



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

Thursday, the Fifth day of March Two Thousand Fifteen
PRESENT

THE HON`BLE MR JUSTICE P.N.PRAKASH
CRL OP(MD) No.3358 of 2015

S.SOBU

... PETITIONER/ACCUSED NO.4

Vs

THE INSPECTOR OF POLICE
SUCHINDRUM POLICE STATION, KANYAKUMARI DISTRICT.
CR.NO.469/2014

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.T.LAJAPATHI ROY Advocate
For Respondent : 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, 302 and 506(ii) IPC in Crime No.469 of 2014 on the file of the respondent police, seeks anticipatory bail.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the State.

3. This is second anticipatory bail petition and the first anticipatory bail petition in Crl.O.P.(MD) No.254 of 2015 was dismissed by this Court on 21.01.2015 by a detailed order. In Paragraph No.4 of the earlier order, this Court has extracted the facts of the case, which is as follows:

"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 defacto complainant. According to the defacto 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 defacto 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 defacto complainant has given contradictory versions and therefore, her complaint is not worthy acceptance."

4. Mr.T.Lajapathi Roy, learned counsel for the petitioner submitted that earlier this Court had dismissed the anticipatory bail petition on the ground that it will not look into Section 161(3) Cr.P.C. statement of the defacto complainant that was produced by the learned counsel for the accused, on the ground that it ought not to have been made available to the accused in the light of a Full Bench judgment of this Court in [https://www.mca.gov.in/Content/Securities Commission v. Rajesh Kumar Sharma and others vs. State of Madras](https://www.mca.gov.in/Content/Securities%20Commission%20v%20Rajesh%20Kumar%20Sharma%20and%20others%20vs.%20State%20of%20Madras) by Inspector of Police, G5 Police Station, Madras, reported in 1988 L.W.(Crl.) 503. Learned counsel for the petitioner submitted that he has now obtained a certified copy of

Section 161(3) Cr.P.C. statement of the defacto complainant and relying upon it, the same arguments were advanced.

5. In the considered opinion of this Court, the situation has not changed in any way, because even a certified copy of such document cannot be furnished by the Magistrate in the light of the aforesaid judgment, following which, a Circular has been issued by the Registrar General of this Court 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) Cr.P.C. and other documents to the accused pending investigation.

6. Learned counsel for the petitioner submitted that now investigation has been completed and the accused will be entitled to such records.

7. However, on instructions from the respondent police, who was present in the Court, learned Government Advocate (Crl.Side) submitted that investigation is still pending and final report has not been filed.

8. Police investigation formerly comes to an end only when a final report under Section 173(2) Cr.P.C. is filed and not otherwise. Even going by the submission made by the learned counsel for the petitioner, it can, at the most, be stated that the defacto complainant is giving contradictory versions and that by itself will not lead to the interference that the petitioner herein is innocent.

9. This Court called for the Case Diary and perused the materials gathered by the respondent police and found that the name of this petitioner surfaces in the confession of the co-accused. This petitioner has been used as a hireling for carrying out the attack against the deceased, who was a Village Panchayat President.

10. It is seen that the defacto complainant has implicated this petitioner even in the complaint and the name of this petitioner figures in the FIR. In her 161(3) Statement, which is now being relied upon by the learned counsel for the petitioner, she has not excluded the name of this petitioner. Though some of the accused were arrested and released on bail, that cannot be a good reason for granting anticipatory bail to this petitioner. Hence, the Criminal Original Petition is dismissed.

sd/-

05/03/2015

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

1. THE INSPECTOR OF POLICE
SUCHINDRUM POLICE STATION, KANYAKUMARI DISTRICT.

2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.T.LAJAPATHI ROY Advocate SR.No. 10966

SR : 09.03.2015 : 2P/4C

ORDER IN

CRL OP(MD) No.3358 of 2015

Date :05/03/2015