

(2008) 08 MAD CK 0072

Madras High Court

Case No: Criminal OP. No. 18541 of 2008

G. Moorthy

APPELLANT

Vs

Inspector of Police, Central
Crime Branch, Team 2, Egmore,
Chennai

RESPONDENT

Date of Decision: Aug. 14, 2008

Hon'ble Judges: K.N. Basha, J

Bench: Single Bench

Advocate: Habibullah Badsha, SC for M/s. K. Ramesh Kumar, for the Appellant;
Seethapathy for Intervenor and Mr. A. Saravanan, Govt. Advocate (Crl. Side) for
Respondent, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.N. Basha, J.

The petitioner has come forward with this petition seeking for the relief of a direction to the respondent police to execute the non-bailable warrant dated 26.03.2008 issued by the learned XI Metropolitan Magistrate, Saidapet, Chennai, in Crime No. 124 of 2008 for securing the arrest of the second accused and pass such other orders.

2. Mr. Habibullah Badsha, learned senior counsel for the petitioner submitted that the petitioner is the defacto complainant in this case. It is submitted that the complaint is in relation to the alleged offences of cheating and misappropriation to the tune of Rs. 18 Crores. It is submitted that the second accused in this case was apprehended in Mumbai on 17.03.2008 and enlarged on transit bail by the Court of Sessions, Mumbai, on condition that he shall appear before the Magistrate's Court in Chennai on 26.03.2008. The learned senior counsel submitted that after obtaining such order from the Mumbai Court, the second accused has also preferred a petition for anticipatory bail before this Court and after this Court expressed its disinclination to grant the relief sought for as the petition for anticipatory bail is not

maintainable, the petition was withdrawn on 01.04.2008 in Crl. O.P. No. 6657 of 2008. It is submitted by the learned senior counsel that even thereafter the second accused has not appeared before the Magistrate's Court and on the other hand, the second accused has filed another petition for anticipatory bail before this Court in Crl. O.P. No. 17257 of 2008 and this Court dismissed the petition by the order dated 07.08.2008. The learned senior counsel contended that in spite of issuing the non-bailable warrant by the learned Magistrate as early as on 26.03.2008, the respondent police has not taken any effective steps to execute the non-bailable warrant and no action was taken till date. The learned senior counsel contended that the conduct of the accused would amount to a clear case of disobedience of the orders passed by the Sessions Court, Mumbai and this Court and in view of the inaction on the part of the respondent police, the second accused has taken advantage and is siphoned off the misappropriated amount from the petitioner and tampering with the evidence causing hindrance to the investigation. It is further submitted that as a result, the petitioner has been put into great hardship and irreparable loss and as such the petitioner has been constrained to approach this Court with the above said prayer.

3. The learned counsel for the second accused appeared before this Court today and submitted that the second accused has filed a petition for recalling the non-bailable warrant before the learned Magistrate and such petition was dismissed by the learned Magistrate and challenging that order, the petitioner has preferred a revision before this Court and the revision is posted for hearing before this Court on Monday, i.e., on 18.08.2008 and therefore, it is submitted by the learned counsel for the second accused that this matter may also be posted on Monday, i.e., on 18.08.2008 to hear both the matters together.

4. The learned Government Advocate (Crl. Side), on the other hand, submitted that the respondent police undertakes to take effective steps to execute the non-bailable warrant within a period of one month.

5. I have carefully considered the rival contentions put forward by either side and also perused the materials available on record and the earlier orders passed by this Court and the bail order of the Sessions Court, Mumbai.

6. Before proceeding to consider the contentions put forward by the learned senior counsel for the petitioner and submission of the learned counsel for the second accused and the learned Government Advocate (Crl. Side), it is relevant to refer the unusual and unprecedented sequence of events in this case.

7. There are three accused in this case and all the three accused have been implicated in this case on the allegation of cheating and misappropriation of funds to the tune of Rs. 18 Crores. The main allegation is leveled against the second accused, who is said to be the king-pin of the alleged transaction. Now the non-bailable warrant is pending against the second accused as issued by the

learned XI Metropolitan Magistrate, Saidapet, Chennai, on 26.03.2008. The necessity for the learned Magistrate to issue the non-bailable warrant against the second accused arises under the following circumstances:

(i) The First Information Report was registered in this case by the respondent police on 07.03.2008 in X. Crime No. 124 of 2008 for the offences under Sections 406, 418 r/w 34 IPC. Thereafter, the respondent police went to Mumbai on 17.03.2008 to arrest the accused, who have been named in the First Information Report. The second accused was arrested by the respondent police on 17.03.2008 and thereafter, he was produced before the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, and prayed for the transit warrant to produce the accused before the jurisdictional Court, namely, XI Metropolitan Magistrate, Saidapet, Chennai. At that time, the counsel appeared for the second accused objected the transit custody of remand and also presented a bail application. The Assistant Public Prosecutor was also present at that time before the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai. The learned Additional Chief Metropolitan Magistrate, Mumbai, adjourned the matter to the next day, i.e., on 18.03.2008 and directed the respondent police to keep the second accused in their custody by seeking the help of concerned area police station. Meantime on the same day, i.e, on 18.03.2008, the second accused preferred a bail petition in Bail Application No. 642 of 2008 before the Sessions Court, Greater Bombay. The learned Sessions Judge has also entertained such petition for bail in spite of the fact that the concerned second accused has already been arrested and produced before the learned Additional Chief Metropolitan Magistrate, 9th Court, Bondra, Mumbai, and a bail application was also filed by the second accused and the learned Additional Chief Metropolitan Magistrate adjourned the matter to the next day i.e, on 18.03.2008. It is pertinent to be noted that the second accused in the bail application filed before the Sessions Court, mentioned about filing of bail application be-fore the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, and further stated that the said application was posted on 18.03.2008, but expressed apprehension that he may not get the bail in the Court of the learned Additional Chief Metropolitan Magistrate, Mumbai.

(ii) It is curious to note that while such bail application was pending before the learned Magistrate, the learned Sessions Judge, as stated above, has entertained the bail petition of the second accused and granted the relief of bail by the order dated 19.03.2008 by imposing a condition that the second accused shall appear before the competent Court at Chennai by 26.03.2008 without fail. It is further made clear in the order of the Sessions Judge that such bail order would be effective till 5.00 p.m. on 26.03.2008. It is seen that even in the petition for bail, the second accused has specifically undertaken to appear before the concerned Magistrate Court at Chennai.

(iii) The second accused having obtained the above said bail order on condition to appear before the competent Court at Chennai on 26.03.2008, instead of appearing before the Magistrate has chosen to file a petition for anticipatory-bail before this Court in Crl. O.P. No. 6657 of 2008 and that petition was dismissed as withdrawn after this Court expressed its disinclination to entertain the petition on the ground that the anticipatory bail is not maintainable in view of the earlier bail order obtained by the second accused from the Sessions Court, Mumbai, on condition to appear before the concerned Magistrate Court on 26.03.2008 by this Court by the order dated 01.04.2008. Even after such order passed by this Court, the second accused has not chosen to appear before the Magistrate Court, but filed yet another petition for anticipatory bail in Crl. O.P. No. 17257 of 2008 and this Court dismissed that petition by the order dated 07.08.2008 observing as follows :

Prima facie materials are available to substantiate the misappropriation and that the respondent police has effected arrest at Mumbai and bail was granted within two days, with a condition to appear before the XI Metropolitan Magistrate, Saidapet, Chennai, on or before 26.03.2008. The intention of the petitioner was not to obey the order and that is why he has filed an application for grant of anticipatory bail before the Court on 24.03.2008 itself. Since the order passed by the court of Sessions, Mumbai has not been obeyed, this Court refused to entertain such application as early as on 01.04.2008 itself.

8. It is seen that now, as per the submission of his counsel, second accused has filed a petition to recall non-bailable warrant before the learned Magistrate and the same was dismissed and against that the second accused preferred a revision and the revision is posted on 18.08.2008. The request of the learned counsel for the second accused to post even this petition on 18.08.2008 is not justified in view of the above said factual scenario and the sequence of events demonstrating the deliberate conduct of the second accused by throwing the orders of the Courts to the wind.

9. The second accused has no locus standi to intervene in this petition as the investigation is pending on the basis of the complaint preferred by the defacto complainant and thereafter, the First Information Report was registered. The accused is entitled to seek remedy as contemplated under law and he has already been arrested and released on bail by the Sessions Court, Mumbai on condition to appear before the learned Sessions Judge on 26.03.2008. But the second accused instead of complying with the condition of bail imposed by the learned Sessions Judge, Mumbai, by appearing before the learned Magistrate on 26.03.2008, has deliberately defaulted in complying with the condition and chosen to file a petition after petition for the relief of anticipatory bail. The fact remains that the second accused obtained the interim order of bail under the guise of undertaking to appear before the learned Magistrate, but he has committed breach of his undertaking. The above said sequence of events and the deliberate and willful conduct of the accused makes it crystal clear that the second accused is guilty of taking the Court for ride

and he has displayed scant regard for the majesty and rule of law and such conduct of the second accused is nothing but playing fraud on the Court. It is relevant to refer the decision of the Hon"ble Apex Court in [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others,](#) in which the Hon"ble Apex Court has held that-

The Courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process as convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

10. It is painful to note that in spite of the learned XI Metropolitan Magistrate has issued non-bailable warrant as early as on 26.03.2008, the respondent police has not raised its little finger by taking effective steps to execute the non-bailable warrant. Even after the dismissal of the earlier anticipatory bail petition by this Court as early as on 01.04.2008 in CrI. O.P. No. 6657 of 2008, the respondent police has remained as silent spectator. The apprehension of the petitioner that by taking advantage of the non-execution of the non-bailable warrant, the second accused alleged to have siphoned off the misappropriated amount and tampering with the evidence cannot be brushed aside lightly.

11. In view of the lethargic and indifferent attitude of the respondent police in dealing with the non-bailable warrant issued by the learned Magistrate against the second accused and in order to secure the ends of justice and to prevent the abuse of process of Court, this Court is constrained to direct the Commissioner of Police, Greater Chennai, to nominate a competent police official not below the rank of Assistant Commissioner of Police and the said Assistant Commissioner of Police, by taking assistance of Inspector of Police, is directed to execute the non-bailable warrant within a period of fifteen days from the date of receipt of a copy of the order of this Court.

This petition is ordered accordingly.