



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

Thursday, the Twenty Sixth day of March Two Thousand Fifteen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL OP(MD) No.759 of 2015

1 SETHU
2 AZHAGESAN
3 VALARMATHI
4 PALANIAPPAN
5 POORNAM
6 MANOHARAN
7 DHANAPACKIYAM @ PACKIYAM
8 PALANIAPPAN

... PETITIONERS/ACCUSED NOS.1 TO 8

Vs

STATE REP BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, THIRUPPATHUR,
SIVAGANGAI DISTRICT.
CRIME NO.9/2014

... RESPONDENT/ COMPLAINANT

For Petitioner : M/S.B.JAMEEL ARASU Advocate
For Respondent : M/S.A.P.BALASUBRAMANIAN
Govt. Advocate (Crl. Side)
For Intervenor : M/S.S.KARTHIK, Advocate

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

ORDER : The Court Made the following order :-

Apprehending arrest at the hands of the respondent police in Crime No.9 of 2014, for the offence under Sections 294(b), 494 and 506(ii) IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 2002., the petitioners are now before this Court seeking Anticipatory Bail.

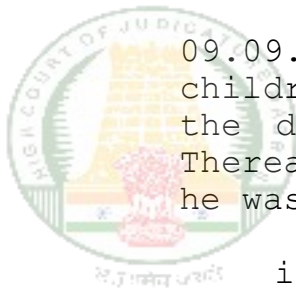
2.On 23.02.2015, this Court passed the following order:

"This Court, by order dated 10.02.2015, passed the following order:-

Heard the learned counsel for the petitioners and the learned Government Advocate (crl. side) appearing for the respondent police.

<https://hcservices.ecourts.gov.in/hcservices/>

1)The case of the prosecution is that the first petitioner got married to the de facto complainant on



09.09.2002 and through the wedlock, they have two children. The first petitioner went to Malasia and asked the de facto complainant to be in her parental house. Thereafter, the first petitioner returned from Malasia and he was not taking care of her.

iii). Mr.B.Jameel Arasu, learned Counsel appearing for the petitioners would submit that there are three proceedings pending viz-a-viz the first petitioner and the de facto complainant viz., H.M.O.P.No.157 of 2010 that has been filed by the first petitioner against the de facto complainant for divorce and the de facto complainant has filed a domestic violence proceedings against the petitioners and also the maintenance proceedings. It is alleged that the first petitioner contracted second marriage with one Pandiselvi and is living with her.

iv) The allegations found in the complaint as against the first petitioner indeed serious in as much as he also contracted second marriage and treated the de facto complainant cruelly and the two children are left to fend for themselves. The de facto complainant is also not having any job.

v) At this juncture, Mr.B.Jameel Arasu, learned Counsel appearing for the petitioners, seeks time for getting instructions from his clients.

3. On 11.02.2015, this Court passed the following Order:-

Today, when the matter was taken up for hearing, Mr.B.Jameel Arasu, learned counsel for the petitioners would submit that the first petitioner is very seriously disputing the paternity of the second child Salamon, who is born on 25.11.2009. In this regard, Mr.B.Jameel Arasu, learned counsel took me through the pleadings in H.M.O.P.No.157 of 2010, that has been filed by the first petitioner before the Sub Court, Pudukottai against the defendant seeking divorce. In the petition in H.M.O.P.No.157 of 2010, the first petitioner has disputed the paternity of the second child Salamon. Mr.B.Jameel Arasu, learned counsel took me through the passport entries of the first petitioner and contended that the first petitioner came to India on 16.06.2007 and left India on 22.07.2007. Thereafter, he came again to India only on 20.07.2009 and stayed in India till 21.10.2009. Whereas Salamon was born on 25.11.2009. Based on this, the learned counsel for the petitioners submitted that the first petitioner had no access with the de-facto complainant and therefore, the Salamon would not have been born to first petitioner.

ii). This Court expressed its opinion that the interim anticipatory bail could be granted to the petitioners, if the first petitioner undertakes to submit himself for DNA test to find out the paternity of Salamon.



4. On 12.02.2015, this Court passed the following order:-
"Today, when the matter came up for hearing, the learned counsel for the petitioners would submit that the first petitioner is ready to undergo DNA examination. Under such circumstances, the first petitioner - Sethu is directed to pay a sum of Rs.25,000/- to the concerned authority viz., Forensic Science Department towards the charges for DNA examination within ten days from the date of receipt of a copy of this order and shall accompany the respondent police for extraction of blood samples. The *de facto* complainant shall take the child viz., Salamon along with respondent police for the purpose of DNA test."

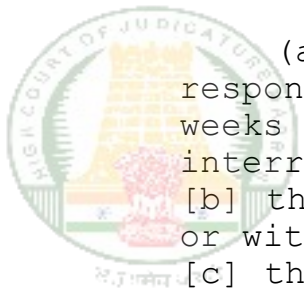
5. Pursuant to the direction issued by this Court, on 12.02.2015, the first petitioner herein - P.Sethu and the *de facto* complainant have filed individual affidavits, stating that they are ready to submit themselves for DNA Test, in order to determine the paternity of the second child - Salamon. In such circumstances, the respondent police is directed to take the first petitioner herein, the *de facto* complainant and the child - Salamon before the Assistant Director of Regional Forensic Science Laboratory, Collectors Office Road, Medical College Campus, Madurai, along with Police Photographer. The petitioner is directed to pay a sum of Rs.7,500/- with the Assistant Director of Regional Forensic Science Laboratory, Madurai, towards fees for DNA Test. The petitioner shall also pay a sum of Rs.500/- towards charges to the Photographer for taking photographs and giving prints.

6. The Officials of the Assistant Director of Regional Forensic Science Laboratory, Madurai, shall draw blood samples from the first petitioner herein, the *de facto* complainant and the child - Salamon for the purpose of DNA Test, give top priority to this case and send a report to this Court, on or before 16.03.2015.

7. Taking into consideration of the over all circumstances, I am inclined to grant Interim Anticipatory Bail to the first petitioner and Anticipatory Bail to the petitioners 2 to 8, but with conditions.

8. Accordingly, interim Anticipatory Bail is granted to the first petitioner for a period of three weeks from today and in the event of arrest, the first petitioner is directed to be released on bail on his executing a bond for Rs.10,000/- (Rupees Ten Thousand Only) without sureties to the satisfaction of the arresting officer.

9. The petitioners 2 to 8 are ordered to be released on bail, in the event of arrest or on their appearance before the learned Judicial Magistrate, Thiruppathur, Sivagangai District, on executing a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that,



(a) The petitioners 2 to 8 shall appear before the respondent police daily at 10.30 a.m. for a period of two weeks and thereafter, as and when required for interrogation.

[b] the petitioners 2 to 8 shall not tamper with evidence or witness either during investigation or trial.

[c] the petitioners 2 to 8 shall not abscond either during investigation or trial.

[d] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 2 to 8 released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

9. The petitioners 2 to 8 shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready failing which, the petition for anticipatory bail stands dismissed"

3. Today i.e. on 26.03.2015, it is submitted that as per the orders of this Court, the respondent police produced the petitioner and the defacto complainant Tamilarasi and her son Salamon before the Experts in the Tamil Nadu Forensic Laboratory for DNA profiling. This Court has received a report dated 19.03.2015 from the Deputy Director of Regional Forensic Science Laboratory, Madurai, who has conducted the DNA profiling of the petitioner, Tamilarasi and her son Salamon. The expert has come to the following conclusion:

'From the DNA typing results of the above samples, it is found that the alleged father Mr.P.Sethu is excluded from the paternity of the male child, Salomon'.

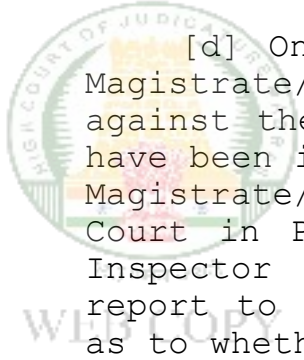
4. In view of the above said conclusion, the assertion of the petitioner that he is not the father of the said child appears to be justified.

5. In the result, anticipatory bail is granted to the first petitioner. Accordingly, the first petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Thiruppathur, Sivagangai District, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

[a] the first petitioner shall report the respondent police as and when required for interrogation.

[b] the first petitioner shall not tamper with evidence or witness either during investigation or trial.

[c] the first petitioner shall not abscond either during investigation or trial.



[d] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]. The Inspector of Police concerned is directed to send a compliance report to the office of the learned Government Advocate (Crl.side) as to whether the petitioner is complying with the order or not.

6. The original report dated 19.03.2015 sent by the Deputy Director, Regional Forensic Science Laborator, Madurai, shall form part of the case records and the parties are permitted to apply for certified copy of the same and obtain the same from this Court. A certified copy of the report has been furnished to the Investigating Officer in the open court for the purpose of their investigation.

sd/-
26/03/2015

/ TRUE COPY /

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

TO

- 1.THE JUDICIAL MAGISTRATE,
THIRUPPATHUR, SIVAGANGAI DISTRICT.
 - 2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, SIVAGANGAI.
 - 3.THE ADDL.PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
 - 4.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, THIRUPPATHUR, SIVAGANGAI DISTRICT.
 - 5.THE DEPUTY DIRECTOR OF REGIONAL FORENSIC SCIENCE LABORATORY,
COLLECTORS OFFICE ROAD, MEDICAL COLLEGE CAMPUS, MADURAI.
 - +1. CC to M/S.S.KARTHIK, Advocate SR.No.14964
 - +ONE CC TO M/S.B.JAMEEL ARASU, Advocate, SR.No.14969
- RL/8C - 30/3/2015

ORDER
IN
CRL OP(MD) No.759 of 2015
Date :26/03/2015