

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2021

Pronounced on : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.327 of 2017

and

CRL.M.P(MD)No. 3128 of 2017

Stella Mary : Petitioner/1st Respondent/Sole Accused

Vs.

1.State represented by its,

The Inspector of Police,

District Crime Branch,

Pudukkottai District.

(Crime No.15 of 2016) : Respondent/2nd Respondent/Complainant

2.Usha : Respondent/Petitioner/Defaco

Complainant

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records relating to the impugned order, dated 07.03.2017 made in Cr.M.P.No.187 of 2017, on the file of the Hon-ble Principal District Judge, Pudukkotai and set aside the same.

For Petitioner : Mr.V.Sasi Kumar

For Respondent : Mrs.S.E.Veronica Vincent,
Government Advocate (Criminal Side), for R1.

: Mr.G.Mathavan, for R2.

ORDER

The Criminal Revision Case is directed against the order passed in Cr.M.P.No.187 of 2017, dated 07.03.2017, on the file of the learned Principal District Judge, Pudukkottai, cancelling the bail granted in Cr.M.P.No.6891 of 2016 by the Court of Judicial Magistrate, Alangudi.

2.The second respondent/defacto complainant lodged a complaint with the Deputy Superintendent of Police, District Crime Branch, Pudukkottai and on transfer of the said complaint to the first respondent police, F.I.R., came to be registered in Crime No.15 of 2016, against the petitioner/accused for the offences under Sections 406 and 420 IPC.

3.After registration of FIR, the petitioner/accused has approached the jurisdictional Magistrate Court, seeking bail in Cr.M.P.No.6690 of 2016 and the same was dismissed on 21.12.2016. The petitioner has filed the second bail application in Cr.M.P.No.6891 of 2016 before the learned Judicial Magistrate, Alangudi and the learned Magistrate, after hearing both sides, has passed an order on 30.12.2016, granting bail to the petitioner with certain conditions. Aggrieved by the order granting of bail, the second respondent/defacto complainant has filed an application under Section 439 (2) of Cr.P.C before the Principal District Court, Pudukkottai in Cr.M.P.No.187 of 2017 for setting aside the bail order granted to the accused and that the learned Principal District Judge, Pudukkottai, after enquiry, has passed the impugned order, dated 07.03.2017, cancelling the bail granted to the petitioner/accused in Cr.M.P.No.6891 of 2016, dated 30.12.2016. Not satisfying with the cancellation of bail order, the accused has come forward

with the present revision.

4. Whether the impugned order passed in Cr.M.P.No.187 of 2017, dated 07.03.2017 on the file of the Principal District Judge, Pudukkottai, is liable to be set aside? is the point for consideration.

5. Before entering into further discussion, it is pertinent to note that the concept of bail is a necessary implication of Article 21 enshrined in the Constitution of India. But at the same time, liberty is not an absolute abstract concept and the same has to be governed by law. It is settled law that cancellation of bail should not be done in a routine manner and that the bail once granted, should not be cancelled in a mechanical manner. Generally, bail can be cancelled by resorting to in the two situations and the first situation is that granting of bail being perverse, passed without due application of mind or in violation of any substantive or procedural law and in the second category, can be cancelled on the ground of misuse of liberty after the grant of bail or other supervening circumstances.

6. Bearing the above legal position in mind, let us consider the case on hand. The case of the defacto complainant is that herself and the petitioner/accused are friends, that the petitioner has promised to construct a house in the house site owned by the defacto complainant within a period of six months, on receiving the amount from his foreign relative, that the complainant has paid Rs.2,70,000/~ towards advance as demanded by the petitioner, that the petitioner after the expiry of time agreed, has not put up construction nor repaid the amount received and that since the petitioner had cheated her, she was forced to lodge a complaint. On enquiry, she came to know that the petitioner, apart from the defacto complainant, had also cheated 10 more persons.

7.It is evident from the records that the learned Magistrate, after taking note of the dismissal of the first bail application and also the period of judicial custody, has granted bail to the petitioner, directing him to execute a bond for a sum of Rs.10,000/~ with two sureties for the like sum and that the petitioner has to report before the respondent police daily at 10.00 am for a period of one month and thereafter, as and when required for interrogation.

8.The main contention of the defacto complainant before the Principal District Court is that the learned Magistrate has not directed the accused to deposit any portion of the amount that was allegedly cheated by her and that she imposed only the usual and ordinary conditions. The learned District Judge, mainly on the ground that bail was granted without any condition to deposit the amount involved, has passed the impugned order cancelling the bail.

9.A cursory perusal of the complaint lodged by the defacto complainant would go to show that there existed civil dispute between the parties. According to the defacto complainant, she had paid Rs.2,70,000/~ and also 5 ½ sovereigns jewels to the petitioner/accused and that the same was not returned or repaid. Very recently, the Hon-ble Supreme Court has comedown heavily on the Bail Courts for imposing

the conditions for deposit of certain amount allegedly due by the accused to the complainant in **Dilip Singh Vs. State of Madhya Pradesh and another** passed in the **Crl.A.No.53 of 2021, dated 19.01.2021**. In the above decision, the criminal appeal was filed against the order of the High Court granting anticipatory bail, subject to the condition of deposit of Rs.41,00,000/~ in Court and upon furnishing personal bond in the sum of Rs.50,000/~ with one solvent surety in the like amount to the satisfaction of the

arresting officer. It is necessary to refer the following passage in the said decision hereunder;

“3. Ex facie, the disputes in the instant case are civil in nature. It is the contention of the complainant that despite having paid Rs.41 lakhs to the appellant pursuant to an agreement for purchase of agricultural land, the appellant has not executed the deed of sale in respect of the same. It appears that the complainant has also filed a civil suit for specific performance of the said agreement, which is pending adjudication.

4. By imposing the condition of deposit of Rs. 41 lakhs, the High Court has, in an application for prearrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

5. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a Court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.”

10. The above decision is squarely applicable to the case on hand. In the present case also, the defacto complainant has only attempted to recover the amount allegedly due by the accused by lodging the complaint. As already pointed out, since there was no condition to deposit the amount, the learned District Judge has cancelled the bail and as per the dictum of the Hon-ble Supreme Court, no such condition can be imposed. Considering the above, this Court has no hesitation to hold that the impugned order cancelling bail is liable to be set aside and is set aside accordingly.

11.In the result, this Criminal Revision case is allowed and the impugned order passed in Cr.M.P.No.187 of 2017, dated 07.03.2017, on the file of the learned Principal District Judge, Pudukkottai is set aside. Consequently, connected Miscellaneous Petition is closed.

24.02.2021

Index : Yes/No

Internet : Yes/No

das

To

1.The Principal District Judge, Pudukkottai.

2.The Inspector of Police,

District Crime Branch,

Pudukkottai District.

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

4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

K.MURALI SHANKAR, J.

das

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