

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI. O.P. No. 11847 of 2021

Dhilip Premkumar

...Petitioner

Vs.

1. The Sub-Inspector of Police
62, Old Post Office Road
Near Railway Station
Opp. City Police Commissioner Office
Gopalapuram, Coimbatore
Tamil Nadu 641 018.
(Crime No. 17 of 2021)

2. Anisha K.S.

3. Muthoottu Mini Financiers Private Ltd.
No.123, Karuppa Kounder Street
Near Raja Street, Town Hall
Coimbatore,
Tamil Nadu 641 001, India.

4. Muthoot Fincorp Limited (Accused No.3)
Registered Office
Muthoot Centre
Ponnen Road
Tiruvanthapuram – 695 034.

... Respondents

Prayer : Petition filed under Section 482 of Code of Criminal Procedure to cancel the bail granted in favour of the Second Respondent / First Accused in the above Criminal M.P. No. 1975 of 2021 dated 06.02.2021 and secure the Second Respondent / First Accused.

For Petitioner : Mr. Rahul Jagannathan

For Respondents : Mr. C.E.Pratap (For R1)
Government Advocate (Crl. Side)
Mr. N.Ponraj (For R2)
Mr. Shiva Prakash (For R3)
Mr. M.Hema Nandhini (For R4)

ORDER

The petitioner/defacto complainant filed the present petition seeking to cancel the bail in favour of the second respondent (A-1).

2. It is the case of the petitioner that he is an NRI and he was induced by the second respondent (A-1) to make investment in the Muthoot Finance Company where the second respondent was working as Manager in the third respondent Company. Believing her words, initially the petitioner has deposited a sum of Rs.30 Lakhs in the year 2018, for which, the second respondent paid a sum of Rs.10 Lakhs as benefit to the petitioner. Thereafter, the defacto complainant again deposited a sum of Rs.52 Lakhs in the year 2018-2019, for which, the second respondent issued bonds and

certificates to the petitioner as if, in favour of the third respondent company. During the year 2020, due to misappropriation of funds, the second respondent was terminated from her service. The petitioner came to know the termination of the second respondent and he repeatedly asked the money from the second respondent. But the second respondent has refused to repay him. Hence, the petitioner made a complaint before the law enforcing agency. Based on his complaint, the respondent police registered a case against the second respondent.

3. The learned counsel for the petitioner submitted that the second respondent induced the petitioner to invest money in the third respondent Company for getting benefits. Due to which, the petitioner has paid a sum of Rs.72 lakhs to the second respondent. Thereafter, he came to know that the second respondent was terminated from service for misappropriation of company's fund. When the petitioner asked her to repay the money, the second respondent has refused to pay him. Hence, the petitioner lodged a complaint before the respondent police. During enquiry, she has also admitted her guilt before the respondent police. The trial Court, without considering all these facts, granted bail to the second respondent and the

same has to be cancelled by this Court.

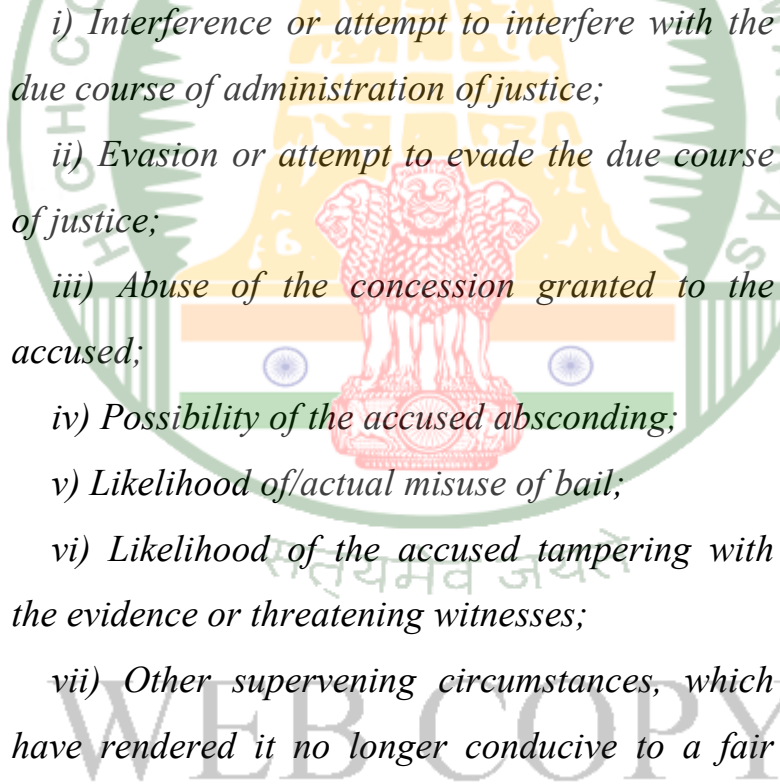
4. The learned counsel for the respondents 3 & 4 submitted that the second respondent was working as Manager in the respondents 3 & 4 Company. Due to malpractice committed by the second respondent, she was terminated from her service. Further the learned counsel submitted that the second respondent created forged documents and bonds as if she is working in the 3rd respondent company and received huge amount from the public in her personal account. The trial Court, without considering the oral and documentary evidence, granted bail to the second respondent, which requires interference of this Court.

5. The learned Government Advocate (Crl. side) appearing on behalf of the first respondent police submitted that investigation has almost been completed and charge sheet is yet to be filed. In view of the serious allegation, the learned counsel requested this court to cancel the bail to the second respondent.

6. Heard the learned counsel for the petitioner as well as the

respondents 2,3 and 4 and the learned Government Advocate and perused the materials available on record.

7. Section 439 (2) of Cr.P.C. clothes the Court with the power to deal with issue relating to cancellation of bail. The Supreme Court has enumerated the following supervening factors that justify cancellation of bail :-

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- i) Interference or attempt to interfere with the due course of administration of justice;*
 - ii) Evasion or attempt to evade the due course of justice;*
 - iii) Abuse of the concession granted to the accused;*
 - iv) Possibility of the accused absconding;*
 - v) Likelihood of/actual misuse of bail;*
 - vi) Likelihood of the accused tampering with the evidence or threatening witnesses;*
 - vii) Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.*

8. The courts should be more rigid in its examination of violation and proof of violation in matters relating to cancellation of bail. Various decisions of the Hon'ble Apex Court vests the courts with power and discretion to cancel bail even when there are no supervening circumstances and broadly classified, they could be brought under the following heads :-

i) Where the court granting bail ignores relevant material and takes into account irrelevant material of substantial nature and not trivial nature;

ii) *Where the court granting bail overlooks the position of the accused qua the victim especially if the accused is in some position of authority such as a policeman and there is prima facie, a misuse of position and power, including over the victim.*

iii) *Where the court granting bail ignores the past criminal record and conduct of the accused while granting bail;*

iv) Where bail has been granted on untenable grounds;

v) *Where the order granting bail suffers from serious infirmities resulting in miscarriage of justice;*

vi) Where the grant of bail was not appropriate.

in the first place, given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified;

vii) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

(Emphasis Supplied)

From the above, it is amply evident that even if there are no supervening circumstances, even then the courts are empowered to cancel the bail granted to the accused.

9. The facts of the case is not in dispute and admittedly, the second respondent was working as Manager in the third respondent company. During the month March-2020, she was terminated from service for creating forged certificates and bonds and also for misappropriation of funds. She has misappropriated nearly Rs.72,00,000/-. Based on the complaint given by the petitioner, the second respondent was arrested and sent to judicial custody.

10. In the above backdrop, a perusal of the order passed by the trial

court reveals that the sole ground on which the accused has been enlarged on bail seems to be the fact that the accused has been under incarceration for nearly 50 days in jail. Apart from the said ground, no other ground seems to have weighed with the trial court to grant bail to the accused.

11. It is trite that *bail is the norm and jail is exception*. However, it should not be lost sight of that while granting bail, the courts should weigh all the factors associated with the case while considering the bail application of the accused. *Prima facie* satisfaction should be based on the hypotheses of just and reasonableness and not on mere *ipsi dixit* of the court. However, the materials available on record reveal that the court below, on the only ground that the accused had suffered incarceration for around 50 days, has enlarged the accused on bail, without considering the gravity of the offence and monstrous and magnitude of the misappropriation alleged against the accused.

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12. The decision of the Hon'ble Supreme Court in the case of ***Daulat Ram – Vs – State of Haryana (1995 (1) SCC 349)*** comes to the aid of this Court, wherein the Hon'ble Supreme Court has held that once supervening

circumstances are brought to the notice of the Court, then the Court is clothed with power to revisit the bail granted to an accused. In the case on hand, the non-application of mind on the part of the trial court while granting bail to the accused definitely is a supervening circumstance, which should weigh in the mind of this Court while dealing with the prayer of the petitioner for cancellation of the said bail. The gravity of the offence and the amount of misappropriation alleged and taking into consideration the fact that investigation is still going on, the court below ought not to have enlarged the accused on bail on the ground that the accused had been under incarceration for around 50 days. The said ground alone would not suffice to grant bail to the accused. Further, the fact that the accused is a lady is also of no consequence while considering the application for bail.

13. In the above circumstances, this Court has no hesitation in arriving at a conclusion that the trial Court erred in enlarging the second respondent/accused in bail. Accordingly the bail granted to the second respondent is cancelled and the first respondent police is directed to take immediate steps in accordance with law to arrest the second respondent. Accordingly, the order passed by the learned Sessions Judge, Coimbatore in

C.M.P.No.1975 of 2021 dated 06.05.2021 is set aside and this Criminal Original Petition is allowed.

31.08.2021

Index : Yes/No
Speaking order/non speaking order
rli

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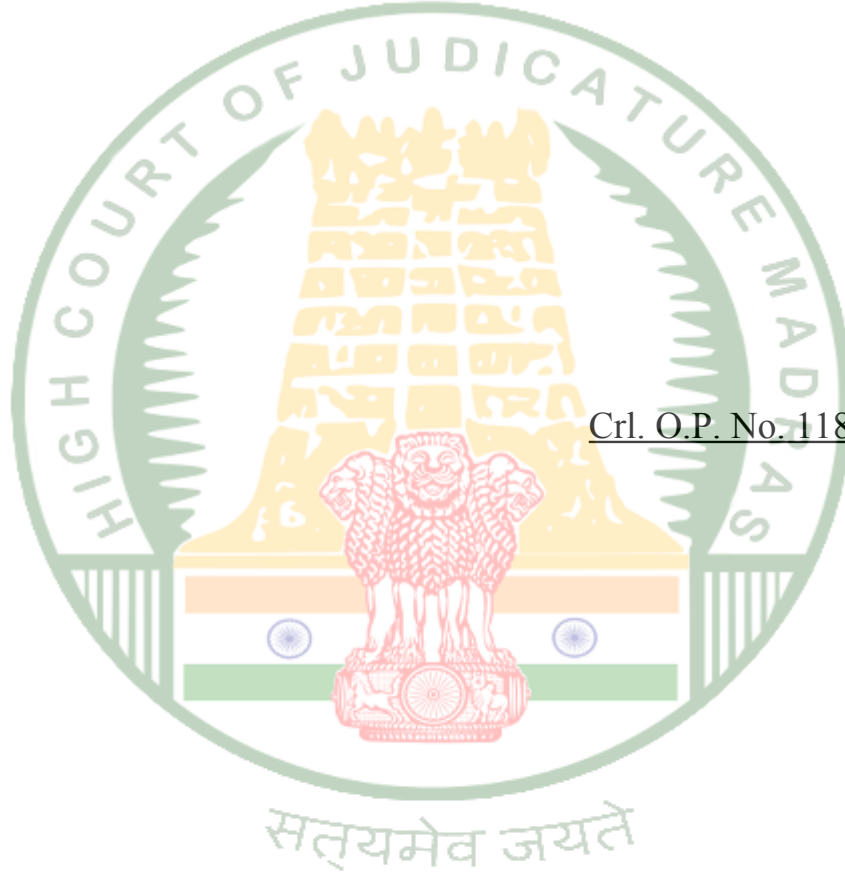
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M.DHANDAPANI,J.

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