

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.2.2016

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.O.P. No.30438 of 2015

A.Sethuraman

.. Petitioner/A-1

Vs.

State by
rep. By the Dy. Supdt. of Police,
ATC, CB CID,
Chennai 600 008.

.. Respondent

Criminal Original Petition filed under Section 438 of the Code of Criminal Procedure, to enlarge the petitioner on bail, in the event of arrest, pending investigation in Cr.No.1 of 2015 on the file of the respondent police.

For Petitioner : Mr.R.Johnsathyan
for Mr.K.Suthan

For Respondent : Mr.S.Shanmugavelayutham
Public Prosecutor

O R D E R

This petition is for anticipatory bail, in other words, issuance of a direction in the event of his arrest to release him on bail under Section 438 Cr.P.C.

2. Offences alleged are under Sections 323, 330, 355 and 506 (ii) IPC and Sections 10 and 12 of the Protection of Children from Sexual Offences Act read with Section 23 of the Juvenile Justice (Care and Protection of Children) Act.

3. Petitioner is A1 in this case.

4. This is his fourth petition for anticipatory bail.

5. It all started with the missing of a cellphone from a woman. Case of theft has been registered by R1 Mambalam Police in Crime Nos.1895 and 1896 of 2014 under Section 379 IPC. The present case has been registered by CBCID in Crime No.1 of 2015.

6. In connection with the said theft case, certain juveniles, who were alleged to have contravened law (Juvenile in conflict with Law) have been taken to R1 Mambalam Police Station. It has become a hell for them. They were stated to have suffered custodial violence, torture and inhuman treatment. The perpetrators are said to be A1 and A2.

7. A2 obtained regular bail. Now A1 seeks anticipatory bail. He is an Head Constable. He is alleged to have participated

in the inhuman treatment, which included compelling one of the boy to perform foreskin.

8. In several cases, I have repeatedly held that there cannot be any limitation or *res judicata* in filing bail / anticipatory bail petitions, because it is concerned with liberty of the individual (See Article 21, Constitution of India). But in case of subsequent bail / anticipatory bail petitions, the petitioner must satisfy the Court that there are perceptible change of circumstances since the dismissal of his earlier petition. Grant of bail / anticipatory bail or dismissal of it must be based on sound judicial principles. It is intended to have a check on any arbitrary exercise of power of arrest by police.

9. In case of grant of anticipatory bail, the Court has to see the nature of accusation, severity of the offence/s alleged, tendency of the accused to meddle with the work of the investigating agency, his potentiality to indulge in criminal activity,

his past behaviour and his ability to strike terror in the minds of the victims of crime.

10. Now it is well settled that when the Court is satisfied that prosecution needs to subject the accused to custodial interrogation, the Court may deny him advance bail. But at the same time, Court must also keep in its mind the right of the accused. While safeguarding the rights of the accused, the Court must also consider the duty of the State to prosecute the offender, bring him to justice (See ***Sanjay Chandra Vs. CBI [2012 (1) SCC 40]*** also known as 2G Scam Case).

11. The learned counsel for the petitioner would submit that already A2 was nabbed and statement from him and the witnesses were recorded, there is nothing to elicit from A1 and it is a needless exercise to have custodial interrogation and ultimately his liberty is going to be impaired.

12. On the other hand, the learned Public Prosecutor would submit that the nature of accusations are such that A1 does not deserve grant of anticipatory bail. Further, there are materials, which are need to be verified with the petitioner and there are references about A1 in the statement recorded from the victims/boys.

13. The learned Public Prosecutor would also submit that with great difficulty notice under Section 41-A Cr.P.C. also has been served upon A1, but he has not responded to it. He is audacious.

14. I have anxiously considered the rival submissions, perused the averments in the petition for anticipatory bail and in the counter filed by the prosecution and the materials on record.

15. Long ago Rousseau, a French political thinker said "men are born free, but were found chained everywhere". It

expounds the quintessence of human right. The moment a human being is born, he possesses certain basic right not to be harassed, right not to be disturbed, right to enjoy his personal freedom, right to preserve his personal liberty and dignity.

16. Those rights are affirmed in U.N.O's Universal Declaration of Human Rights, 1948. The presence of this Magnacarta of Mankind is very much found in Article 21 of the Constitution of India. These rights have been re-assured in the International Covenants on Civil and Police Rights, 1966.

17. The said right also extends to police investigation. Police has got the power to investigate, but they have no power to ill-treat, torture the suspects. Police has no power to invade into the cherished human rights of people. It would be in violation of the right of the accused under Article 21 of the Constitution of India.

18. Now, in this perspective, if we see the allegations levelled against the petitioner, it is very serious, especially A1 is a man in uniform.

19. The submission of the prosecution is that they are in possession of certain incriminating materials, which they have unearthed in the course of investigation and they need to verify them with the accused, if nothing incriminating against him, he will come out a clean man. But when such a demand is made and the prosecution says that there are incriminating materials, the Court cannot say that there is no need to go for his custodial interrogation. Now the elicitation oriented custodial interrogation as a tool of investigation has been well settled (See Sections 154, 156 and 157 Cr.P.C.).

20. There were many instances of indiscriminate arrests and sending persons to jail and they were kept there endlessly. Even persons involved in petty offences are so jailed. Even if

they get bail, they continue to remain there because of their inability to produce sureties. There was outcry from various quarters to check the police power of arrest envisaged in Section 41 Cr.P.C.

21. In 2010, through an amendment, Section 41-A has been introduced in the New Code of 1973. Under Section 41-A, efforts were taken to preserve liberty of the people, but at the same time the Investigating Agency to go ahead with their work also has been facilitated. For this purpose, the Legislature has prescribed category of offences. In those cases, the police has to issue notice to suspects and interrogate them, the need to arrest them must be recorded in the Case Diary and the arrested person shall be produced before a Magistrate, who is also bound to satisfy himself that the statutory formalities have been complied with by the police.

22. When the accused has no regard for law, he evades, avoids police notices, he has the tendency to flee away from justice, then it will be a case for his arrest. (See ***Arnesh Kumar Vs. State of Bihar [2014 (8) SCC 273]***). I am glad that in this case the accused, who is their brotheren, the police has issued him notice under Section 41-A of Cr.P.C. But he has no regard for Law Enforcing Agency. He has not responded to their notice.

23. In view of the foregoing, I do not find any perceptible change of circumstances since the dismissal of his earlier anticipatory bail petition.

24. Thus, this petition is dismissed.

29.02.2016

Index : Yes
Internet : Yes
mra/vaan

Dr.P.DEVADASS,J.
vaan/mra

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