

Sampath Shylaja Kumar Vs. State

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Court : Chennai

Decided On : Jan-30-2014

Judge : S.Nagamuthu

Appellant : Sampath Shylaja Kumar

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

30. 01.2014 CORAM THE HONOURABLE MR. JUSTICE S.NAGAMUTHU CrI. R.C.No.1149 of 2013 and M.P.No.1 of 2013 Sampath Shylaja Kumar Petitioner Vs. The State By The Deputy Superintendent of Police, CBI, SCB, Chennai, CBI Case Rc.13(S)2012/CBI/SCB, Chennai. ... Respondent Memorandum of Grounds of Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to set aside the order dated 30.08.2013 made in CrI.M.P.No.3043 of 2013 by the learned Principal Sessions Judge, Chenglpattu. For petitioner : Mr.K.Selvakumaraswami For respondent : Mr.N.Chandrasekaran, Spl. Public Prosecutor for CBI Cases

ORDER

The petitioner is one of the accused in Crime No.204 of 2012 registered by the Inspector of Police, Vellavedu Police Station, Tiruvallur District for offences u/s.120(b) r/w 147, 148 and 302 of IPC. In connection with the said case, the

petitioner was arrested on 20.04.2012 and thereafter, produced him before the learned Judicial Magistrate No.II, Poonamallee. The learned Judicial Magistrate remanded him to judicial custody on the same day. Thereafter, the petitioner was detained under the Tamil Nadu Act 14 of 1982 on 05.06.2012. While so, by order dated 13.07.2012 in CrI.O.P.No.13256 of 2012 filed by the wife of the deceased, the investigation was transferred by this court to CBI. Even before the said case was taken over by the CBI for investigation, the petitioner filed CrI.M.P.No.5443 of 2013 before the learned Judicial Magistrate No.II, Poonamallee, under Section 167(2) of Cr.P.C. seeking statutory bail as the investigation had not been completed within the statutory period. On considering the same, the learned Magistrate passed an order granting bail to the petitioner on the same day. The petitioner was not however released from the prison in view of the order of detention under Tamil Nadu Act 14 of 1982. Thereafter, the case was taken over by the Superintendent of Police, CBI, SCB, Chennai for investigation on 30.08.2012. By order dated 21.01.2013, this court revoked the order of detention made against the accused under Tamil Nadu Act 14 of 1982. Thereafter, by order dated 28.03.2013, the learned Chief Judicial Magistrate, Chengalpattu has granted bail to the petitioner. Accordingly the petitioner executed a bond as directed by the court and, he was released from prison on 15.04.2013. Later on, yet another case was registered against the petitioner on 08.07.2013 by the Inspector of Police, Vellavedu Police Station in Crime No.269 of 2013 for offences u/s.294(b) and 506(ii) of IPC on the allegation that the petitioner had threatened one Arumugam son of Sengalan, who is a witness in the above said murder case. The petitioner was arrested in connection with the said case in Crime No.269 of 2013 and later on, he was released on bail.

2. Subsequently, the respondent - CBI filed CrI.O.P.No.3043 of 2013 before the learned Principal Sessions Judge, Chengalpattu under section 439 (2) of Cr.P.C. seeking cancellation of bail granted to the petitioner by the learned Judicial Magistrate No.II, Poonamallee, on 26.07.2012. This petition was filed on the ground that the petitioner had abused the liberty given to him by granting bail to him under section 167 (2) of Cr.P.C. by threatening a witness. The learned Principal Sessions Judge, Chengalpattu, issued notice to the petitioner and after hearing both sides, by order dated 30.08.2013 cancelled the bail granted to the

petitioner on 26.07.2012 by the learned Judicial Magistrate No.II, Poonamallee. The said order of cancellation of bail dated 30.08.2013 passed by the learned Sessions Judge, Chengalpattu, is under challenge in this revision.

3. I have heard the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondent and also perused the records carefully.

4. The only contention raised by the petitioner in this case is that the learned Sessions Judge, Chengalpattu, lacks jurisdiction to entertain a petition for cancellation of bail when the bail was granted by the learned Judicial Magistrate. In other words, the contention of the learned counsel for the petitioner is that, in the instant case, it would have been legal and appropriate only for the learned Judicial Magistrate No.II, Poonamallee, to entertain a petition for cancellation of bail as provided in Section 437 (5) of Cr.P.C. He would further submit that the respondent ought not to have approached the Court of Sessions invoking the provision under Section 439 (2) of Cr.P.C. straightaway without approaching the learned Judicial Magistrate under Section 437 (5) of Cr.P.C. With this allegation, the petitioner is before this court with this revision.

5. But, the learned Special Public Prosecutor would oppose this revision. According to him, the power of the Sessions Judge under Section 439 (2) of Cr.P.C. is a wider power which can be invoked to cancel a bail granted by any court under Chapter XXXIII of Cr.P.C.

6. I have considered the above submissions.

7. It needs to be noted that every person released on bail under sub-section (2) of Section 167 of Cr.P.C. shall be deemed to be so released under the provisions of Chapter XXXIII of the Code for the purposes of that Chapter [vide ... proviso to sub section (2) of Section 167 of Cr.P.C. From this provision, it is crystal clear that the bail granted to an accused under sub section (2) of Section 167 of Cr.P.C. shall be deemed to be an order of bail issued under Section 436 or 437 or 439 of Cr.P.C.

8. Now, turning to sub-section (5) of 437 of Cr.P.C., the said provision empowers the court which has released a person on bail to cancel the same and commit him

to custody. The said provision reads as follows:- 437. When bail may be taken in case of non-bailable offence. (1) ... (2) ... (3) ... (4) ... (5) Any court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to Custody.

9. A plain reading of this provision would clearly indicate that so far as the court which has granted bail is concerned, the said court has got power to cancel the bail granted for reasons to be recorded and, then, to commit the accused to custody. A comparative reading of the above two provisions would go to show that a bail granted by the learned Magistrate under sub section (2) of Section 167 of Cr.P.C. can be cancelled subsequently by the very same Magistrate as provided in sub section (5) of Section 437 of Cr.P.C. Regarding this legal position there is no controversy at all before this court.

10. Now turning to sub section (2) of Section 439 of Cr.P.C., it empowers the High Court as well as the Court of Sessions to cancel the bail granted under the said Chapter viz., XXXIII of Cr.P.C. The said provision reads as follows:- ".439. Special powers of High Court or Court of Session regarding bail. (1) ... (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

11. If one compares sub-section (5) of Section 437 and sub-section (2) of Section 439 of Cr.P.C., it will be ipso facto clear that sub-section (2) of Section 439 of Cr.P.C. empowers the High Court as well as the Court of Sessions to cancel the bail granted under this Chapter irrespective of the court which has granted bail; whereas sub-section (5) of Section 437 of Cr.P.C. would indicate that the bail can be cancelled by the court which has granted bail. I find that there is no overlapping between these two provisions. Both the provisions operate in a different sphere. From sub-section (2) of Section 439 of Cr.P.C. it is crystal clear that a court of sessions has been empowered to cancel the bail granted under this Chapter by a Magistrate. As we have already noticed, bail granted under sub-section (2) of Section 167 of Cr.P.C. is deemed to be a bail granted under Chapter XXXIII of Cr.P.C. Therefore, bail granted under sub section (2) of Section 167 of Cr.P.C. can

very well be cancelled by either by the High Court or Court of Sessions under sub section (2) of Section 439 of Cr.P.C.

12. But, the learned counsel for the petitioner would rely on a judgment of the Hon'ble Supreme Court in Prakash Kadam and others v. Ramprasad Vishwanath Gupta and another, 2011 (6) SCC189 The learned counsel would mainly rely on the observations made in paragraphs 18 & 19 of the judgement which read as follows:- ".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."

13. That was a case where the bail granted by the Court of Sessions was subsequently cancelled by the High Court. That order of the High Court came to be challenged before the Hon'ble Supreme Court. While dealing with such bail, the Hon'ble Supreme Court in paragraphs 18 & 19 of the judgement has made the above observations. A reading of the above observations of the Hon'ble Supreme Court and the other relevant portions of the said judgement would show that the Hon'ble Supreme Court has only dealt with the grounds in general upon which bail can be cancelled. The Hon'ble Supreme Court has indicated that one of the factors for cancelling bail is misuse of bail granted to the accused. The other ground is likelihood of misuse of bail. On these grounds the bail granted can be cancelled either by the Court of Sessions or High Court. But, if the bail has been granted on erroneous grounds, then the same could be challenged only before the higher court viz., the Court of Sessions or High Court under sub section (2) of Section

439 of Cr.P.C. and not before the very same court which has granted bail under sub section (5) of Section 437 of Cr.P.C. Except this distinction, I do not find any other point in favour of the accused to hold that the court of sessions has got no jurisdiction to cancel the bail on the ground of abuse by the accused when bail had earlier been granted by the Magistrate. In such view of the matter I do not find any merit in this revision and this revision deserves only to be dismissed.

14. In the result, this criminal revision petition is dismissed. Consequently, connected MP is closed. Index : yes 30.01.2014 Internet : yes kmk To 1.The Principal Sessions Judge, Chengalpattu, Kancheepuram Dist. 2.The Chief Judicial Magistrate, Chengalpattu, Kancheepuram Dist. 3.The Judicial Magistrate No.II, Poonamallee, Tiruvallur District. 4.The Deputy Superintendent of Police, CBI, SCB, Chennai, S.NAGAMUTHU.J., CrI.R.C. No.1149 of 2013 30.01.2014

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