



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

Wednesday, the Twenty Third day of November Two Thousand Sixteen
PRESENT

The Hon`ble Mr Justice S.VAIDYANATHAN

CRL OP(MD) No.21750 of 2016

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1 SELVARAJ
2 DHANALAKSHMI
3 DINESH KUMAR

... PETITIONERS / ACCUSED NOS.1 TO 3

Vs

THE SUB INSPECTOR OF POLICE,
KATTUPUDUR POLICE STATION,
KATTUPUDUR,
TRICHY DISTRICT.

(CRIME NO.323 OF 2015) ... RESPONDENT / COMPLAINANT

For Petitioner : M/S.T.VADIVELAN Advocate

For Respondent : M/S.S.PRABHA, Govt. Advocate (Crl. Side)

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 for the alleged offences punishable under Sections 294(b), 323, 324 and 506(i) IPC in Crime No.323 of 2015 on the file of the respondent police, the petitioners/A1 to A3 have come forward with this petition, seeking anticipatory bail.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent police.

3. The case of the prosecution is that based on the private complaint lodged by the defacto complainant, alleging that the petitioners scolded the defacto complainant in filthy language, threatened him and his wife with dire consequences and also attacked them, the present FIR has been registered.

4. Learned counsel for the petitioners would submit that the petitioners have been falsely implicated in this case and they had nothing to do with the alleged occurrence.

5. Learned Government Advocate (Crl.Side) submitted that it is a case in counter and the investigation of the case is almost complete.



6. However, it is seen that though the 3rd petitioner herein attained majority now, he is minor at the time of occurrence and therefore, this Court posed a question to the learned counsel for the petitioner as to the maintainability of the present petition against him.

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7. To the above query raised by this Court, learned counsel for the petitioners relied upon a judgment of this Court in the case of Selvapandi vs. Inspector of Police, Amathur Police Station, Virudhunagar District, reported in (2007) 2 MLJ (Cri) 437, wherein it has been held as under:

"10. It is also to be noted that as per the School Transfer Certificate, the petitioner is apparently a juvenile at the time of occurrence. In view of the above said legal position, since the petitioner is entitled to be released on bail in the event of arrest, there will be no difficulty for this Court to issue such a direction by invoking power under Section 438 Cr.P.C.

11. In the result, the juvenile Board concerned is directed to release the petitioner on bail in the event of his arrest in connection with this case as laid down in Section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2000. The juvenile Board shall decide whether such release shall be with or without sureties."

8. I am unable to accept the view taken by the Hon'ble Judge in the above said case in order to give quietus to the issue, because in the said case, the petitioner therein was a juvenile, even when the anticipatory bail petition was filed by him. But, in the case on hand, the petitioner was minor at the time of occurrence and has now attained majority and therefore, this case stands on a different footing. Earlier, I had taken a different view in Crl.O.P.No.22361 of 2015 dated 08.10.2015 and dismissed the anticipatory bail petition filed by the Juvenile therein, by relying upon a judgment of the High Court of Chattisgarh in "Preetam Pathak versus State of Chattisgarh" in M.Cr.C.(A) No.1104 of 2014, wherein it has been held as under:

"7. A close and careful perusal of Section 12 of the Act, 2000 would show that an application for bail of juvenile would be entertainable by the Board only if he is arrested and brought before the Board where he is accused of bailable or nonbailable offences and the condition precedent to the juvenile would be, he is arrested or detained or appears or is brought before a Board, then only his application filed under Section 12 of the Act, 2000 shall be decided by the Board. Apart from Section 12 of the Act, 2000, there is no other provisions in the Act, 2000 like Section 438 of Cr.P.C. giving powers to the Board to grant



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anticipatory bail to the juvenile and thus, power and jurisdiction to grant anticipatory bail has not been conferred to the juvenile Justice Board, and therefore, the provisions contained in Section 438 of Cr.P.C. cannot be exercised by this court or court of session to grant anticipatory bail to the juvenile by virtue of provisions contained in Section 6(2) of the Act, 2000.

"8. The aforesaid question came to be considered before the High Court of Madhya Pradesh in case of Kapil Durgawani v. State of Madhya Pradesh¹, in which, after consideration it has been held that provisions of Section 12 of the Act, 2000 do not provide such power to the Board which is equivalent to Section 438 of Cr.P.C. and the Board has no jurisdiction to entertain application under Section 438 of Cr.P.C. by holding as under:

"Provisions of Section 12 of the Act, 2000, do not provide such powers to the Board which is equivalent to Section 438 of Cr.P.C. The Board has no jurisdiction to entertain application under Section 438 of Cr.P.C."

"9. Again similar proposition has been reiterated by the MP High Court in case of "Sandeep Singh Tomar v. State of M.P."

"10. I am in respectful agreement with the view taken by the High Court of Madhya Pradesh in Kapil Durgawani (Supra) and Sandeep Singh Tomar (Supra), and in the considered opinion of this court juvenile is not entitled to maintain application under Section 438 of Cr.P.C. in absence of specific provisions in the Act, 2000."

9. My brother Judge Justice P.N.Prakash has also taken the similar stand as that of mine in the case of Crl.O.P.(MD) Nos.1785, 1941, 2073, 2047 and 2224 of 2016 dated 16.02.2016 and held as under:

"13. Section 12 of Act 2 of 2016 also has non obstante clause, indicating the legislative intent, that the source of power to grant bail under this Act is independent from that of the Code. Section 5 of Code of Criminal Procedure indubitably protects the procedures laid down in special statutes from the onslaught of the provisions of the Code in the absence of a specific provision to the contrary in the Code. This rests on the principle Generalia Specialibus Non Derogant (special law prevails over general law). The non obstante clause used in Section 1(4) and Section 12 of the Juvenile Justice Act cited supra denudes the power of this Court to issue such



directions under Section 482 Cr.P.C. Section 482 cannot be used to foreclose the power of the Board to conduct a full fledged enquiry under Section 12 of the J.J.Act.

14. Therefore, this Court has no jurisdiction under Section 482 Cr.P.C. to give such directions as prayed for by the petitioners in matters concerning a special statute, namely, the Juvenile Justice Act, and directing the Board to act in breach of law, however, noble it may seem to appear.

In the result, all these petitions stand dismissed and it is left open to the respective Juvenile Justice Boards to decide the cases without in any way being influenced by what is stated above and pass orders in accordance with law."

10. Since there is no clear provision to sort out the issue on hand, this Court is empowered to give interpretation to the statute in the absence of clear stipulation. Therefore, this Court holds that,

i) if a juvenile commits an offence and surrenders before the Juvenile Board before attaining majority, the concerned Juvenile Board can consider the application filed by the Juvenile and release him on bail;

ii) if a juvenile commits an offence and approaches this Court for anticipatory bail after attaining majority, this Court can entertain the anticipatory bail petition and grant appropriate relief;

iii) if a juvenile commits an offence and is taken to custody after attaining majority, then also he can file a bail petition before this Court for his release;

iv) though it is respective High Courts, which could consider the anticipatory bail / bail petitions of a juvenile filed after he becomes major, the Trial proceedings should be conducted only by taking into account the date of incident.

11. Taking note of the above interpretation, this Court is of the view that this petition for anticipatory bail can be considered and entertained by this Court, since the petitioner has attained majority. Therefore, considering the facts and circumstances of the case and also the fact that custodial interrogation of these petitioners, including the minor, who attained majority now, is not necessary at this stage, this Court is inclined to grant anticipatory bail to the petitioners.

12. Accordingly, the petitioners are ordered to be released on bail in the event of their arrest or appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the Judicial Magistrate, Musiri, subject to the following conditions:

(i) each of 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 Magistrate concerned;

(ii) the petitioners 1 & 3 shall report before the respondent police daily at 10.30 a.m. for two weeks and thereafter as and when required and the 2nd petitioner shall report before the respondent police as and when required for interrogation;

(iii) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(iv) the petitioners shall not abscond either during investigation or trial.

(v) on breach of any of the aforesaid conditions, the 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 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].

sd/-

23/11/2016

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Sub-Assistant Registrar (C.S.)

TO

1 THE JUDICIAL MAGISTRATE
MUSIRI.

2 -DO THROUGH-
THE CHIEF JUDICIAL MAGISTRATE, TRICHY.

3 THE SUB INSPECTOR OF POLICE,
KATTUPUDUR POLICE STATION,
KATTUPUDUR,
TRICHY DISTRICT.

4 THE ADDL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.T.VADIVELAN Advocate SR.No.71909

ORDER

IN

CRL OP (MD) No.21750 of 2016

Date :23/11/2016