

Madras High Court

Murthy.V.K vs The State By The on 27 September, 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.22782 of 2017

Murthy.V.K.
Senior Branch Manager,
Karnataka Bank Limited,
Anna Nagar West Extension Branch,
No.W-582, Ground Floor,
SBOA School Street,
Anna Nagar West Extension,
Chennai, Tamil Nadu 600 101. Petitioner

Vs.

1.The State by the
Inspector of Police,
Central Crime Branch

2.J.Sriram # A1

3.K.Padmanabhan # A2 Respondents

Prayer:

Petition filed under Section 439(2) of Cr.P.C., seeking to cancel the bail granted to Sr

For Petitioner : Mr.V.P.Sengottuvel

For Respondents : Mr.C.Iyyappa Raj for R1

Additional Public Prosecutor

Mr.R.John Sathyan for R2 and R3

for M/s. Nathan and Associates

O R D E R

The petitioner/ defacto complainant Bank has filed this petition seeking cancellation of bail under Section 439(2) of Cr.P.C. against the order dated 12.10.2017 passed by the learned Principal Sessions Judge in CRL.M.P.NO.15577 of 2017, wherein, bail was granted in favour of the respondents 2 and 3/ A1 and A2.

2.THE case of the prosecution is that the defacto complainant Bank is a Scheduled Bank under the Reserve Bank of India established in the year 1924. The Bank has millions of customers and the

business of the Bank is being carried out with the funds deposited by the customers who are maintaining savings bank/ current accounts, fixed deposits and loans.

3.The Vigilance Department of the Bank conducted surprise inspection of jewels under jewel loan accounts of Anna Nagar West Extension Branch during the second week of August, 2016, and the Vigilance Department came to know that the jewels pledged by the respondents 2 and 3/ A1 and A2 for availing loan are imitation jewellery and not genuine gold jewels.

4.Immediately, on coming to know about the fraud being committed by the respondents 2 and 3/ A1 and A2, the petitioner and other Officials of the Bank verified all the jewels on which jewel loans were disbursed. During verification, the petitioner and other Officials of the Bank came to know that the jewels pledged for availing 325 jewel loan accounts were also imitation jewels and not real gold jewellery.

5.Thereafter, detailed enquiry was conducted. On enquiry, the petitioner and other Officials of the Bank came to know that 180 borrowers had availed 325 gold jewel loans and all of them were introduced by the respondents 2 and 3/ A1 and A2. In the internal Vigilance enquiry the petitioner and other Officials of the Bank came to know that all 180 borrowers are name lenders for A1 and in all the cases loan amount has been withdrawn by A1 through the cheques signed by the borrowers.

6.The respondents 2 and 3 obtained gold jewel loans with the connivance of the jewel appraiser S.Punniakotti/ A3, earlier Branch Manager (who is still absconding) Vasantha Shenoy/ A4, earlier Branch Manager V.Suraj/A5. All the accused colluded with each other to cheat the Bank by fraudulently pledging imitated jewels to avail loan. The petitioner further aver that A1 is the master mind and he had only pledged the imitation jewels as original gold and defrauded the Bank to the tune of Rs.20.55 Crores with active help of other accused and all the accounts are invested in the Gold and Silver Jewellery shop in the name and style of 'Sri Lakshmi Thanga Maligai, No.238, GNT Road, Redhills, Chennai 600 052 run by A1. A1 is also doing real estate business, promoting lands in the name and style of M/s.Sri Lakshmi Promoters.

7.A1 is the customer of Anna Nagar Branch from the year 2010 and he has opened a number of accounts in his name and in the names of his family members and has availed several loans from the year 2010 with the help of A4 and A5. However, the said illegality came to light only in the year 2016. Immediately thereafter, the petitioner lodged a complaint before the first respondent Police, based on which, the case came to be registered.

8.The learned counsel appearing for the petitioner would submit that initially A1 and A2 filed petition seeking bail in Crl.M.P.No.3003 of 2017 before the Metropolitan Magistrate Court and the learned Metropolitan Magistrate on 19.09.2017 dismissed the said petition. Thereafter, the very same accused filed petition seeking bail in CRL.M.P.NO.14398 of 2017 before the Sessions Court, Chennai and the learned Principal Sessions Judge, Chennai vide order dated 22.09.2017 dismissed the said petition. Thereafter, A1 and A2 filed petition seeking bail in CRL.M.P.NO.14936 of 2017 before the Sessions Court, Chennai and the learned Principal Sessions Judge, Chennai vide order dated 05.10.2017 dismissed the said petition. Thereafter, the respondents 2 and 3/ A1 and A2 once

again filed petition seeking bail in CRL.M.P.NO.15577 of 2017 before the Sessions Court, Chennai. The learned Principal Sessions Judge, Chennai, considering the undertaking given by A1 and A2 that they are ready to settle the amount if they are released on bail, vide order dated 12.10.2017 granted bail to the respondents 2 and 3/ A1 and A2.

9. The learned counsel appearing for the petitioner would further submit that though bail has been granted to the respondents 2 and 3 by the learned Principal Sessions Judge, Chennai on 12.10.2017, even after a lapse of eleven months, the respondents 2 and 3/ A1 and A2 have not taken any steps to settle the matter as submitted by them before the learned Principal Sessions Judge and not even a single pie has been paid to the petitioner. The total amount cheated is to the tune of RS.20.55 Crores. Hence the petitioner has filed this petition seeking to cancel the bail granted to the respondents 2 and 3 by the learned Principal Sessions Judge in CRL.M.P.NO.15577 of 2017.

10. THE learned counsel appearing for the respondents 2 and 3 would submit that apart from this loan, property loan to the tune of Rs.3 Crores was availed by pledging property document worth Rs.34 Crores with the petitioner Bank. He would further submit that the respondents 2 and 3 have not given any undertaking before the lower Court with regard to the settlement of the loan amount. He would further submit that the respondents 2 and 3 are not in a position to pay any conditional amount, since there is no property. The learned counsel would further submit that if the respondents 2 and 3 are in bail, they will prepare and arrange to settle the loan amount, however, if the bail cancelled, the petitioner cannot recover any amount from the respondents 2 and 3 and would further submit that the respondents 2 and 3 have not violated any of the conditions imposed by the lower Court. He would further submit that subsequently the conditions imposed upon respondents 2 and 3 were also relaxed by the lower Court. He further submitted that normally this Court will not entertain the petition for cancellation of bail unless there is deliberate violation of the conditions imposed. Accordingly, he prayed that this petition may not be entertained.

11. REPUDIATING the contention of the learned counsel appearing for the respondents 2 and 3, the learned counsel appearing for the petitioner would submit that if a property is pledged for borrowing loan, usually the Bank will take appropriate action under the SARFAESI Act or by way of civil suit. However, in the present case, imitation jewels were pledged and without property security or without gold security, loan to the tune of RS.20.55 Crores was obtained by the respondents 2 and 3 through 180 fake persons. Hence, the usual procedure cannot be adopted for recovering the loan amount.

12. THE learned counsel appearing for the petitioner would further submit that the alleged property worth Rs.34 Crores which was referred by the learned counsel appearing for the respondents 2 and 3 was already attached for non payment of the loan amount already availed to the tune of nearly Rs.3 Crores and the matter is pending before the Debt Recovery Tribunal. In the present case through 180 fake persons, loan to the tune of RS.20.55 Crores was obtained without any gold or property security. Hence, the petitioner has filed this petition.

13. THE learned counsel appearing for the petitioner would further submit that the second respondent is running a Gold and Silver Jewellery shop in the name and style of 'Sri Lakshmi

Thanga Maligai, No.238, GNT Road, Redhills, Chennai 600 052 and is residing in a felicitous bungalow and enjoying other properties without paying single paise to the defacto complainant company. The Sessions Court granted bail on condition that the respondents 2 and 3 undertaken to settle the dues if enlarged on bail. However, the said undertaking was not given effect to and not even paid any amount. The earlier undertaking given by the counsel is binding on the respondents 2 and 3. Accordingly, he relied upon the decision of the (2016) 235 DLT 580 (Som Datt Enterprises Limited v. Vijay Cable Industries). Accordingly, he prayed for cancellation of bail and requested this Court to grant liberty to the petitioner Bank Officials to attach the Jewellery shop and other properties to prevent the accused from enjoying the same and to issue further direction to the law enforcing agency to provide adequate protection to recover the dues. In support of his arguments, the learned counsel relied upon various decisions of the Hon'ble Apex Court.

14. HEARD the arguments advanced on either side and also perused the materials available on record.

15. THE undisputed facts are that the respondents 2 and 3 are arrayed as A1 and A2 in Crime NO.293 of 2017. A3 is the jewel appraiser, A4 and A5 are the earlier Branch Managers. They had borrowed loan to the tune of RS.20.55 Crores through 180 fake persons. Accordingly, based on the complaint given by the petitioner, the law enforcing agency registered the case in Crime NO.293 of 2017 for the offence under Sections 408 and 420 r/w 120 (B) of IPC.

16. PERUSAL of records discloses that the learned Principal Sessions Judge, Chennai, considering the submission made by the respondents 2 and 3/ A1 and A2 that they are ready to settle the amount if they are released on bail, vide order dated 12.10.2017 granted bail to the respondents 2 and 3/ A1 and A2 in CRL.M.P.NO.15577 of 2017.

17. THE relevant portion of the order dated 12.10.2017 made in CRL.M.P.NO.15577 of 2017 reads as follows:

ž .A careful consideration of the arguments, Admittedly, title deed worth about RS.2,70,00,000/- for the property belonged to the 1ST petitioner was with the bank and also the learned counsel for petitioner argued that the title deed worth about Rs.34 crores pertaining to 1ST petitioner's family was also with the bank. The petitioner obtain several loans in his name and also the family members. According to the intervener, the 1ST petitioner has given a undertaking letter on 1.10.2016 assuring that on or before 6.10.2016 he will repay RS.2 crores and the remaining entire balance of jewel loans within the next 15 working days and will close all the loan accounts, but he had not settled the amount and the same was mentioned in the FIR. Intervener also submitted that some of the persons were introduced by A1 and A2 and also received the cheque for the jewel loan. The learned counsel for petitioners stated that the bank or the investigating agency has not produced any document that the jewels are fake. Neither, the intervener nor the investigating agency has not reply in that context. The learned counsel for the petitioners also submitted that the petitioners also submitted that the petitioners are ready to settle the amount if they are released on bail on any condition. The petitioners have been in custody for the past 32 days. Already the period for taking custodial interrogation is over and major part of the investigation might have been completed by this time. Further, all the documents are available with the investigating agency as well as with the

bank. There is no question of tempering the evidence.□

18. HOWEVER, even after a lapse of eleven months, no records are produced before this Court by the respondents 2 and 3 to show the settlement of loan amount in favour of the petitioner Bank.

19. ONCE bail is granted, it should not be interfered with unless any supervening circumstances arises. Normally, this Court does not interfere with the order of bail granted by the lower Court unless any supervening circumstances arises for cancellation of bail.

20. IN the present case, innocent public money which was deposited in the Bank was advanced as loan to the respondents 2 and 3 after receiving imitation jewels with the connivance of Bank Officials. The loan amount is Rs.20.55 Crores. If original gold jewellery or any property is available with the Bank, the Bank can recover the amount either by invoking SARFAESI Act or by way of civil suit. In the present case, A1 and A2 have pledged imitation jewels with the active help of the other accused/ Bank Officials and obtained a loan of Rs.20.55 Crores from the defacto complainant Bank. Unless the bail granted to the respondents 2 and 3 is cancelled and proper investigation is carried out, the innocent public money cannot be recovered from the accused.

21. IT is useful to refer hereunder a few decisions which has dealt with similar issues:

(i) The decision of the Hon'ble Apex Court reported in (1995) 1 SCC 349 (Dolat Ram Vs. State of Haryana), the relevant portion of which reads as follows:

œ.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 the cancellation of the 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 course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances 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 the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a nonbailable case in the first instance and the cancellation of bail already granted.□

(ii) The decision of the Hon'ble Apex Court reported in (1987) 2 SCC 364 (State of Gujarat Vs. Mohanlal Jitmalji Porwal and another), the relevant portion of which reads as follows:

□. The next question which arises is as regards the request made by the learned Assistant Public Prosecutor for adducing additional evidence in order to prove letter Ex. 26 received from the Mint Master certifying that the article in question was made of gold of the purity of 99.60. The request

was made in order to invoke the powers of the Court under Section 391 of the CrPC, 1973, which inter alia provides that in dealing with any appeal under Chapter XXIX the appeal court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself or ask it to be taken by a Magistrate. The High Court rejected the prayer on the ground that it did not consider it "expedient in the interests of justice to open a new vista of evidence" in view of the fact that the offence had taken place six years back. The mere fact that six years had elapsed, for which time-lag the prosecution was in no way responsible, was no good ground for refusing to act in order to promote the interests of justice in an age when delays in the Court have become a part of life and the order of the day. Apart from the fact that the alleged lacuna was a technical lacuna in the sense that while the opinion of the Mint Master had admittedly been placed on record it had not been formally proved the report completely supported the case of the prosecution that the gold was of the specified purity. To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The Community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the Community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The Community or the State is not a person-non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest. The High Court was therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor invoking the powers of the Court under Section 391 of the CrPC. We are of the opinion that the application should have been granted in the facts and circumstances of the case with the end in view to do full and true justice. The application made by the learned Assistant Public Prosecutor is therefore granted. The High Court will issue appropriate directions for the recording of the evidence to prove the report of the Mint Master under Section 391 Cr.P.C. when the matter goes back to High Court and is listed for directions. The appeal is therefore allowed. The order of acquittal is set aside. The matter is remitted to the High Court for proceeding further in accordance with law in the light of the abovesaid directions.□

(iii) The decision of the Hon'ble Apex Court reported in (2011) 6 SCC 189 (Prakash Kadam and others Vs. Ramprasad Vishwanath Gupta and another), the relevant portion of which reads as follows:

□It was contended by the learned counsel for the appellants before us, and it was also contended before the High Court, that the considerations for cancellation of bail are different from the consideration of grant of bail vide *Bhagirathsinh v. State of Gujarat*, *Dolat Ram v. State of Haryana* and *Ramcharan v. State of M.P.* However, we are of the opinion that that is not an absolute rule, and it will depend on the facts and circumstances of the case.

18. IN considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/ Revisional Court.

19. IN our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.□

(iv) The decision of the Hon'ble Apex Court reported in (2013) 7 SCC 466 (Nimmagadda Prasad vs. Central Bureau of Investigation), the relevant portion of which reads as follows:

§ 3. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat v. Mohanlal Jitmalji Porwal this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under: (SCC P.371, para 5) □.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.□

25. ECONOMIC offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.□

(v) The decision of the High Court of Delhi reported in (2016) 235 DLT 580 (Som Datt Enterprises Limited v. Vijay Cable Industries), the relevant portion of which reads as follows:

§ 6.(c) The judgment-debtors / alleged contemnors in para 6 of the compromise application being EA NO.233/1997 unequivocally "agreed to give an Undertaking to this Honble Court, inter alia, to the effect that they would faithfully abide by the terms and conditions of the said settlement and shall punctually discharge all their liabilities thereunder."

27.(XII) In the subsequent Rama Narang Vs. Ramesh Narang supra it was held that in order to maintain sanctity of the orders of the court, it has become imperative that those who are guilty of

deliberately disregarding the orders of the Court in a clandestine manner should be appropriately punished. It was further held that the Majesty of the Court and the Rule of Law can never be maintained unless this Court ensures meticulous compliance of its orders.

(xiii) The Division Bench of this Court in Mohan Nair Vs. Rajiv Gupta 220 (2015) DLT 332 held that to say that the orders of the Courts are unimplementable and unenforceable has the tendency of making the law and the Court, a laughing stock and it is the duty of every Court to prevent its machinery from being made a sham, thereby running down the Rule of Law and rendering itself an object of ridicule. It was further held that public interest requires that we have a legal system and courts which command public respect and if the courts were to make orders manifestly incapable of achieving their avowed purpose, law would indeed be an ass.

(xiv) Here, we have a judgment debtor/alleged contemnor namely Mr. V.K. Bhatia who, when faced with orders of attachment of monies payable to him by DGS&D and the State Electricity Boards having been issued by the Court, made the Court vacate the said orders of attachment by promising to make the payment to the decree holder as provided therein and who thereafter has neither made the payment nor left the Relator/Decree Holder in a position to execute the money decree in any other way. Supreme Court in Krishnadevi Malchand Kamathia Vs. Bombay Environmental Action Group (2011) 3 SCC 363 observed that justice is only blind or blindfolded to the extent necessary to hold its scales evenly; it is not and must never be allowed to become blind to the reality of the situation, lamentable though that situation may be.□

22. PERUSAL of the above decisions disclose that the Hon'ble Apex Court has clearly made it clear that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances 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 the trial.

23. THE Hon'ble Apex Court further held that an economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest. The Hon'ble Apex Court has further held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.

24. IN the present case, the learned Principal Sessions Judge, Chennai, considering the submission made by the respondents 2 and 3/ A1 and A2 that they are ready to settle the amount if they are released on bail, vide order dated 12.10.2017 granted bail to the respondents 2 and 3/ A1 and A2 in CRL.M.P.NO.15577 of 2017. However, even after a lapse of eleven months, the amount was not settled.

25. IN the recent days, these type of Bank fraud scandal is increasing. The wrong doers through innovative method are approaching the Bank without any security. In the present case, the

respondents 2 and 3 approached the Bank with the active help of the Bank Officials, introduced fake persons and obtained loan to the tune of RS.20.55 Crores. Mere cancellation of bail will not solve this issue. Hence, liberty granted to the law enforcing agency as well as the Bank to take appropriate action against the persons to recover the loan amount. Hence, it is right time to curb the illegal enjoyment. It is just and necessary to prevent the accused from enjoying the crime proceeds. Accordingly, this Court is fully satisfied and inclined to grant liberty to the law enforcing agency as well as the Bank Officials to take appropriate steps to recover the innocent public money which is hidden and enjoyed by the accused and to prevent the accused from enjoying the property. In the present case the second respondent is running a Gold and Silver Jewellery shop in the name and style of 'Sri Lakshmi Thanga Maligai, No.238, GNT Road, Redhills, Chennai 600 052 and he is also doing real estate business, promoting lands in the name and style of M/s.Sri Lakshmi Promoters.

26. IN view of the above, liberty is granted to the law enforcing agency to secure the crime proceeds which were invested in different format. Accordingly, the Deputy Commissioner of Police, Chennai, is directed to provide proper Police protection to the Bank Officials for taking steps to recover the dues by searching and attaching the property.

27. THIS criminal original petition is allowed and the bail granted in favour of the respondents 2 and 3/ A1 and A2 VIDE order dated 12.10.2017 in CRL.M.P.NO.15577 of 2017 by the learned Principal Sessions Judge, is hereby cancelled.

27.09.2018 pri Speaking Order/ Non Speaking Order Index: Yes/ No Internet: Yes/ No To

1.THE Inspector of Police, Central Crime Branch

2.THE Public Prosecutor, High Court of Madras, Chennai 600 104.

M.DHANDAPANI,J.

pri CRL.O.P.NO.22782 of 2017 27.09.2018