

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

CrI.O.P.No.21454 of 2016

S.Maria Saranya

.. Petitioner

Vs.

1. M.J.Maria Jareen
2. S.Maria Jayaraj
3. M.J.Sahaya Delvin
4. M.J.Maria Jagan

5. The State rep. by
The Inspector of Police,
W-35, All Women Police Station,
West Tambaram, Chennai.

6. Mr.S.Ambigapathi
Advocate, Enrolment No.1882/1999,
Door No.8, Room No.6, II Floor,
Sunkurama Chetty Street,
Opp. High Court, Chennai-1.

(Sixth respondent impleaded as per
the order dated 28.04.2017 made in
CrI.O.P.No.21454 of 2016)

7. Mr.Mani Vasagam,
Advocate, Enrolment No.2671/2004,
MHAA, High Court, Madras.

8. Mr.B.Aravindan,
Advocate, Enrl.No.970/2011,
No.95, Law Chambers,
High Court, Madras.

(Respondents 7 and 8 impleaded as per
order dated 29.06.2017 made in
CrI.O.P.No.21454 of 2016)

9. Mr.S.Sathish Rajan,
 Advocate,
 No.187, New Additional Law Chambers,
 High Court, Madras. (Enrol.No.632/1989)
 (Respondent No.9, impleaded as per
 order dated 02.08.2017 made in
 CrI.O.P.No.21454 of 2016)

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to cancel the anticipatory bail granted to the respondents 1 to 4 in CrI.O.P.No.10535 of 2016, dated 16.06.2016.

For petitioner : Mr.M.Premkumar

For respondents: Mr.Vijay Narayanan, Advocate General assisted by
 Mr.P.Muthukumar, Govt. Advocate (CrI. Side) for R-5

No appearance for RR-1 to 4

Mr.S.Ambigapathi - R6

No appearance -- RR-7 and 8

Mr.N.Lakshmanan for Mr.S.Sathish Rajan - R9

ORDER

The above CrI.O.P. was disposed of on 06.11.2017. Today (21.11.2017), it is listed under the caption "for clarification" at the instance of the Madras Bar Association.

2. The Madras Bar Association represented on 20.11.2017 that paragraphs 22 and 23 of the said order dated 06.11.2017 may be recalled, or in the

alternative, to make it as a suggestion for amendment of the Appellate Side Rules of this Court and there need not be any direction that the directions made in paragraphs 22 shall take effect from 02.01.2018. When the matter is taken up for hearing today, no one represented before this Court. However, on behalf of the Bar, Mr.B.Vijay, learned counsel, who was waiting for another case to be heard by this Court, stated that a Division Bench of this Court in Crl.A.No.198 of 2017, by judgment (unreported) dated 12.04.2017, has already in a different case, considered the Clauses (i), (ii) and (iii) of the said paragraph 22 of the said order dated 06.11.2017 and the Division Bench in the said case, observed that the bail and anticipatory bail petitions shall be in the form of a petition. The said learned counsel also drew the attention of this Court to paragraphs 20 to 29 of the said judgment of the Division Bench, which are extracted hereunder:

"20. During the hearing of the appeal, The learned Additional Public Prosecutor appearing for the State however brought to our notice an order passed by a learned Single Judge of this Court in Contempt Petition No.1368 of 2016 dated 26.10.2016 wherein, the learned Single Judge has issued a direction to the Registry in the following terms:-

"8.This court makes it very clear that henceforth, anticipatory bail application should be in the form of an affidavit/petition duly signed by the petitioner/petitioners concerned in all pages. If the anticipatory bail application is filed in petition format, the Advocate on record should sign in all the pages of the petition and if the anticipatory bail petition is filed in the affidavit format, the person who is attesting the affidavit shall sign in all the pages. In either case, the name of the Advocate/Attesting Person should be written in capital letters, mentioning his place of qualification, Enrollment Number and Cell Phone

Number".

Referring to the same, the learned Additional Public Prosecutor appearing for the State submitted that in respect of the petitions filed under Section 389 Cr.P.C., also a Form could be prescribed and it may be examined as to Whether an affidavit should also be filed in support of the petition as it is done in Civil Miscellaneous Petitions.

21. The learned counsel for the appellant submitted that along with this Criminal Appeal, the petitioner has filed a Miscellaneous Petition seeking suspension of sentence. The learned counsel for the appellant submitted that there is no "Form" prescribed for such a petition, either in the Code of Criminal Procedure or, in the Criminal Rules of Practice. He further submitted that an affidavit need be filed along with the same.

22. Mr.V.Gopinath, learned Senior Counsel assisted the Court as Amicus Curiae. He would submit that the Criminal Procedure Code prescribes no Form for these matters though, the Criminal Procedure Code prescribes Form for seeking other purposes such as, memorandum of appeal, petition seeking transfer of case, etc.

23. We have considered the above submissions.

24. Plainly speaking, neither in the Criminal Procedure Code nor in the Criminal Rules of Practice, there is any Form prescribed for a petition seeking bail, anticipatory bail or bail by suspending the sentence pending a Criminal Appeal.

25. As rightly pointed out by the learned Senior Counsel, under Section 382 Cr.P.C., the Criminal Procedure Code has prescribed that every appeal shall be made in the Form of petition in writing. Even Section 382 Cr.P.C., does not prescribe that such petition should be accompanied by any affidavit. If we look into Section 407(3) Cr.P.C., every petition seeking transfer, in a criminal case from one Court to another Court shall except when the applicant is the Advocate General of the State, be supported by an affidavit or affirmation.

26. Had it been the intention of the legislature that a petition filed seeking anticipatory bail under Section 438 Cr.P.C., should be accompanied by an affidavit, as it has been prescribed under Section 407 Cr.P.C, the Code of Criminal Procedure would have prescribed for filing an affidavit in support of the petition seeking anticipatory bail. The very fact that no such prescription is found in Section 438 Cr.P.C., would go to show that it is the intention of the legislature that it is suffice if mere petition is filed seeking

anticipatory bail and there is no need to file any affidavit. Similarly, no affidavit need be filed in support of a petition seeking suspension of sentence pending criminal appeal or a petition seeking bail.

27. Apart from that, under Article 227 of the Constitution of India, the High Court has got power of superintendence over all Courts and in exercise of the said power, the High Court is empowered to make and issue general Rules and prescribe forms for regulating the practice and proceedings of such Courts. Thus, prescribing form for anticipatory bail or for any other purpose and regarding the practice and proceedings of such Courts by issuing rules falls within the administrative domain of the High Court under Article 227 of the Constitution of India. Similarly, under Section 483 Cr.P.C., the High court exercises similar power to prescribe the form or to issue any Rule on the administrative side. It is in exercise of the power conferred under these two provisions, the Criminal Rules of Practice and Circular orders have been issued by the High Court. If at all, any such Form is to be prescribed and Rule should be made, to the effect that a petition seeking anticipatory bail or bail or suspension of sentence, is to be supported by an affidavit of the party concerned, the High Court would have made such rule and prescribed the Form for the same in the Rules of Practice. The very fact that the High Court has not done so, would go to show that it is not necessary that the party seeking anticipatory bail or bail or suspension of sentence needs to file any affidavit in support of the petition nor to file the petition in a particular Form.

28. The term "High Court" as employed in Article 227 of the Constitution of India and Section 483 Cr.P.C., would denote the entire body of the Judges of the High Court. In other words, it is for the House of all the Judges of the High Court to take a decision whether a Rule should be made to the effect that an affidavit should be filed in support of the petition filed seeking anticipatory bail, bail or suspension of sentence.

29. On the judicial side, in our considered view, with great respect, we wish to state that such Rule or Prescription of a Form cannot be made. In such view of the matter, we are constrained to overrule the direction issued by the learned Single Judge in paragraph No.8 in Contempt Petition No.1368 of 2016 dated 26.10.2016."

3. After Court hours, when I was about to rise from Dais, Mr.G.Mohanakrishnan, learned counsel, who is the President of the Madras High Court Advocates' Association (MHAA), appeared before this Court and requested for modification of the said order dated 06.11.2017 passed by this Court in this CrI.O.P. This Court informed Mr.G.Mohanakrishnan, learned counsel that when the aforesaid matter was pending, on one occasion, he was also heard and this Court informed him that this Court was going to suggest for affixing of photographs of the Advocates in the Vakalat. This Court even asked him the suggestions on behalf of the Bar, but he has not given any suggestions. But when the directions are given in the said order dated 06.11.2017, now, under the guise of saving the genuine Advocates, protecting the fraudulent Advocates, can't be accepted. If anyone is aggrieved by the order of this Court, dated 06.11.2017 passed in this CrI.O.P., the only remedy is to approach the Apex Court, as Section 362 Cr.P.C. is a bar for this Court to entertain any application either to review or recall the said order dated 06.11.2017. Admittedly, no petition is filed to review or recall the said order dated 06.11.2017. Even if it is filed, such a review petition is not maintainable, in view of the said bar under Section 362 Cr.P.C., which reads as follows:

"Section 362 Cr.P.C : Court not to alter judgment: Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

4. That apart, in order to protect the genuine Advocates and to espouse the cause of the genuine Advocates, the Bar Council of Tamil Nadu and Pondicherry should be assisted by various Bar Associations in matters relating to legal procedures. The contention of Mr.G.Mohanakrishnan, learned counsel representing as President of the Madras High Court Advocates' Association, that there should be amendment in the Rules framed under the Advocates Act, and until such time, no photograph need be suggested to affix, cannot be accepted.

5. It is true that the Division Bench of this Court in the said judgment dated 12.04.2017 in Criminal Appeal, has dealt with the issue regarding the attesting of the affidavit by the petitioner himself in the bail and anticipatory bail petitions, etc., on similar lines to the one passed by this Court in this Crl.O.P. on 06.11.2017, and on an earlier occasion, this Court dealt with the matter and I have made observations in Contempt Petition No.1368 of 2016, by order dated 26.10.2016 similar to the one made in paragraphs 22 (i) to (iii) in the order dated 06.11.2017 passed in this Crl.O.P. The affixing of photos in the Vakalat/Memo of appearance has not been dealt with in the earlier order passed in Cont.P.No.1368 of 2016, dated 26.10.2016.

6. Entire reading of the above extracted paragraphs of the judgment of the Division Bench of this Court makes it clear that the observations of this Court made in the said Contempt Petition, have been over-ruled by the Division Bench in the said Criminal Appeal, but had this been brought to the attention of this

Court while disposing of this CrI.O.P., this Court would not have incorporated the directions in paragraph 22 (i), (ii) and (iii) in this CrI.O.P. In any event, asking the Advocates to affix photographs in the Vakalat and in the Memorandum of Appearance, more particularly, in the light of the directions issued in the order of this Court, dated 06.11.2017 in this CrI.O.P., cannot be recalled, in view of the bar imposed under Section 362 Cr.P.C. As stated supra, if any one is aggrieved by the said order of this Court, dated 06.11.2017 passed in this CrI.O.P., it is open for them to approach the Supreme Court.

7. All Courts including this Court and the Supreme Court, are interested in the welfare of genuine Advocates. If the Bar is going to stand on technicalities and protect the fraudulent Advocates, this Court cannot be a party to it, more particularly with regard to the fate of the litigants. Moreover, this Court is more concerned about the moral values in the Advocate profession, than the legality of any issue, particularly, in the context of the fraud played by the fraudulent Advocates. It is to be remembered that law profession is already under severe criticism and due to the illegal activities of lawyers in this State, the reputation of lawyers is getting diminished among the public. In olden days, respect extended to the lawyers is inexplicable and that they were given utmost importance/respect in the society. Even many of the leaders of our nation, like Mahatma Gandhi, Jawaharlal Nehru and Dr.B.R.Ambedkar are lawyers, who sacrificed their lives for the noble cause of justice, apart from fighting for

freedom and several unknown lawyers had also lost their lives in the freedom struggle. Law profession is a service oriented profession, which lost its charm in the past decades due to enrolment of some black sheep in it. Some lawyers accumulate wealth through notoriety, corruption, deception, protection of despicable clients and protecting thieving clients, which made Adolf Hitler to utter that "I shall not rest until every German sees that it is a shameful thing to be a lawyer." If a Doctor commits mistake, his patient will go 6 feet beneath the Earth, whereas if an Advocate commits mistake, his client will go 6 feet above the Earth (death sentence by hanging). I think it appropriate to extract only one passage from the judgment of the Constitution Bench of the Supreme Court in the celebrated case in Bar Council of Maharashtra vs. M.V.Dabholkar etc., reported in 1975 (2) SCC 702, which reads as follows:

"52. The Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bold contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumptions: (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself not more formally, by the profession as a whole."

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8. This Court wants to part with this order by quoting an incident that took place in the Madurai Bench of this Court in respect of withdrawal of W.P.(MD).No.17232 of 2014, and for withdrawal of the said Writ Petition, some

other counsel other than the one on record for the petitioner therein, submitted a letter before the Registry for withdrawal, but it appears that actually, the counsel on record for the petitioner therein did not submit the so-called letter before the Registry for withdrawal. The said order passed in W.P.(MD).No.17232 of 2014, dated 31.07.2015, reads as follows:

"This Writ Petition is listed today under the caption "For Withdrawal" based on the letter dated 27.07.2015, purported to be given by Mr.R.Meenakshisundaram, learned counsel for the petitioner. When this matter was called, none appeared on behalf of the petitioner and therefore, the case was passed over for the counsel on record to make an endorsement.

2. In the afternoon, the 2nd counsel by name Mr.M.Suresh, who has signed the vakalath along with Mr.R.Meenakshisundaram, appeared before this Court and submitted that his office is having separate letter head and that this letter has not been signed by Mr.R.Meenakshisundaram at all. Apart from the above, Mr.M.Suresh further submitted that he has also cross-checked with Mr.R.Meenakshisundaram as to the genuineness of the signature.

3. It is a sorry state of affair that such a fraudulent letter has been presented before this Court, as if the same has been given by Mr.R.Meenakshisundaram and therefore, the veracity of the same has to be verified.

4. Therefore, Registry is directed to place this matter before My Lord the Hon'ble Chief Justice to get appropriate orders to proceed with this issue. Registry is further directed to instruct all the Posting Sections that whenever such a letter of withdrawal is circulated, it should contain the cause title, signature of the counsel on record and the party's signature and the party's signature should be attested by a Notary Public with his Roll Number. Though the said exercise appears to be cumbersome, in order to avoid deceitfulness being played in the name of the party concerned or the counsel on record, such a strict measure is inevitable one.

5. While receiving the letter of withdrawal, Registry should inform the concerned person/counsel from whom such a letter is received that apart from forwarding the letter to the Registry, unless and until he/she makes an endorsement in the Court bundle before the Open Court, the case will not be allowed to be

withdrawn."

9. The Bar has made a mention only to please the Bar members. Certainly, the genuine legal practitioners will not object to the directions/suggestions made by this Court in the said paragraphs 22 (barring paragraph 22(i) to (iii)) and 23 of the said order dated 06.11.2017, as they were expecting someone to bell the cat. If regular practitioners are going to object to the procedures now directed/suggested, there will be a time when the respondent(s)/defendant(s) in any of the litigation, will one day withdraw the case of the petitioner and no one much less the Judges will be able to verify about the genuineness of the lawyers, thereby putting the petitioner/appellant/plaintiff in peril. Unless the photographs are affixed on the Vakalat/Memorandum of Appearance, it will be very difficult to ascertain the genuineness of the Advocate. The days are not far off to link Aadhar details to verify the genuineness of the Advocates.

10. In view of the foregoing discussion, no clarification is required in the order of this Court dated 06.11.2017 passed in this Crl.O.P. In view of the bar imposed under Section 362 Cr.P.C., no review/recall/amendment/clarification petition is maintainable. It is open for the aggrieved person to approach the Supreme Court by challenging the said order dated 06.11.2017 passed in this Crl.O.P. together with this order rejecting the request of the Bar to recall/modify

the order dated 06.11.2017 passed in this CrI.O.P. If the suggestions/directions are not going to be adhered to, even the God can't save this profession and this institution.

21.11.2017

Index: Yes

Internet: Yes

Speaking order

CS

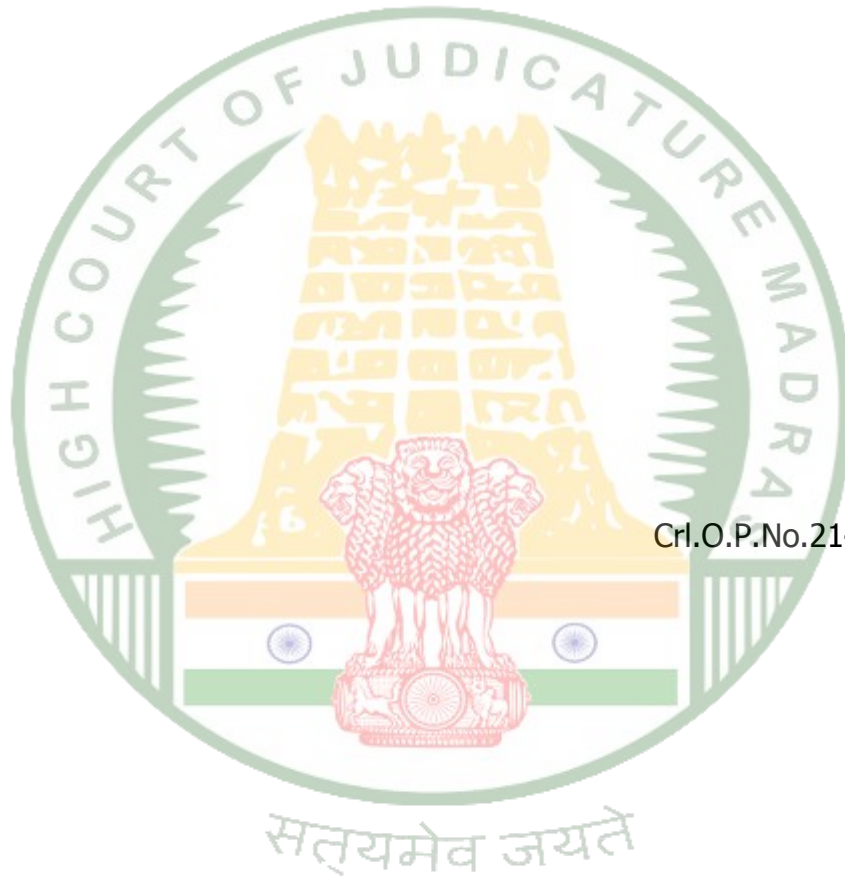
To

1. The Inspector of Police,
W-35, All Women Police Station,
West Tambaram, Chennai.
2. The Public Prosecutor, High Court, Madras.
3. The Advocate General, High Court, Madras.

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S.VAIDYANATHAN, J

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CrI.O.P.No.21454 of 2016

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