869 of 2016 and respondents 2 to 4 in Crl.O.P(MD)No.2870 of 2016 by the learned Principal Sessions Judge, Tuticorin vide orders dated 22.12.2015 and 17.12.2015 made in Crl.M.P.No.4046, 4047 and 3967 of 2015 and accordingly, these petitions are allowed.

To

- 1.The Principal Sessions Judge, Tuticorin.
- 2.The Inspector of Police, Sathankulam, Tirunelveli District.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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