

# Umamaheshwari vs State Through on 29 June, 2016

**Author: V.M.Velumani**

**Bench: V.M.Velumani**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2016

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Crl.O.P.(MD)Nos.8218 of 2016 & 8219 of 2016  
&  
Crl.M.P.(MD)Nos.4024 & 4025 of 2016

Umamaheshwari, W/o.Ramesh ... Petitioner  
in Crl.O.P.(MD)No.8218/2016

Manikandan, S/o.Ramamurthy ... Petitioner  
in Crl.O.P.(MD)No.8219/2016

Versus

1.State through,  
The Sub Inspector of Police,  
S.S.Colony Police Station,  
Madurai.  
(Crime No.485/2016)

2.Karmegam, S/o.Ramachandran

3.Nagamani, W/o.Karmegam ... Respondents  
in both the Crl.O.

PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order passed by the learned Vacation Sessions Judge, Madurai, in Crl.M.P.Nos.17 and 18 of 2016, dated 11.05.2016, in connection with Crime Nos.477 and 485 of 2016 respectively, on the file of the first respondent police.

!For Petitioner : Mr.Veerakathiravan  
(in both the Crl.O.Ps.) Senior Counsel  
for Mr.C.Jegannathan

^For R1

: Mr.P.Kannidevan  
(in both the CrI.O.Ps.) Government Advocate  
(Criminal side)

For R2 & R3 : Mr.N.Sundareshan  
(in both the CrI.O.Ps.)

: COMMON ORDER

These Criminal Original Petitions have been filed seeking to set aside the order passed by the learned Vacation Sessions Judge, Madurai, in CrI.M.P.Nos.17 and 18 of 2016, dated 11.05.2016, in connection with Crime Nos.477 and 485 of 2016 respectively, on the file of the first respondent police.

2. The petitioner in both the CrI.O.Ps., are the de-facto complainant in Crime Nos.477 and 485 of 2016 respectively.

3. According to the petitioner in CrI.O.P.(MD)No.8218 of 2016, she gave a complaint on 18.04.2016 against the respondents 2 and 3 with the first respondent police stating that on 17.04.2016 the respondents 2 and 3 damaged the drainage pumps and pelted stones in the Apartment belonging to her, situated at Bye-Pass Road, Madurai. On information, she found that the respondents 2 and 3 damaged the property worth about Rs.1,00,000/-. On 18.04.2016, when the petitioner went to the Apartment, the respondents 2 and 3 threatened her with dire consequences. On her complaint, a case in Crime No.477 of 2016 has been registered for the offences punishable under Sections 294(b), 323 and 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

4. According to the petitioner in CrI.O.P.(MD)No.8219 of 2016, he is working as a Manager in Gowri Krishna Hotel, situated at S.S.Colony, Bye-pass Road, Madurai. On 23.04.2016 about 5.30 p.m., the respondents 2 and 3 and others assembled in front of the Hotel and pelted stones inside the Hotel and abused the owner, the petitioner / de-facto complainant and the hotel workers in filthy language and damaged the mirror and other valuables in the Hotel. Suddenly, the second respondent / A1 drove his vehicle bearing Registration No.TN-58-AF-1469, in a rash and speedy manner with an intention to murder the petitioner / de-facto complainant and the said car rammed into the Hotel and damaged valuables, particularly, the glasses and wooden furniture, worth about Rs.60,00,000/-. Due to that occurrence, four persons have been injured. A2, A3 and A4 have threatened one Subburaman and Gopal, who were working in the said Hotel and looted Rs.1,00,000/- cash from the cash box of the Hotel. On his complaint, a case in Crime No.485 of 2016 has been registered for the offences punishable under Sections 147, 294(b), 448, 323, 307, 379, 506(ii) and 120(B) and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992.

5. In both the cases, the respondents 2 and 3 were arrested and remanded to judicial custody. The respondents 2 and 3 filed CrI.M.P.Nos.17 and 18 of 2016, for enlarging them on bail. The petitioner in CrI.O.P.(MD)No.8218 of 2016 filed CrI.M.P.No.109 of 2016 and the petitioner in CrI.O.P.(MD)No.

8219 of 2016 filed Crl.M.P.Nos.3, 4 and 113 of 2016, for intervening.

6. The learned Vacation Sessions Judge, Madurai, by order dated 11.05.2016, without considering the gravity of the offence committed by the respondents 2 and 3 and without considering the contention of the learned counsel for the petitioners and the learned Public Prosecutor, enlarged the respondents 2 and 3 on bail. Hence, the petitioners have come out with the present petitions to set aside the order passed by the learned Vacation Sessions Judge, Madurai, in Crl.M.P.Nos.17 and 18 of 2016, dated 11.05.2016, in connection with Crime Nos.477 and 485 of 2016 respectively, on the file of the first respondent police.

7. The learned Senior Counsel appearing for the petitioners submitted that the second respondent is a notorious land grabber and the respondents 2 and 3 damaged the property of the Hotel, worth about Rs.60,00,000/- and also damaged the property of the petitioner in Crl.O.P.(MD)No.8218 of 2016, worth about Rs.1,00,000/- and committed theft of Rs.1,00,000/-. The second respondent drove the car at a high speed and entered the Hotel and damaged the property and four persons were injured. After they were enlarged on bail, at the instigation of the second respondent, a car belonging to the owner of the Hotel was damaged on 07.06.2016 and the driver of the owner was threatened with dire consequences and the persons belonging to the second respondent, at his instigation, tried to kill the driver of the car. At the instigation of the second respondent, three persons were distributing the pamphlets containing defamatory statement against the owner and Management of the Hotel. On complaint given by the driver of the car, a case in Crime No.656 of 2016 has been registered for the offences punishable under Sections 341, 294(b), 323 and 506(ii) IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992. The learned Senior Counsel further submitted that the learned Vacation Sessions Judge, Madurai, has not properly considered the gravity of the offence and also the fact that the respondents 2 and 3 are habitual offenders and the offences are serious in nature. The learned Vacation Sessions Judge, Madurai, failed to consider the contentions of the Intervenor. Further, the learned Vacation Sessions Judge, Madurai, has not imposed any stringent condition, while enlarging the respondents 2 and 3 on bail.

8. The learned Senior Counsel appearing for the petitioners submitted that the respondents 2 and 3 were remanded to judicial custody and immediately they were admitted in the Hospital.

9. In support of his submissions, the learned Senior Counsel appearing for the petitioners relied on the following Judgments:

(i) State by Superintendent of Police, Central Bureau of Investigation (Special Crime Branch), Madras Vs. Adi Rajaram [1996 MLJ (Crl.) 194], wherein in paragraph 16, it has been held as follows:

?16. The application for cancellation has been filed under Section 439(2) read with Sec.482, Crl.P.C. I see no reason to hold that it is not maintainable and the contention deserves to be rejected. In State V. Mahinder Singh (1994) 1 Crimes 56 and Jayanti Prasad Goel V. Sumitra Jain and others, (1994) 1 S.C.R.174, the High

Court of Delhi has held that if it is found that bail has been granted improperly, can always be cancelled. The propriety and illegality of the order passed by the Court of Session can be examined by this High Court. Therefore, I see no merit in the contention that the petition is not maintainable.?

(ii) *Puran Vs. Rambilas and another* [2001 CRI. L.J. 2566], wherein in paragraph 15, it has been held as follows:

?15. We see no substance in this submission. In the hierarchy of Courts, the High Court is the Superior Court. A restrictive interpretation which would have effect of nullifying Section 439(2) cannot be given. When Section 439(2) grants to the High Court the power to cancel the bail, it necessarily follows that such powers can be exercised also in respect of the Orders passed by the Court of Session. Of course cancellation of bail has to be on principles set out hereinabove and only in appropriate cases.?

(iii) *Y.Banumoorthy Vs. R.Janakiraman* [2006 (2) MLJ (Crl.) 134], wherein in paragraph 13, it has been held as follows:

?13. Therefore, even if such a remedy is available for the accused, this Court can invoke Section 482 of the Code of Criminal Procedure to prevent the abuse of the process of law by the inferior Courts and to ensure the stream of administration of justice remains clean and pure.?

10. The learned Government Advocate (Criminal side) submitted that the respondents 2 and 3 furnished sureties and complied with the condition imposed by the learned Vacation Sessions Judge, Madurai, while enlarging them on bail and subsequently, the condition viz., directing the respondents 2 and 3 to appear before the first respondent police daily has been relaxed and directed them to appear on every Monday for four weeks in Crl.M.P.No.17 of 2016 and two months in Crl.M.P.No.18 of 2016 respectively and the investigation is going on.

11. The learned counsel for the respondents 2 and 3 submitted that the petitioners filed Crl.O.Ps., to set aside the order dated 11.05.2016, made in Crl.M.P.Nos.17 and 18 of 2016, enlarging the respondents 2 and 3, are not maintainable. The learned Vacation Sessions Judge, Madurai, has considered the complaint, contentions of the learned counsel for the Intervenors and the learned Public Prosecutor and the learned counsel for the respondents 2 and 3 and after appreciating the same, enlarged the respondents 2 and 3 on bail with certain conditions. The respondents 2 and 3 have complied with the conditions and also appeared before the first respondent police regularly and subsequently, the said condition was relaxed and therefore, he prayed for dismissal of the Criminal Original Petitions.

12. I have considered the submissions made by the learned counsel appearing for the parties.

13. The learned counsel for the respondents 2 and 3 contended that the abovesaid petitions are not maintainable. On the other hand, the learned Senior Counsel appearing for the petitioners relied on the Judgments referred to above and submitted that the present petitions are maintainable and this Court has ample power and jurisdiction to cancel bail and anticipatory bail granted by a Lower Court or earlier order passed by this Court. From the ratio laid down in the abovesaid Judgments, it is clear that this Court has power to entertain a petition for cancellation or a petition to set aside the earlier order granting bail or anticipatory bail. In view of the abovesaid Judgments, the contention of the learned counsel for the respondents 2 and 3 that the abovesaid petitions are not maintainable, has no merit.

14. 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 show that a Court granting bail must consider the gravity of offence and antecedent of the accused and possibility of accused absconding or indulging in similar offences. The learned Vacation Sessions Judge, Madurai, while enlarging the respondents 2 and 3, has failed to consider the principles for granting bail as contemplated by provisions of Act as well as the judgments of this Court and the Hon'ble Supreme Court. The learned Vacation Sessions Judge, Madurai, has failed to consider the gravity of the charges levelled against the petitioner in both the cases in question. In addition to this, after the respondents 2 and 3 were enlarged on bail, the second respondent again indulged in instigating his men to commit offences by damaging the car of the owner of the Hotel as well as tried to kill the driver of the car. The allegation is also made at his instigation, three persons were distributing the pamphlets containing defamatory statement against the owner and Management of the Hotel. This Court is taking note of the subsequent complaint and FIR registered against the respondents 2 and 3.

15. Considering the above facts, the bail granted by the learned Vacation Sessions Judge, Madurai, in Crl.M.P.Nos.17 and 18 of 2016, dated 11.05.2016, is cancelled and the respondents 2 and 3 are directed to surrender before the Court concerned.

16. The Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

To

1.The Vacation Sessions Judge, Madurai.

2.The Sub Inspector of Police, S.S.Colony Police Station, Madurai.

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