

Karuppaiah vs P.R.Rajesh Kumar : First 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

CrI.O.P(MD)No.21722 of 2015

Karuppaiah : Petitioner/
Informant

Vs.

1.P.R.Rajesh Kumar : First
Respondent/Petitioner

2.State rep. by
The Inspector of Police,
City Crime Branch P.S.,
Trichy District.
(Crime No.5 of 2015) : Second
Respondent/Respondent

Prayer: Criminal Original Petition is filed under Sections 439(2) read with 482 of the Criminal Procedure Code praying to cancel the anticipatory bail order passed in Cr.M.P.No.1068 of 2015, dated 13.05.2015 on the file of the Vacation Sessions Court, Trichy.

!For Petitioner : Mr.P.Andiraj

^For Respondent No.1 : Mr.K.Rajeshwaran

For Respondent No.2 : Mr.P.Kannithevan,
Government Advocate (CrI.side).

:O R D E R

This petition has been filed praying to cancel the anticipatory bail granted in favour of the first respondent vide order dated 13.05.2015 made in CrI.M.P.No.1068 of 2015 by the learned Vacation

Sessions Judge, Tiruchirappalli.

2.It is averred in the petition that the petitioner and first respondent are neighbours. The first respondent introduced one Muthukumar (A.1) as Satheshkumar and he is the owner of the land to an extent of 2 acres situated at Tamalaroobam Village in Trichy within the Corporation limit and A.1 informed him that he is going to sell the said property. Believing the same, the petitioner paid a sum of Rs.2 crores to the first respondent and A.1 as advance. After receiving the amount, both the accused have evaded to register the document in favour of the petitioner and cheated him. On verification, the petitioner came to know that the accused colluded together and with the help of other persons created forged documents as if A.1 is the original owner. The petitioner lodged a complaint before the Inspector of Police, Woraiyur Police Station against A.1 and the first respondent. Both of them have filed Crl.O.P(MD)Nos.22569 and 22671 of 2014 before this Court for anticipatory bail. During pendency of the same, on the representation made on the side of the petitioners that they will settle the matter, this Court referred the matter to the Mediation and Conciliation Centre attached to this Bench. During mediation, the accused persons did not appear before the Mediation Centre and there was no possibility of settlement and therefore the matter was referred back to the Court. When this Court was not inclined to grant anticipatory bail to them, they sought permission to withdraw the said petitions and this Court granted permission and accordingly the same were dismissed as withdrawn. Thereafter, the investigation of the case was transferred to the second respondent police and taken on file in Crime No.5 of 2015 on 24.03.2015 for the offences under Sections 419, 420, 468, 471 and 474 IPC and the second respondent arrested A.1, Muthukumar and remanded him to judicial custody. Thereafter the first respondent moved a petition for anticipatory bail before the Vacation Sessions Court, Tiruchirappalli in Crl.M.P.No.1068 of 2015, suppressing the fact that he has already approached this Court for anticipatory bail and the same was dismissed as withdrawn and in the petition before the learned Vacation Sessions Judge, Tiruchirappalli, he specifically mentioned that the petitioner has not moved any anticipatory bail application before the Higher Forum and this Court. The learned Vacation Sessions Judge without considering the gravity of the offences and also the fact that a number of persons were cheated by the first respondent and A.1, granted anticipatory bail to the first respondent on the ground that the first respondent only introduced A.1 to the petitioner and did not receive any amount. The learned Vacation Sessions Judge failed to see the fact that Rs.2 crores was paid to the first respondent and A.1. Therefore the petitioner has come up with the present petition for cancellation of the anticipatory bail granted in favour of the first respondent by the learned Vacation Sessions Judge, Tiruchirappalli.

3.The learned counsel for the petitioner has reiterated the averments made in the petition.

4.The learned counsel for the first respondent submitted that the learned Vacation Sessions Judge after considering all the facts and also considering the fact that the first respondent only introduced the petitioner to A.1 and also appreciating the part played by the first respondent, granted anticipatory bail in favour of the first respondent. He further submitted that the first respondent is complying with the condition imposed by the learned Vacation Sessions Judge and he has not suppressed any facts. According to him, the petition for anticipatory bail filed before the learned Vacation Sessions Judge is the first petition for anticipatory bail, after transfer of the case to the

second respondent and therefore it is not a suppression of fact. The learned counsel also relied on the decision of the Hon'ble Supreme Court in Jagmohan Bahl and another v. State (NCT of Delhi) and another reported in (2014)16 Supreme Court Cases 501, wherein in paragraph Nos.15 and 16, it is held as follows:

15. In the instant case, when the Additional Sessions Judge had declined to grant the bail application, the next Fourth Additional Sessions Judge should have been well advised to place the matter before the same Judge. However, it is the duty of the prosecution to bring it to the notice of the concerned Judge that such an application was rejected earlier by a different Judge and he was available. In the entire adjudicatory process, the whole system has to be involved. The matter would be different if a Judge has demitted the office or has been transferred. Similarly, in the trial court, the matter would stand on a different footing, if the Presiding Officer has been superannuated or transferred. The fundamental concept is, if the Judge is available, the matter should be heard by him. That will sustain the faith of the people in the system and nobody would pave the path of forum-shopping, which is decryable in law.

16. Having said what we have stated hereinabove, the natural corollary would have been to set aside the order as it has been passed in an illegal manner. Ordinarily we would have issued that direction but, a significant one, in the present case, the allegations, as we find, are quite different.

The FIR was instituted under Section 420/34 IPC and relates to execution of an agreement. In such a situation, we do not intend to set aside the order and direct the appellants to move a fresh application for bail under Section 438 CrPC. We are only inclined to direct that the bail order granted in their favour shall remain in force and the appellants shall abide by the terms and conditions imposed by the Court and would not deviate from any of the conditions?.

5. The learned Government Advocate (Criminal side) submitted that the charge sheet has already been filed before the Trial Court and the first respondent suppressed the fact that he has already approached this Court for anticipatory bail and the same was dismissed as withdrawn and he filed a petition for anticipatory bail before the learned Vacation Sessions Judge and obtained anticipatory bail. In the earlier petition for anticipatory bail filed before this Court by the first respondent, on the representation made on his side that he will settle the matter, the matter was referred to Mediation and Conciliation Centre and due to his absence, the matter was referred back to the Court and when this Court was not inclined to grant anticipatory bail in favour of him, the learned counsel for the petitioner sought permission to withdraw the petition and accordingly the petition was dismissed as withdrawn. Now, suppressing the above said facts, the first respondent approached the learned Vacation Sessions Judge and obtained anticipatory bail.

6. It is seen from the order passed by the learned Vacation Sessions Judge that the learned Vacation Sessions Judge failed to see the allegation of the petitioner/de facto complainant that he paid a sum of Rs.2 crores to both A.1 and first respondent and the accused persons have cheated number of

persons by making similar false representations. The learned Vacation Sessions Judge also failed to impose condition upon the first respondent directing him to appear before the second respondent police for enquiry.

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 lancing of the impugned order.?

(iii)CrI.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 be 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 have 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 Vacation Sessions Judge, Trichy, while granting anticipatory bail to the first respondent/A2, has failed to consider the principles for granting bail enunciated in the judgments of this Court and the Hon'ble Supreme Court. The learned Vacation Sessions Judge, Trichy, has failed to consider the gravity of the charges levelled against the first respondent/A2.

8. Considering the abovesaid facts and also the fact that the decisions referred to supra are also applicable to the facts of the present case and the Judgment relied on by the learned counsel for the first respondent is not applicable to the facts of the present case, this Court is inclined to cancel the anticipatory bail granted in favour of the first respondent/A2 by the learned Vacation Sessions Judge, Tiruchirappalli vide order dated 13.05.2015 made in Cr.M.P.No.1068 of 2015 and accordingly, this petition is allowed.

To

1. The Vacation Sessions Judge, Tiruchirappalli.
2. The Inspector of Police, City Crime Branch P.S., Trichy District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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