

## **Tulaseedharan Nair vs State Of Kerala on 14 July, 2006**

**Equivalent citations: 2006CRILJ4176, 2006(4)KLT471, 2006 CRI. L. J. 4176, (2006) 48 ALLINDCAS 814 (KER), (2006) ILR(KER) 3 KER 360, 2006 (48) ALLINDCAS 814, (2006) 3 KER LJ 57, (2006) 4 KER LT 471, (2007) 2 ALLCRILR 30, 2006 (56) ACC (SOC) 43 (KER)**

**Author: R. Basant**

**Bench: R. Basant**

ORDER

R. Basant, J.

1. This revision petition is directed against an order passed by the learned Sessions Judge under Section 439(2) of the Cr.P.C. canceling the bail granted to the petitioners 1 to 9 herein. It will be advantageous to refer to the sequence of events - twists and turns, that have taken place in this case which led to the passing of the impugned order.

2. An incident is alleged to have taken place on 24.3.2002 at 2.30 a.m. Bereft of unnecessary details, the crux of the alleged incident is that there was an attempt to widen a pathway which already exists. Fence poles planted on either side of the way were allegedly removed. The de facto complainant was allegedly assaulted and intimidated. Obscenities were showered on him. On his complaint a crime was registered on 24.3.2002. That crime was registered under Sections 323, 506(ii), 294(b) read with Section 34 of the IPC. Six named accused persons (petitioners 1 to 6 herein) and some others (not named) were allegedly responsible for the crime. After investigation, final report was filed raising allegations against petitioners 1 to 6 under Sections 323, 294(b) and 506(ii) read with Section 34 of the IPC. Cognizance was taken by the learned Magistrate and C.C.No.981/02 was registered. Petitioners 1 to 6 appeared before the learned Magistrate and they were granted bail under Section 436 of the IPC on 18/1/2003. The de facto complainant was aggrieved and dissatisfied with the investigation conducted. He approached the Director General of Police for further investigation. Further investigation was ordered and further investigation was conducted under Section 173(8) of the Cr.P.C. The case was kept pending before the learned Magistrate.

3. Thereupon, in the course of further-investigation, the police arrayed petitioners 7 to 9 also as accused and made a further allegation that the offence under Section 379 of the IPC was also committed by the accused persons. After further investigation, a further final report under Section 173(8) of the Cr.P.C. was filed and in that further final report, accused 7 to 9 were arrayed as additional accused and allegations under Sections 143, 144, 147, 148, 149, 323, 294(b), 506 (ii) and 379 of the IPC were raised.

4. Petitioners 7 to 9 were arrested by the police and produced before the learned Magistrate. The learned Magistrate enlarged them on bail under Section 437 of the Cr.P.C.

5. The de facto complainant's grievance remained unsatisfied by the further investigation conducted also. He came to this Court with W.P.(c) No. 10509/05 alleging that the investigation was not conducted properly. It is submitted that further investigation was ordered by the superior officials of the police and such further investigation is now continuing. A Deputy Superintendent of Police is conducting such further investigation now.

6. The offence under Section 379 of the IPC was included, in the further report filed under Section 173(8) of the Cr.P.C. on the allegation that the fence poles which were uprooted from the sides of the pathway which was sought to be widened and which were available at a point away from the scene of the crime on the date of the occurrence had subsequently been stealthily removed. The Deputy Superintendent of Police conducting the investigation filed a petition before the learned Magistrate praying that in the changed circumstances, bail granted to petitioners 1 to 9 may be cancelled and he may be permitted to re-arrest them. That petition was dismissed by the learned Magistrate.

7. The prosecution filed a revision petition before the learned Sessions Judge against that order. While that revision petition was pending, the de facto complainant approached this Court. This Court in the very same W.P.(c) No. 10509/05 issued a direction to the learned Sessions Judge to consider the matter as one under Section 439(2) of the Cr.P.C. and pass appropriate orders. The de facto complainant also appeared before the learned Sessions Judge and he was heard. It is thereafter that the impugned order has been passed by the learned Sessions Judge.

8. Arguments have been advanced by the learned Counsel for the petitioners and the learned Public Prosecutor. The de facto complainant came before this Court with the prayer to get himself impleaded. That prayer was not allowed. But he was permitted to make his submissions before this Court. He has also been heard in the matter. I must say that the de facto complainant has made impassioned appeals with righteous indignation. He had prepared his brief well. He has certainly been of good assistance to this Court in the matter. The learned Counsel for the petitioners submits that no circumstance which is legally recognised and which would justify an order of cancellation of bail under Section 439(2) of the Cr.P.C. do exist. The learned Sessions Judge did not consider the questions in the proper perspective. There was no allegation of the petitioners abusing the freedom/liberty granted to them. There was no allegation that they hampered or interfered with the due course of justice. The petitioners had made an assertion that they have no confession to make at all and that they have no statement to be made about the alleged disposal of the fence poles. In these circumstances, the learned Sessions Judge should not have invoked his extraordinary powers under Section 439(2) of the Cr.P.C. to cancel the bail. They were already questioned by all the Investigating Officers and the second Investigating Officer who submitted the first further report under Section 173(8) of the Cr.P.C. had made it clear that he was not able to trace those fence poles even after questioning the accused. The counsel further points out that the second Investigating Officer had been permitted by the court to interrogate the accused though their bail was not cancelled by the court at that stage. The learned Counsel for the petitioners, in these circumstances, relied on the precedents to show that cancellation of bail is a harsh remedy of law which jurisdiction cannot be

invoked lightly. The prayer for rejection of an application for bail and the prayer for cancellation of a bail cannot be treated identically. Stronger fare must be insisted before the extraordinary and harsh remedy of law of cancellation of bail is directed.

9. Precedents have been copiously cited at the Bar, I do not think that there is any controversy or dispute on the law involved. I may mention that the point is well taken that totally different considerations must appeal to the court while considering an application for grant of bail and while considering an application for cancellation of bail. A reading of Section 439(2) of the Crl.P.C. shows clearly that the legislature did not think it necessary to enumerate the reasons on which a prayer for cancellation of bail can be allowed. I extract Section 439(2) of the Crl.P.C. below:

439. Special powers of High Court or Court of Session regarding bail,-

(1) xxx xxx xxx (2) A High Court or Court Sessions may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

10. The power to cancel the granted bail is available only to the High Courts and the Courts of Session and the Parliament appears to have placed trust and faith that such superior courts will be able to identify the valid reasons on which such an extraordinary harsh remedy of law can be granted. The Parliament has hence not chosen to enumerate and stipulate the circumstances under which such powers can or cannot be invoked. Normally and ordinarily interference with the due course of justice, hampering investigation, abusing freedom granted by the court which granted bail, intimidation of witnesses etc., are the reasons urged for cancellation of bail. But by no stretch of imagination can it be held that the list is exhaustive. There must and can be other circumstances under which also an order for cancellation of bail can be allowed. It is left to the sound judicial discretion of the superior courts - the Sessions Courts and the High Courts to decide in what causes an order of bail can be cancelled. It is unnecessary - nay, it will be counter productive to attempt to enumerate exhaustively the circumstances under which bail already granted can be cancelled and need not be cancelled. A court must be informed of all the circumstances. Myriad are the circumstances and facts which may arise in each case and no two cases can be said to be exactly identical. Therefore, the list of circumstances which are often referred to, it must be alertly noted, is not exhaustive and other circumstances can and may certainly be there.

11. Without intending to be exhaustive and with the only intention of being illustrative, it can certainly be held that where the investigational needs compellingly require the cancellation of bail, the court can resort to such course. The de facto complainant alertly points out the decision reported in *The State of Maharashtra v. Girish Jethalal Cheddha and Ors.* (Bombay) 1987 (1) Crimes 547 on this aspect. I am in agreement with the de facto complainant on this aspect. If bail were granted assuming that only a lesser offence is committed, and it turns out that the magnitude or the seriousness of the offence had not dawned on the Investigator or the court at the stage when bail was granted, resort can in an appropriate case be made to the power under Section 439(2) of the Cr.P.C. Similarly, if bail is procured in collusion with the investigating agency or by suppression of material facts, bail already granted can certainly be cancelled in an appropriate case. If there is fraud played on the court or fraud played on the investigating agency itself, in an appropriate case, bail

granted can be cancelled under Section 439(2) of the Cr.P.C. Even arbitrary, and not bonafide exercise of the discretion by a judicial functionary can be reckoned as a satisfactory reason in an appropriate case to justify the invocation of the powers under Section 439(2) of the Cr.P.C. I may hasten to observe that such relief is not to be granted for the mere asking or because elements of any of these grounds appear to be present. It must also be remembered always that cancellation of the order of bail already granted in his favour is an exceptional harsh consequence which a person can be visited with under law.

12. I now come back to the specific facts. Why does the prosecution want the bail to be cancelled? Why does the de facto complainant pray that bail granted to the petitioners be cancelled? It is submitted that fraud has been played on the court, inasmuch as crime was registered initially without making any reference to the offence under Section 379 of the IPC. It is further submitted that the Investigating Officer had hurriedly completed the investigation and filed charge sheet raising innocuous allegations under Section 323, 506 and 294(b) read with Section 34 of the IPC. It is submitted that such an innocuous final report was filed initially only to facilitate the petitioners getting bail under Section 436 of the Cr.P.C. on their surrender before the learned Magistrate. Even the subsequent Investigator did not act fairly and properly, it is contended. When accused 7 to 9 were arrested and produced, no serious objection was raised against the grant of bail to them, it is submitted. The learned Public Prosecutor, the Investigator and even the learned Magistrate did not alertly consider all the circumstances and the petitioners were permitted to be on bail with impunity, contends the de facto complainant.

13. The thieved articles/fence poles have not been recovered. For a proper prosecution under Section 379 of the IPC every effort must have been made to recover the thieved property. No serious efforts, in this direction, were made. The petitioners deserve to be interrogated now to trace the thieved property. This having not been done, the cancellation of bail is totally justified, submits the de facto complainant.

14. I have considered these circumstances also. I do not want to express any final opinion on the theory of fraud and collusion. On the first day when the crime was registered, indications reveal that the fence poles were not removed and were available, though not at the site; but at a nearby location. The omission to include the allegation under Section 379 of the IPC may be improper. But, according to me, it would be too much in the given circumstances to dub that as fraud played on the court. I leave the matter there, as further investigation has not been completed yet and the present Investigating Officer appears to be making a serious attempt.

15. The statement of the accused that they do not have anything more to say to the Investigator cannot be reckoned as acceptable gospel truth. The courts have repeatedly referred to the advantages of custodial interrogation in, resolving crimes. Custodial interrogation, properly done without resort to objectionable methods can be of great help in the investigation of the crime. Custodial interrogation is not synonymous with third degree methods or objectionable handling of the accused. Custodial interrogation, it is clear as day light can help the police to confront the indictee with various circumstances, corner him by interrogation and help the Investigator to collect vital data. In these circumstances, I am unable to agree that a statement, made by the accused that

they do not want to make any statement that they do not know about the present location of the stolen articles or that they do not want to make any confession is the end of the road for the Investigator. An alert intelligent and efficient Investigator by custodial interrogation, it is trite, will be able to unearth information which may conveniently be not volunteered before a court. Therefore, I am unable to accept the contention that the statement of the accused that they do not want to make a confession, do not know any thing about the stolen property and do not want to make any further statement can be reckoned as final and conclusive.

16. I have adverted very anxiously to all the circumstances. At the end of the day I must mention that I am not persuaded to agree that such circumstances exist in this case which would justify the cancellation of the bail already granted. This is not to say that directions need not be issued to facilitate further interrogation of the petitioners. It is significant that there is not a whisper of an allegation made by the Investigator or even by the de facto complainant authentically that the petitioners have abused their freedom or had abused the liberty granted to them. There is no specific allegation of intimidation of the de facto complainant or the witnesses. Of course, at the Bar such allegations have been generally tried. But specific allegations to that effect and tangible data to support any such allegations are not forthcoming. I am satisfied, in these circumstances, that the challenge deserves to be upheld; but with appropriate further directions which would facilitate an efficient, fair and expeditious investigation. The learned Counsel for the petitioners submits that the petitioners are willing to co-operate with the Investigator and make themselves available for interrogation as and when directed by the court. Appropriate direction to that effect can also be made. I may hasten to further observe that the liberty of the Investigating Officer or even the de facto complainant to approach the courts if there be actual abuse of the freedom or intimidation of the witnesses in future, will remain unaffected by this order passed by me.

17. In the result:

(a) This revision petition is allowed.

(b) The impugned order is modified. The direction for cancellation of bail is set aside.

(c) The petitioners are directed to make themselves available for interrogation before the present Investigating Officer between 8 a.m. and 5 p.m. on 20.7.06, 21.7.06 and 22.7.06 at his office at Thiruvalla. It shall be open to the Investigating Officer during such period to interrogate them and to take them to any place if such interrogation leads to any information which would necessitate or facilitate recovery also.