



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

Friday, the Twenty Seventh day of February Two Thousand Fifteen
PRESENT

THE HON`BLE MR JUSTICE P.N.PRAKASH
CRL OP(MD) No.2827 of 2015

PANDI @ ATTACK PANDI

... PETITIONER/ACCUSED NO.10

Vs

THE INSPECTOR OF POLICE
SUBRAMANAPURAM POLICE STATION,
SUBRAMANIAPURAM, MADURAI.
CR. NO. 68/2013.

... RESPONDENT/COMPLAINANT

For Petitioner : M/S. S.R.RAJAGOPAL, FOR M/S. V. SRIKANTH Advocate

For Respondent : MR.K.CHELLAPANDIAN, ADDITIONAL ADVOCATE GENERAL,
ASST. BY MR.A.P.BALASUBRAMANIAN, 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, 427, 302, 120(b) and 109 r/w 34 IPC in Crime No.68 of 2013 on the file of the respondent police, seeks anticipatory bail.

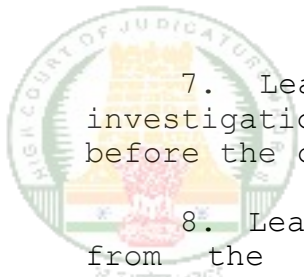
2. Heard Mr.S.R.Rajagopal, learned counsel for Mr.V.Srikanth, learned counsel for the petitioner and Mr.K.Chellapandian, learned Additional Advocate General, assisted by Mr.A.P.Balasubramanian, learned Government Advocate (Crl.Side) appearing for the State.

3. This is fourth anticipatory bail petition and the earlier anticipatory bail petitioners in Crl.O.P.(MD) Nos.7643 of 2013, 15346 of 2013 and 6095 of 2014 were all dismissed as withdrawn.

4. The case of the prosecution is that the deceased Suresh Babu was a DMK Party man and on 31.01.2013 around 07:15p.m. in the evening, while he was returning from his office to his residence, he was waylaid, brutally attacked and killed by seven assailants with deadly weapons. Thereafter, some of the accused surrendered before the learned Judicial Magistrate, Natham and Police took them into their custody. During the course of investigation, it came to light that it was this petitioner, who had masterminded the elimination of Suresh Babu.

5. Mr.S.R.Rajagopal, learned counsel for the petitioner submitted that this petitioner was not in the scene of occurrence and he has been falsely implicated by the Police.

6. This Court called for the Case Diary and found that there are sufficient materials disclosing the involvement of this petitioner in the planned-murder of the deceased. This Court does not want to disclose the materials observed in the Case Diary at this juncture, for, that will hamper the course of investigation. Suffice to say that the confession of the arrested accused clearly implicates this petitioner in the offence. Apart from this, there are sufficient materials to show that this petitioner had exhorted the assailants to attack the deceased and custodial interrogation of this petitioner is required in order to find out the involvement of others in the elimination of Suresh Babu.



7. Learned counsel for the petitioner further submitted that investigation has been completed and a final report has also been filed before the concerned Magistrate.

8. Learned Additional Advocate General, after taking instructions from the Investigating Officer, who was present in this Court, represented that the investigation is not yet over and no final report has been filed. In the light of the assertion by the learned Additional Advocate General that final report has not been filed, the burden is now on the petitioner to show the existence of the fact which he seeks to assert. The petitioner cannot make a wild assertion without supporting materials and attempt to create a red herring in the case. This Court also ascertained through the Registrar (Judicial) that Police have not filed any final report in this case.

9. Learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in Shri Gurbaksh Singh Sibbia and Others vs. State of Punjab, reported in (1980) 2 SCC 565 to drive home the point that this Court should protect the valuable right of the petitioner, guaranteed under Article 21 of the Constitution of India. But, unfortunately, in the same judgment, the Constitution Bench has also given the following caution:

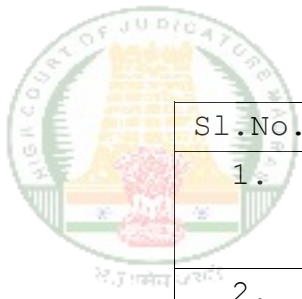
"On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made."

10. The respondent police have given a long list of cases pending against this petitioner in order show his antecedents.

Details of cases pending against the petitioner / accused

Sl.No.	Nature of offence and Crime No.
1.	Crime No.67/2012 of DCB, Madurai for offences 147, 148, 341, 406, 420, 307 and 506(ii) IPC
2.	Crime No.88/2012 of DCB, Madurai for offences 147, 148, 341, 406, 420, 468, 471 and 506(ii) IPC
3.	Crime No.436/2012 of Avaniapuram PS, Madurai for offences 294(b) and 506(ii) IPC
4.	Crime No.639/2012 of Avaniapuram PS, Madurai for offences 147, 294(b) and 506(ii) IPC
5.	Crime No.672/2012 of Avaniapuram PS, Madurai for offences 353 and 506(ii) IPC
6.	Crime No.747/2012 of Avaniapuram PS, Madurai for offences 147, 148, 294(b), 323 and 506(ii) IPC
7.	Crime No.42/2013 Keeraithurai PS, Madurai for offences 147, 148, 435 and 506(ii) IPC r/w Sections 3(1) of TNPDL Act

Cases in which the petitioner accused involved and suppressed by him



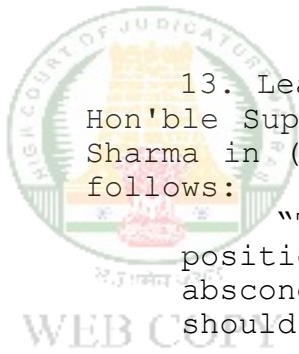
Sl.No.	Nature of offence and Crime No.
1.	Madurai City B3.Theppakulam PS Cr.No:1991/09 u/s 147,148,341,324,364,307 and 506(ii) IPC and Accused Summon has been issued by the Court and Case is pending for trial
2.	Tuticorin Dist, Kulasekarapattinam PS Transfer to Athur PS Dt:13.08.12 Memo 6/SDOT/12, Cr.No:283/09 u/s 147, 148, 324, 307 IPC and 3 of TNDPL Act
3.	Virudhunagar Dist, Aruppukottai PS Cr.No:332/10 u/s 3 r/w 25 (1) (B) (a) Arms Act r/w 120(B) IPC in which NBW is pending from 27.07.12
4.	Madurai City CCB Cr.No:53/11 Land Grabbing Unit u/s 427, 448, 471, 506(ii) IPC and this case is pending trial.
5.	Madurai City CCB Cr.No:57/11 Land Grabbing Unit u/s 406,420,448,367,506(ii) IPC and this case is pending trial.
6.	Madurai Dist, Avaniapuram PS Cr.No:339/11 u/s. 147, 148, 294 (b), 323, 406, 506(ii) IPC r/w 4 of Women Harssment Act
7.	Madurai Dist, DCB PS Cr.No:30/12 for offences 120(b), 468,471,420 IPC
8.	Madurai Dist. Perungudi PS Cr.No.05/13 for offences 447,379,294(b) and 506(ii) IPC and Sec. 21 and 23 of Mines and Minerals Development and Regulation Act.

11. Learned counsel for the petitioner also relied upon the following passage of Mr.Justice V.R.Krishna Iyer, rendered in the case of Gudikanti Narasimhju and others vs. Public Prosecutor, High Court of Andhra Pradesh in AIR 1978 SC 429:

"Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Art.21 of the Constitution that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community."

Of course, Mr.Justice V.R.Krishna Iyer, while sitting single has made the aforesaid remarks. But the same Hon'ble Judge in the case of Niranjana Singh and another vs. Prabhakar Rajaram Kharote and others reported in AIR 1980 SC 785 has said "We agree that, in our view, an outlaw cannot ask for the benefit of law and he, who flees justice cannot claim justice."

12. Now, it is to be seen whether this petitioner is an outlaw. The fact that this petitioner has been absconding since 2013, is sufficient to infer that he is an outlaw, because the prosecution has initiated proclamation proceedings before the learned Judicial Magistrate No.IV, Madurai in CrI.M.P.No.6877 of 2013 and after going through the process of proclamation, learned Magistrate by an order dated 19.12.2013 had concluded that it is a fit case to order proclamation in respect of this petitioner, as he is an absconder. The petitioner was directed to appear before the learned Magistrate on 22.01.2014 and the proclamation was directed to be published in a vernacular newspaper and also by affixture in the Court notice board. The petitioner did not pay heed to the order of the learned Magistrate and therefore, he was declared as a Proclaimed Offender subsequently and his properties were also directed to be attached.



13. Learned Additional Advocate General relied upon a judgment of the Hon'ble Supreme Court in the case of State of Madhya Pradesh vs. Pradeep Sharma in (2014) 1 SCC (Cri) 768, wherein the Hon'ble Apex Court held as follows:

"The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail."

14. However, learned counsel for the petitioner submitted that this judgment of the Hon'ble Supreme Court has overlooked the law laid down by the Constitution Bench of the Hon'ble Supreme Court in Shri Gurbaksh Singh Sibbia and Others vs. State of Punjab (supra) inasmuch as when there is an apprehension of arrest, a petition for anticipatory bail is maintainable and just because, the person has been proclaimed as a Proclaimed Offender, it cannot be said that he cannot maintain an application for anticipatory bail. The Hon'ble Supreme Court in Pradeep Sharma's case does not say that a proclaimed offender cannot approach the Court under Section 438 Cr.P.C. for anticipatory bail. The question of maintainability was not the issue before the Hon'ble Supreme Court either in Pradeep Sharma's case or in Lavesb vs. State (NCT of Delhi), reported in (2012) 8 SCC 730.

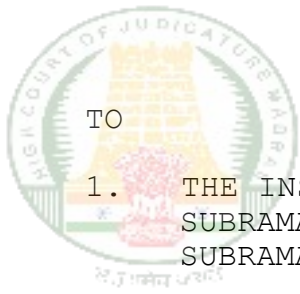
15. Prior to the amendment, Section 438 Cr.P.C. gave discretionary powers to the High Court and the Courts of Sessions to grant pre-arrest bail. The said discretionary jurisdiction was channelized by various rulings of the Apex Court beginning from Shri Gurbaksh Singh Sibbia's case. Section 438 of Cr.P.C. has now been amended and the Parliament in its wisdom has statutorily regulated the exercise of jurisdiction by the Courts under Section 438 Cr.P.C. Both in Pradeep Sharma and Lavesb's cases, the Hon'ble Supreme Court has stated that an absconding accused will not be entitled to the relief of anticipatory bail and it does not say that he will not be entitled to file an application for anticipatory bail. In other words, apart from the circumstances enumerated under Section 438 Cr.P.C., as amended recently, by the aforesaid judgments of the Hon'ble Supreme Court, an additional check has been added to the power of the High Court, viz., that the relief of anticipatory bail cannot be granted to a proclaimed offender.

16. In the hierarchy of Courts as well under Article 141 of the Constitution of India, this Court is bound by the law laid down by the Apex Court in the aforesaid two cases.

17. In fine, taking into consideration the gravity of the allegations against this petitioner and also the fact that this petitioner has been declared as a Proclaimed Offender, this Court is not inclined to grant anticipatory bail to this petitioner. Hence, the Criminal Original Petition is dismissed.

sd/-
27/02/2015

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TO

1. THE INSPECTOR OF POLICE
SUBRAMANAPURAM POLICE STATION,
SUBRAMANIAPURAM, MADURAI.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

SR : 02.03.2015 : 5P/3C

ORDER
IN
CRL OP(MD) No.2827 of 2015
Date :27/02/2015