

**P. Muthupandi Vs. State**

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**Court :** Chennai

**Decided On :** Nov-21-2008

**Reported in :** 2009CriLJ1943

**Judge :** K.N. Basha, J.

**Acts :** Indian Penal Code (IPC) - Sections 124(A) and 153(A); Unlawful Activities (Prevention) Act, 1967 - Sections 13(1) and 13(1)(2); Code of Criminal Procedure (CrPC) , 1974 - Sections 439(2)

**Appeal No. :** Cri. O.P. (MD) Nos. 10474 and 10475 of 2008

**Appellant :** P. Muthupandi

**Respondent :** State

**Advocate for Def. :** Siva Ayyappan, Govt. Adv. (Cri. Side), ;T. Lajapathi Roy and ;M. Ajmal Khan, Adv.

**Advocate for Pet/Ap. :** T.K. Gopalan, Adv. for ;T. Lenin Kumar, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**K.N. Basha, J.**

1. The petitioner, who is a practising Advocate, has come forward with these petitions seeking for the relief of cancellation of bail granted to the second respondents in both the matters, who have been arrayed as A-1 and A-2 by the learned Principal Sessions Judge, Ramanathapuram, in Crl.M.P. No. 1787 and 1788 of 2008 dated 29.10.2008 for the alleged offences under Sections 124(A), 153(A)1(a) of IPC and under Section 13(1)(2) of Unlawful Activities (Prevention) Act, 1967.

2. The petitioner filed separate affidavits containing the same contents in both the matters seeking for the relief of cancellation of the order of bail granted to the second respondents in both the matters, who have been arrayed as A-1 and A-2, in this case.

3. Mr. T.K. Gopalan, learned Counsel for the petitioner made two-fold submissions, firstly, in respect of the maintainability of the petition filed by the petitioner and secondly in respect of the reasons for cancelling the bail order.

4. The learned Counsel for the petitioner submitted in respect of the maintainability of the petition that the petitioner is an aggrieved person In view of the conduct of the second respondents, viz., A-1 and A-2 delivering speeches against the sovereignty and integrity of the country and further went to the extent of speaking about the demand of separate Tamil Nadu. It is contended that the petitioner is a patriotic citizen and in the interest of the country, he has come forward with these petitions considering the seriousness of the offences alleged against A-1 and A-2. Therefore, it is contended by the learned Counsel for the petitioner that the petitioner is having locus standi and he is entitled to file the petition seeking for the relief of cancellation of bail order granted to A-1 and A-2 in this case. In support of his contention of maintainability of the petition filed by the petitioner, the learned Counsel would place reliance on the decision of the Hon'ble Apex Court in R. Rahinam v. State AIR 2000 SC 1851.

5. In respect of the second submission, viz., reasons for cancelling the bail order granted in favour of A-1 and A-2, the second respondents in these petitions, the learned Counsel put forward the following contentions:

(1) The Sessions Court while granting the relief of bail has not considered the heinous nature of the crime ;

(2) The Public Prosecutor has not opposed the matter and on the other hand, he has given concessions for granting the relief of bail to A-1 and A-2 ; and

(3) The second respondents/A-1 and A-2 misused their freedom on the basis of their release on bail by giving interviews to the Tamil magazines justifying their stand in respect of the delivery of their speech which is the subject matter of this case.

On the basis of the above said contentions, learned Counsel for the petitioner submitted that the impugned order of bail granted to A-1 and A-2 is liable to be cancelled. In support of his contention the learned Counsel for the petitioner would also place reliance on the following decisions:

(1) Purvan v. Rambilas : 2001 CriLJ2566

(2) S.M. Muddassir v. State : 98(2002)DLT129

(3) Panchanan Mishra v. Digambar Mishra : 2005 CriLJ1721

(4) Mehboob Dawood Shaikh v. State of Maharashtra : 2004 CriLJ1359 and

(5) Man Singh v. Ganga Singh

6. Mr. T. Lajapathi Roy, learned Counsel appearing for A-1/second respondent in Crl.O.P.(MD) No. 10474 of 2008 confined his arguments in respect of the question of maintainability of the petition. It is contended that the petitioner is not entitled to file the petition seeking for the relief of cancellation of bail granted to the accused/A-1 and A-2 in this case as he is neither the de facto complainant nor any aggrieved party. It is submitted that the petitioner is only a third party to the case and as an individual he has no locus standi to file this petition. The learned Counsel further contended that in a case instituted on a police report a private party has no locus standi. In support of his contention, learned Counsel placed reliance on the decision of the Hon'ble Apex Court in Thakur Ram v. State of Bihar : 1966 CriLJ700 . It is further submitted that this Court in All India Democratic

Women's Association v. State has held that a third party has no locus standi to intervene in a petition filed by the prosecution to cancel the bail granted to the accused.

7. Yet another decision relied by the learned Counsel for A-1 is Sardela Damodar v. State of A.P. : 1996(2)ALD859 and in that decision it was held by the Andhra Pradesh High Court that a private person cannot be treated on par with the Public Prosecutor and as such he has no locus standi to file the petition for cancellation of bail.

8. Mr. M. Ajmal Khan, learned Counsel appearing for A-2/the second respondent in CrI. O.P. (MD) No. 10475 of 2008 justified the grant of the relief of bail to the accused and put forward the following contentions:

(1) The petitioner has come forward with these petitions only with political interest and for achieving political mileage;

(2) The intention of the petitioner is only to politicize the issue ;

(3) The accused have not committed any sin by protesting for the rights of the Tamil people ;

(4) There is absolutely no allegation of tampering with the evidence ;

(5) The accused deposited their passports on the basis of the condition imposed on them while granting the relief of bail and as such the question of fleeing from justice not at all arises ;

(6) The learned Judge not only considered the nature of offence but also considered the objections of the Public Prosecutor and the Public Prosecutor has not given any concession for granting the relief of bail and on the other hand, the Public Prosecutor, being the Officer of the Court, put forward the facts of the case ;

(7) The reading of the bail order clearly shows that it is contended by the learned Public Prosecutor that the speeches of the accused as shown in the first Information Report would attract the offences alleged against them and further stated that the investigation is substantially over and charge sheet is to be filed ;

{8) The question of exercising the judicial power wrongly not at all arises in respect of the well-reasoned order of bail granted by the learned Principal Sessions Judge, Ramanathapuram ; and

(9) The second respondents in both the matters/A-1 and A-2 are also strictly complying with the condition by reporting before the Judicial Magistrate No. 1, Madurai, everyday at 10.30 a.m. ;

In support of his contention, learned Counsel for A-2 would place reliance on the followings decisions:

(1) Krishna Reddy v. State ;

(2) State by Inspector of Police v. Sivakumar : 2003(4)CTC695 : and

(3) Bhagirathsinh Judeja v. State of Gujarat : 1984 CriLJ160 .

9. Mr. Siva Ayyappan, learned Government Advocate (Crl. Side) contended that the Public Prosecutor has not shown any concession for granting the relief of bail. It is submitted that as a matter of fact, the Public Prosecutor before the learned Principal Sessions Judge put forward the nature of allegation contained in the First Information Report and submitted that the allegation contained in the First Information Report attracts the offences alleged against them. It is pointed out by the learned Government Advocate (Crl. Side) that the learned Judge while granting the relief of bail also observed that the nature and seriousness of allegation in respect of the speeches made by the accused have to-be considered and decided only at the time of trial. It is submitted that the learned trial Judge while granting the relief of bail also considered the submission that the Investigating Officer examined all the witnesses and as such there is no chance for tampering with the witnesses. It is also stated by the learned Government Advocate (Crl. Side) that as on date the investigation is over and the investigating agency is waiting for the sanction to file the charge sheet in view of one of the offences also under Section 13(1)(2) of the Unlawful Activities (Prevention) Act.

10. I have given my careful and anxious consideration to the rival contentions put forward by either side and perused the affidavits filed by the petitioner and the

impugned order of granting bail to A-1 and A-2.

11. At the outset, it is to be stated that the petitioner is neither the complainant nor an aggrieved party, but he is only a third party to the instant case. The reading of the affidavits filed by the petitioner does not disclose anything about the maintainability of the petition filed by the petitioner to the effect that as to how he is aggrieved over the grant of relief of bail to A- 1 and A-2. It is pertinent to be noted that the petitioner has not whispered a word in the affidavits to the effect that he is having any concern over this matter. It is pertinent to be noted that in the affidavits the petitioner also has not made any allegation of inaction on the part of the police or cited any instances of law and order situation arose in view of the alleged speeches of A-1 and A-2 necessitating or compelling the petitioner to approach this Court through these petitions. Therefore, the petitioner has not made out any right or locus standi for him to approach this Court by filing these petitions. However, learned Counsel for the petitioner contended that the petitioner is a patriotic citizen and in view of the seriousness of the nature of offence alleged against the accused, he has come forward with these petitions in the interest of the country. The learned Counsel for the petitioner, as already pointed out, mainly placed reliance on the decision of the Hon'ble Apex Court in R. Rathinam v. State AIR 2000 SC 1851 in respect of the maintainability of the petition. In the said decision, the Hon'ble Apex Court has held that,

The frame of the Sub-section (2) of Section 439 indicates that it is a power conferred on High Court or Sessions Court to cancel bail. Exercise of that power is not banned on the premise that bail was earlier granted by the High Court on judicial consideration. In fact the power can be exercised only in respect of a person who was released on bail by an order already passed. There is nothing to indicate that the said power can be exercised only if the State or investigating agency or even a public prosecutor moves for it by a petition. The power so vested in the High Court can be invoked either by the State or by any aggrieved party. The said power can be exercised sup motu by the High Court. If so, any members of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 of the

Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such consideration it is open for the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition filed by advocates who have nothing to do with the case is not maintainable in law.

The above principle laid down by the Hon'ble Apex Court clearly shows that the decision rendered by the Hon'ble Apex Court exclusively in respect of the suo motu power of the High Court.

12. The Hon'ble Apex Court in a later decision in *Puran v. Rambilas* : 2001 CriLJ2566 referring the decision in *R. Rathinam v. State* AIR 2000 SC 1851 has held that,

A group of practising Advocates presented petitions before Chief Justice of the High Court seeking initiation of suo motu proceedings for cancellation of bail. The Chief Justice placed the petitions before a Division Bench. The Division Bench refused to exercise the suo motu powers on the ground that the petition submitted by the Advocates was not maintainable. This Court held that the frame of Sub-section (2) of Section 439 indicates that it is a power conferred on the Courts mentioned therein. It was held that there was nothing to indicate that the said power can be exercised only if the State or investigating agency or a Public Prosecutor moves by a petition. It was held that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. It was held that the said power could also be exercised suo motu by the High Court. It was held that, therefore, any member of the public, whether he belongs to any particular profession or otherwise could move the High Court to remind it of the need to exercise its power suo motu.

The decision cited supra also makes it crystal clear that the decision rendered by the Hon'ble Apex Court in *R. Rathinam v. State* AIR 2000 SC 1851 is only in

respect of the exercise of suo motu power of the High Court and in the decisions of the Hon'ble Apex Court has not declared that any individual is having right and he can approach this Court challenging an order of bail.

13. The Hon'ble Apex Court in *Janata Dal v. H.S. Chowdhary* reported in : 1993 CriLJ600 has held that, in a criminal case, a person who has no interest shall not invoke the jurisdiction of the Court by intervening in the proceedings and a person acting bona fide and having sufficient interest in the proceeding alone has locus standi to file a public interest litigation and a person for personal gain or private profit or political motive, or any oblique consideration has no such right to file public interest litigation.

14. The position of law is now well-settled as per the decision rendered by the Hon'ble Apex Court in *Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India* 2006 (3) SCC (Cri) 125 : 2006 AIR SCW 4287. One of the questions arose in that decision is whether the bail already granted to certain accused, viz., R-4 and R-5 in that case is liable to be cancelled. The Hon'ble Apex Court as per the majority held in that decision that,

It is a criminal litigation exclusively between Respondents 4 and 5 and the State. It is also important to note that in a case of this nature nobody else has got any right to interfere especially by way of public interest litigation or else such public interest litigation would only hamper the course of justice and may cause prejudice to the accused by denying them a fair trial. This unnecessary interference in the criminal case may cause, sometimes, damage to the prosecution case also.

15. Therefore, as per the well-settled principle of law laid down by the Hon'ble Apex Court in the decisions cited supra, a third party or any individual like the petitioner has no locus standi and on that ground these petitions are liable to be dismissed as not maintainable.

16. However, considering the law laid down by the Hon'ble Apex Court, this Court has got the duty to exercise its suo motu power. Therefore, let me now consider whether the materials placed before this Court by either side would make out a case for cancellation of bail already granted to the accused, viz., A-1 and A-2/the

second respondents in both the matters.

17. The crux of the allegation in this case is in relation to the speeches made by A-1 and A-2 in a meeting convened by the Cine Field Industry in support of the Sri Lankan Tamils at Rameshwaram. The speeches were delivered by A-1 and A-2 on 19.10.2008 in a meeting convened by Cine Field Industry between 4.30 p.m. and 8.30 p.m. The complaint was preferred by the Inspector of Police, 'Q Branch' on the very next day, i.e., on 20.10.2008 at 10.00 a.m. and the First Information Report was registered on 24.10.2008 at 2.00 p.m.

18. It is pertinent to be noted at the stage of considering the question of bail, the Court cannot undertake a detailed examination of the allegation contained in the First Information Report and such exercise would amount to pre-judging the issue and may result in grave prejudice to the accused to defend his case at the time of trial as it is well-settled that the accused has presumed to be innocent till the guilt is proved. It is suffice for the Court to find out whether the accused is made out a case for bail on the basis of the allegations and materials available on record. As far as the instant case is concerned, the case stands entirely on the basis of the speeches said to have been delivered by the accused, namely, A-1 and A-2. Therefore, it is for the prosecution to prove its case at the time of trial to the effect that the speeches said to have been made by A-1 and A-2 would attract the ingredients of the offences under Sections 124(A) and 153(A) IPC and 13(1)(d) of Unlawful Activities (Prevention) Act. The accused is entitled to defend his case and he should be given reasonable opportunity to put forward his defence and as such any finding in respect of the nature of allegation and offence would not only cause prejudice to the accused but also would result in grave miscarriage of justice.

19. The learned Principal Sessions Judge, Ramanathapuram, in the impugned order of granting bail has rightly held that in respect of attraction of the offence under Sections 124(A) and 153(A) IPC and 13(1)(d) of Unlawful Activities Act are to be decided only at the time of trial.

20. It is pertinent to be noted that the impugned order further reveals that the learned Principal Sessions Judge has taken into consideration for granting the

relief of bail to A-1 and A-2 the following important aspects, viz., that there is no chance for tampering the witnesses as already all the witnesses have been examined by the Investigating Officer and further the accused are well known Cine Directors and they are having permanent residence. It is seen that apart from imposing other conditions, the learned Principal Sessions Judge further directed the accused to surrender their passports before the learned Judicial Magistrate, Ramanathapuram. Yet another condition imposed by the learned Sessions Judge is to the effect that A-1 and A-2 have been directed to appear before the learned Judicial Magistrate No. 1, Madurai, daily at 10.30 a.m. until further orders. Therefore, this Court is of the considered view that the learned Principal Sessions Judge has passed a well-considered and well-reasoned order of granting bail to A-1 and A-2 and as such there is no infirmity or illegality in the impugned order of bail.

21. It is also relevant to refer the principles laid down by a catena of decisions of the Hon'ble Apex Court in respect of cancellation of bail. The Hon'ble Apex Court has held in *Bhagirathsinh Judeja v. State* : 1984 CriLJ160 that,

Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail. It is now well-settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

22. The Hon'ble Apex Court in *Mehboob Dawood Shaikh v. State of Maharashtra* : 2004 CriLJ1359 has held that,

Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

23. The Hon'ble Apex Court in *Dolat Ram v. State of Haryana* : (1995)1SCC349 while considering the power of this Court under Section 439(2) of Cr.P.C. has held that,

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 bail, already granted. Generally speaking, the ground 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 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....

24. It is also pertinent to be noted the principles laid down by the Hon'ble Apex Court in respect of cancellation of bail in a landmark case in *Gurcharan Singh v. State (Delhi Admn.)* reported in : 1978 CriLJ129 . The Hon'ble Apex Court in that decisions has held as follows:

29. We may repeat the two paramount considerations, viz., likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.

25. In the latest decision in Rizwan Akbar Hussain Syed v. Mehomood Hussain reported in 2008 (1) M.L.J. (Cri.) 356 : 2007 Cri LJ 3255 the Hon'ble Apex Court has held as follows: Cancellation of bail should not be done in a routine manner. Where it appears to the superior Court that the Court granting bail acted on irrelevant materials or there was non-application of mind or where Court does not take note of any statutory bar to grant of bail, order for cancellation of bail can be made. These circumstances are illustrative and not exhaustive.

26. If the impugned order is considered in the light of the above well settled principle of law, then this Court has no hesitation to hold that no ground made out for cancelling the impugned order of bail already granted to the second respondents in both the matters/A-1 and A-2.

27. It is also relevant to note that two paramount considerations for cancellation of bail, namely, fleeing from justice and tampering with the evidence neither alleged nor made out in this case. It is also equally important to note that there is no ground made out to the effect that A-1 and A-2 abused or misused the benefit of freedom of the grant of bail. It cannot be stated that merely A-1 and A-2 giving interviews to certain Tamil magazines would amount to misuse or abuse of the benefit of grant of bail order.

28. Added to all these important aspects, it is also pertinent to be noted that all the witnesses have already been examined and the investigation is over and the charge sheet is going to be filed after obtaining sanction from the Government in view of the fact that one of the offences alleged under Section 13(1)(2) of the Unlawful Activities (Prevention) Act. It is seen that A-1 and A-2 are also strictly complying with the condition by appearing before the learned Judicial Magistrate No. I, Madurai, every day at 10.30 a.m. Therefore, even the question of tampering the evidence or hampering the investigation not at all arises.

29. For the foregoing reasons, there is absolutely no ground made out warranting the interference of this Court in the impugned order of bail granted to A-1 and A-2 dated 29.10.2008 in CrI.M.P. Nos. 1787 and 1788 of 2008 on the file of the learned Principal Sessions Judge, Ramanathapuram. Accordingly, these petitions are dismissed.

30. However, it is made clear that the second respondents in both the matters, viz., A-1 and A-2 shall have certain restraint from delivering any speeches or giving any interviews to the Magazines or newspapers or other print and electronic media in respect of the alleged offence against them in this case pending for filing the charge sheet before the Court.

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