Lakshmanan vs Karuthapandi on 11 July, 2016

Author: V.M.Velumani

Bench: V.M.Velumani

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2016

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl.O.P.(MD).No.20925 of 2015

Lakshmanan ... Petitioner

Vs.

1.Karuthapandi

2.The Inspector of Police,
Nagamalaipudukottai Police Station,
Madurai. ... Respondents

PRAYER: Petition filed under Section 439(1) of the Code of Criminal Procedure, to cancel the Anticipatory bail granted to the first respondent herein made in Cr.M.P.No.5859 of 2015, dated 01.10.2015 on the file of the Principal Sessions Judge, Madurai.

!For Petitioner : Mr.N.Shanmugaselvam
^For R1 : No appearance
For R2 : Mr.P.Kannithevan
Government Advocate

:O R D E R

This petition has been filed to cancel the Anticipatory bail granted to the first respondent herein, in Cr.M.P.No.5859 of 2015, dated 01.10.2015 by the learned Principal Sessions Judge, Madurai.

2.The first respondent and other accused have been charged for the offences punishable under Sections 406, 420, 468, 471 of IPC. The first respondent/A1 and A2 filed anticipatory bail petition before the Principal Sessions Court, Madurai, in Cr.M.P.No.5859 of 2015. By order, dated 01.10.2015, the learned Principal Sessions Judge, Madurai granted anticipatory bail to the first respondent/A1 and dismissed the anticipatory bail petition with regard to A2. Now, the petitioner has come out with the present petition for cancellation of anticipatory bail granted to the first

respondent/A1.

3.The learned counsel for the petitioner submitted that the learned Principal Sessions Judge, Madurai did not consider the allegation made against the first respondent/A1 in the FIR and the serious nature of offence committed by the first respondent and his son A2 that they have not only received Rs.7,00,000/- from the petitioner, for securing a job in the Madurai Kamaraj University, but also issued forged appointment order. Therefore, the order of the learned Principal Sessions Judge, Madurai is illegal and liable to be set aside.

4.There is no representation on behalf of the first respondent/A1.

5.The learned Government Advocate(Crl.side) submitted that based on the complaint given by the petitioner, case has been registered against the first respondent and his son A2 and Investigation is pending.

6.A reading of the FIR shows that the first respondent /A1 has received money and issued forged appointment order. The learned Principal Sessions Judge, Madurai has failed to consider the allegations made against the first respondent.

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:-
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> ?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.
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> 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.?
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> 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, Madurai, while granting anticipatory bail to the first respondent/A1, 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, Madurai, has failed to consider the gravity of the charges levelled against the first respondent/A1.

8. Considering the serious allegations made against the first respondent/A1, the anticipatory bail granted by the learned Principal Sessions Judge, Madurai, in Crl.M.P.No.5859 of 2015, dated 01.10.2015, stands cancelled. The Criminal Original Petition is allowed accordingly.

To

1.The Principal Sessions Court, Madurai.

2.The Additional Public Prosecutor Madurai Bench of Madras High Court, Madurai.

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