

Petitioner Vs. Respondent

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Court : Chennai Madurai

Decided On : Jul-13-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : Crl.M.P.(MD)No. 2562 of 2016 in Crl.O.P.(MD)No. 17660 of 2012

Appellant : Petitioner

Respondent : Respondent

Judgement :

This petition has been filed by the petitioner, who was working as Headmaster in Government Kallar Higher Secondary School at Anaipatti, Nilakkottai Taluk, Dindigul District, and also the accused in Crime No.38 of 2012, to cancel the anticipatory bail granted by this Court to the second respondent, vide order dated 13.12.2012, in Crl.O.P.(MD)No.17660 of 2012 and consequent time extension order, dated 13.10.2015, passed in M.P.(MD)No.2 of 2015 in Crl.O.P.(MD)No.17660 of 2012 and consequently, direct the learned Judicial Magistrate No.I, Dindigul, to cancel the bail granted to the second respondent and direct the first respondent to arrest and remand the second respondent.

2. The second respondent has been charged for the offences punishable under Sections 120(b), 420, 409, 465, 468 and 471 IPC. He filed Crl.O.P.(MD)No.17660 of 2012 for anticipatory bail. This Court, by order dated 13.12.2012 granted anticipatory bail to him. But, he did not execute the surety and comply with

conditions imposed by this Court. After a lapse of three years, again he filed Crl.O.P.(MD)No.2018 of 2015 for anticipatory bail, suppressing the earlier petition, viz., Crl.O.P.(MD)No.17660 of 2012 filed by him and the order of this Court, dated 13.12.2012. This Court, by order dated 24.02.2015, dismissed Crl.O.P.(MD)No.2018 of 2015, when the learned Government Advocate (Criminal side) brought to the notice of this Court that the second respondent suppressing the earlier petition filed by him and the order of this Court, dated 13.12.2012. After dismissal of Crl.O.P.(MD)No.2018 of 2015, the second respondent filed M.P.(MD)No.1 of 2015 in Crl.O.P.(MD)No.17660 of 2012, for extension of time. The said M.P.(MD)No.1 of 2015 was dismissed. Again, the second respondent filed M.P.(MD)No.2 of 2015 in Crl.O.P.(MD)No.17660 of 2012, for extension of time suppressing the earlier order passed in Crl.O.P.(MD)No.2018 of 2015 for anticipatory bail and M.P.(MD)No.1 of 2015, for extension of time. At the time of hearing in M.P.(MD)No.2 of 2015, the second respondent offered to pay a sum of Rs.50,000/- as cost. Hence, this Court, by order dated 13.10.2015, extended time for executing the sureties.

3. The learned counsel for the petitioner submitted that the second respondent has not complied with the conditions imposed by this Court while granting anticipatory bail. The second respondent did not appear before the first respondent police even after receipt of summons issued to him and he is absconding and for four years. The petitioner is kept under suspension. Since the second respondent was armed with the order of anticipatory bail passed in Crl.O.P.(MD)No.17660 of 2012, the first respondent police did not initiate any further proceedings citing the order passed in Crl.O.P.(MD)No.17660 of 2012 and the order passed in M.P.(MD)No.2 of 2015 in Crl.O.P.(MD)No.17660 of 2012, granting extension of time. Due to pendency of the criminal proceedings, disciplinary proceedings initiated against the petitioner could not be proceeded further and therefore, he prayed for cancellation of anticipatory bail granted to the second respondent.

4. In support of his submission, the learned counsel for the petitioner relied on the Judgment of the Hon'ble Supreme Court reported in **2016 (1) SCC 146 [Sudhir Vs. The State of Maharashtra and another]**, wherein in paragraphs 8 to 13, it has been held as follows:

8. In **Gurbaksh Singh Sibbia Vs. State of Punjab [1980 (2) SCC 565]**, the Constitution Bench of this Court, while laying down the guidelines relating to grant of anticipatory bail, has observed in para 14 as under: (SCC p. 580)

14. Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, the courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges.

The Constitution Bench in the abovementioned case, in paras 16 and 17, while observing that the relief of anticipatory bail cannot be said to be barred merely for the reason that the allegations relate to the economic offences or corruption, has clarified that where the allegations are mala fide, the prayer for anticipatory bail can be accepted. In the present case, at this stage, there appears to be no malice on the part of the Revenue Commissioner, who ordered enquiry, or the Deputy Commissioner, who conducted enquiry, before getting lodged the first information reports against the appellants.

9. In **State of A.P. Vs. Bimal Krishna Kundu [1997 (8) SCC 104]**, which relates to the offences punishable under Sections 420, 468 and 406 IPC arisen out of leakage of question paper in respect of examination conducted by the Public Service Commission, this Court has made the following observations: (SCC pp. 107-08, para 12)

12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when

they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on the career of millions of students, the learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.

10. In **Siddharam Satlingappa Mhetre Vs. State of Maharashtra [2011 (1) SCC 694]**, in sub-para (viii) of para 112, this Court has held as under: (SCC p. 736)

112. (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

11. In **Bhadresh Bipinbhai Sheth v. State of Gujarat [2016 (1) SCC 152]**, laying down the principles regarding cancellation of anticipatory bail in sub-paras 25.6 and 25.9 of para 25, this Court has observed as under: (SCC pp. 167 and 168)

25.6. It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

* * *

25.9. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of the anticipatory bail because all circumstances and situations of future

cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

12. Having considered the submissions made by the learned counsel for the parties, and after considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon. Therefore, we are not inclined to disturb the same.

13. Accordingly, we decline to interfere with the order of cancellation of anticipatory bail, passed by the High Court. All the four appeals are dismissed.

5. The learned Government Advocate (Criminal side) appearing for the first respondent submitted that the second respondent is not co-operating for the investigation and he is absconding.

6. The learned counsel for the second respondent submitted that the petition filed by the co-accused for cancellation of bail is not maintainable and the second respondent has complied with the conditions imposed by this Court and he has not suppressed any facts before this Court. The alleged occurrence took place in the year 2012 and at this point of time, custodial interrogation of the petitioner is not required and therefore, he prayed for dismissal of the petition.

7. In support of his submissions, the learned counsel for the second respondent relied on the following Judgments:

(i) **Aslam Babalal Desai Vs. State of Maharashtra [AIR 1993 SC 1]**, wherein in paragraph 11, it has been held as follows:

11. On a conjoint reading of Sections 57 and 167 of the Code it is clear that the legislative object was to ensure speedy investigation after a person has been

taken in custody. It expects that the investigation should be completed within 24 hours and if this is not possible within 15 days and failing that within the time stipulated in clause (a) of the proviso to Section 167(2) of the Code. The law expects that the investigation must be completed with dispatch and the role of the Magistrate is to oversee the course of investigation and to prevent abuse of the law by the investigating agency. As stated earlier, the legislative history shows that before the introduction of the proviso to Section 167(2) the maximum time allowed to the investigating agency was 15 days under sub-section (2) of Section 167 failing which the accused could be enlarged on bail. From experience this was found to be insufficient particularly in complex cases and hence the proviso was added to enable the Magistrate to detain the accused in custody for a period exceeding 15 days but not exceeding the outer limit fixed under the proviso (a) to that sub-section. We may here mention that the period prescribed by the proviso has been enlarged by State amendments and wherever there is such enlargement, the proviso will have to be read accordingly. The purpose and object of providing for the release of the accused under sub-section (2) of Section 167 on the failure of the investigating agency completing the investigation within the extended time allowed by the proviso was to instil a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory time-frame. The deeming fiction of correlating the release on bail under sub-section (2) of Section 167 with Chapter XXXIII, i.e. Sections 437 and 439 of the Code, was to treat the order as one passed under the latter provisions. Once the order of release is by fiction of law an order passed under Section 437(1) or (2) or Section 439(1) it follows as a natural consequence that the said order can be cancelled under sub-section (5) of Section 437 or sub-section (2) of Section 439 on considerations relevant for cancellation of an order thereunder. As stated in Raghbir Singh's case [AIR 1987 SC 149] the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vii) attempts

to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

(ii) Dolat Ram and others Vs. State of Haryana [1995 (1) SCC 349], wherein in paragraph 4, it has been held as follows:

4. 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 non-bailable case in the first instance and the cancellation of bail already granted.

(iii) Abdul Basit @ Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another [2014 (10) SCC 754], wherein in paragraphs 26 and 27, it has been held as follows:

26. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of

order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the petitioner-accused. Even though the cancellation of bail rides on the satisfaction and discretion of the court under Section 439(2) of the Code, it does not vest the power of review in the court which granted bail. Even in the light of fact of misrepresentation by the petitioner-accused during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition.

27. Herein, the High Court has assigned an erroneous interpretation to the well settled position of law, assumed expanded jurisdiction onto itself and passed an order in contravention of Section 362 of the Code cancelling the bail granted to the petitioners herein. Therefore, in our considered opinion, the High Court is not justified in reviewing its earlier order of grant of bail and thus, the impugned judgment and order [Abdul Kadir Choudhury Vs. Abdul Basit, 2013 SCC On Line Gau 174 : (2013) 129 AIC 707] requires to be set aside.

8. As held by the Hon'ble Supreme Court as well as the various High Courts 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. While considering cancellation of bail or anticipatory bail, conduct of the accused subsequent to order and supervening circumstances or evasion or attempt to evade the due process of justice or abuse of anticipatory bail granted are to be considered by this Court. In view of the same, the judgments relied on by the learned counsel for the second respondent are not applicable to the facts of the present case.

9. From the materials on record, it is seen that the second respondent obtained anticipatory bail, by filing CrI.O.P.(MD)No.17660 of 2012. He did not comply with the conditions imposed by this Court, dated 13.12.2012. Suppressing the same, he again filed CrI.O.P.(MD)No.2018 of 2015 for anticipatory bail. When the learned Government Advocate (Criminal side) brought to the notice of this Court that suppressing the filing of earlier CrI.O.P.(MD)No.17660 of 2012 and order passed

by this Court, dated 13.12.2012, the second respondent has filed CrI.O.P.(MD)No.2018 of 2015 for anticipatory bail, this Court by order dated 24.02.2015, dismissed CrI.O.P.(MD)No.2018 of 2015. The second respondent filed M.P.(MD)No.1 of 2015 in CrI.O.P.(MD)No.17660 of 2012, for extension of time. The said petition was dismissed by this Court. Again, he filed M.P.(MD)No.2 of 2015 in CrI.O.P.(MD)No.17660 of 2012, suppressing the earlier dismissal order passed in CrI.O.P.(MD)No.2018 of 2015 and also the order passed in M.P.(MD)No.1 of 2015 in CrI.O.P.(MD)No.17660 of 2012. After obtaining extension of time in M.P.(MD)No.2 of 2015 in CrI.O.P.(MD)No.17660 of 2012, he did not comply with the conditions imposed by this Court and even after issuance of summons, he did not appear before the first respondent police and is absconding.

10. The contention of the learned counsel for the second respondent that the present CrI.M.P. by the co-accused to cancel the anticipatory bail granted to the second respondent, who is also a co-accused, is not maintainable, is without merit. The Hon'ble Supreme Court in the Judgment reported in **2016 (1) SCC 146** [cited supra] in paragraph 11, referring to earlier judgments held that cancellation of bail can be entertained at the instance of the accused, Public Prosecutor or the complainant. Further, it is well settled that the High Court, which granted anticipatory bail, has power to cancel.

11. Considering the serious allegations made against the second respondent, the act of the second respondent in obtaining anticipatory bail by suppression of facts, not co-operating in investigation and is absconding, the anticipatory bail granted to him in CrI.O.P.(MD)No.17660 of 2012, dated 13.12.2012, stands cancelled. The Criminal Original Petition is allowed accordingly.

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