



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Twenty First day of January Two Thousand Fifteen
PRESENT

The Hon`ble Mr.Justice P.N.PRAKASH

CRL OP(MD) No.254 of 2015

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... PETITIONER/ACCUSED NO.4

Vs

STATE.REP.BY
THE INSPECTOR OF POLICE
SUCHINDRAM POLICE STATION,
KANYAKUMARI DT,
CRIME NO.469/2014

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.I.PINAYGASH, Advocate

For Respondent : MR.A.P.BALASUBRAMANI, Govt. Advocate (Crl. Side)

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 147, 148, 341, 302 and 506(ii) IPC in Crime No.469 of 2014 on the file of the respondent police, seeks anticipatory bail.

2. This is a second application for Anticipatory Bail. The first application for Anticipatory Bail was dismissed as withdrawn on 19.11.2014.

3. Mr.I.Pinaygash, learned counsel appearing for the petitioner, would strongly urge that there are three points available for the consideration of this Court to grant Anticipatory Bail to the petitioner.

4. The incident, in this case, took place on 11.08.2014, at around 07.30 PM. The eye-witness in this case, is the wife of the deceased and she is the *de facto* complainant. According to the *de facto* complainant, when she was proceeding with her husband, seven persons waylaid them and brutally attacked her husband and murdered him. In the complaint given by the *de facto* complainant, apart from mentioning the names of certain persons, she has included this petitioner also. Thereafter, it appears that in the statement made under Section 161(3) of the Code of Criminal Procedure, she has stated that she had inadvertently included the names of three accused, viz., Vivegananthan, Dhilakumar and Achuthan, instead of Selvakumar, Magesh, Agnesh, Subash, Rajesh and Clinton. Based on this, the learned counsel submitted that the *de facto* complainant has given contradictory versions and therefore, her complaint is not worthy of acceptance.

5. This Court would have dismissed this application on the very short ground that the statement given under Section 161(3) of the Code of Criminal Procedure ought not to have gone into the hands of the



petitioner, when the investigation is pending, as held by a Full Bench of this Court in **Selvanathan @ Raghavan and others Vs. State by Inspector of Police, G5 Police Station, Madras**, reported in 1988 LW [Cr1] 503. Following the said Judgment, the Registrar of this Court has issued a Circular in **R.O.C.No.1823-A/2010, dated 20.04.2010**, to all the Magistrates in the State, directing them not to furnish copies of statements obtained under Section 161(3) of the Code of Criminal Procedure and other documents to the accused before culmination of investigation. Strangely, this circular and the Judgment of the Full Bench have been violated and this petitioner has obtained a copy of the 161(3) statement of the *de facto* complainant by some means. Means are more important than the ends. Therefore, this Court will not give any weightage to the first ground raised by the learned counsel appearing for the petitioners, since the circular and the Judgment of the Full Bench have been violated.

6. Apart from the above, I do not find any discrepancy in the version of the *de facto* complainant, because even in the earlier version, she has implicated this petitioner and in the statement under Section 161(3), she has not excluded the name of this petitioner.

7. The learned counsel for the petitioner would further submit that the co-accused have been arrested and released on bail and their custodial interrogations is over. That cannot be a ground to grant Anticipatory Bail to the petitioner, in view of the serious allegations levelled against him.

8. The learned counsel appearing for the petitioner would further submit that there were three previous cases against the deceased and his antecedents were not good.

9. In the opinion of this Court, the said ground taken by the learned counsel is liable to be rejected, on the simple ground that just because the deceased was having three previous cases and his antecedents was not good, that cannot be a reason for anyone to take away his life.

10. For all the reasons stated above, the present Criminal Original Petition for Anticipatory Bail is dismissed.

sd/-

21/01/2015

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE INSPECTOR OF POLICE, SUCHINDRAM POLICE STATION, KANYAKUMARI DT.

2 THE ADDITIONAL PUBLIC PROSECUTOR,

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.T.LAJAPATHI ROY Advocate SR.No.2924

ORDER IN

CRL OP(MD) No.254 of 2015

Date : 21/01/2015