



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

Tuesday, the First day of August Two Thousand Seventeen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CRL MP (MD) No.3752 of 2017

IN

CRL OP (MD) No.9340 of 2016

JACQULIN ANGEL,

... PETITIONER/DEFACTO COMPLAINANT

Vs

1 STATE THROUGH

THE SUB INSPECTOR OF POLICE,

SOUTH THAMARAikulam PS, KANNIYAKUMARI.

CRIME NO.37 OF 2016.

...RESPONDENT/RESPONDENT/COMPLAINANT

2 CHARLIN,

... RESPONDENT/PETITIONER/1st ACCUSED

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Cancel the Anticipatory Bail granted in Crl.O.P.(MD)No.9340 of 2016 dated 15.06.2016.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.NIRANJAN.S.KUMAR, Advocate for the petitioner and of Mr.A.Ramar, Additional Public Prosecutor for R1 and M/s.M.Mariavinola, Advocate for R2, the court made the following order:-

This Criminal Original Petition has been filed under Section 439(2) of the Criminal Procedure Code to cancel the anticipatory bail granted in Crl.O.P.(MD).No.9340 of 2017 dated 15.06.2016.

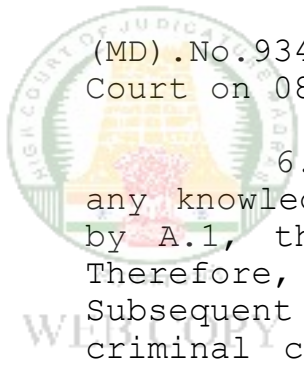
2. The petitioner would aver among other things that the first respondent police registered a case in Crime No.37 of 2016 against two accused persons under Sections 294(b) and 307 I.P.C. It is the case of the petitioner/defacto complainant that she is living along with her mother and her elder sister, namely, Christy Punitha. The petitioner's father left the home and deserted the entire family. The petitioner's mother was working as a Staff Nurse in the Primary Health Centre, Kanyakumari District. The petitioner's elder sister is residing apart from the family and working as office staff/assistant in the accused No.2, namely, Augustin's Real Estate Office in Tirunelveli. The said Augustin/A2, during her employment was exploiting the precarious position of Christy Punitha and started harassing her by giving sexual signs and insisting her to become an illegitimate wife. Because of the pathetic condition and the necessity of salary, the petitioner's sister tolerated each and every activity of A.2/Augustin.



3. The petitioner further submits that at one point of time the harassment became intolerable and hence, the petitioner's sister Christy Punitha resigned her job from Augustin's Office/A.2. Subsequently, A.2 continuously started making phone calls at late hours and induced the petitioner's sister to reconsider of becoming the illegitimate wife. Therefore, the petitioner's sister changed her phone number. Subsequently, A.2/Augustin opened a Facebook account in the name of the petitioner's sister and posted picture of her in the profile picture and portrayed her as a prostitute. The friends of the petitioner's sister after glancing the Facebook page, intimated the petitioner and her sister about the fake new account created by the accused. Immediately, a complaint was lodged by the petitioner/defacto complainant before the respondent police. However, till date, no effective action has been taken by the respondent police against the accused.

4. The petitioner further submits that after the knowledge of the complaint, the second respondent herein/A.1, on 29.01.2016, at about 8 p.m., came to the house of the petitioner along with a knife and threatened that the petitioner's mother that she should give consent for her daughter to become illegitimate wife for A.2. Immediately, when the petitioner's mother refused, the second respondent/A.1 expressed that she should not live further and he immediately took the knife and attacked at the forehead of the mother of the petitioner and near the right side of her ear and on other parts. The petitioner's mother started bleeding terribly. A complaint was lodged by the petitioner/defacto complainant before the respondent police and a case was registered in Crime No.37 of 2016 for the offences made under Sections 294(b) and 307 I.P.C. on 30.01.2016.

5. While so, the first accused, namely, Charlin (A.1) who is the driver of A.2 filed an anticipatory bail vide CrI.M.P.No.502 of 2016 before the learned Sessions Judge, Kanyakumari Division at Nagercoil and the same was dismissed on 15.02.2016. Apart from that, the said Charlin-A1 filed another CrI.M.P.No.742 of 2016 before the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari Division, Nagercoil, which was also dismissed by the lower Court by a detailed order considering the serious nature of the injuries sustained by the petitioner's mother. Subsequently, the first accused has filed CrI.O.P.(MD).No.4897 of 2016 on 17.03.2016 before this Court. While so, the the petitioner/ defacto complainant filed an intervening petition vide M.P.(md).No.2475 of 2016 in CrI.O.P.(MD).No.4897 of 2016 and considering the nature of the injuries and the seriousness of the case, anticipatory bail filed by the first accused was dismissed by this Court on 21.03.2016. Again, the first accused filed CrI.O.P.(MD).No.9340 of 2016 and this Court has granted anticipatory bail to him on 15.06.2016. However, since he did not surrender, he came forward with an application for extension of time vide CrI.M.P.(MD).No.5589 of 2016 in CrI.O.P.(MD).No.9340 of 2016 and the said petition was allowed by this Court vide its order dated 13.07.2016. Thereafter, the said accused-A.1 filed CrI.M.P.(MD).No.6567 of 2016 in CrI.O.P.



(MD).No.9340 of 2016 for relaxation, which was also ordered by this Court on 08.08.2016.

6. As the petitioner/ defacto complainant did not have any knowledge about the second anticipatory bail application filed by A.1, the petitioner could not intervene to contest the case. Therefore, this Court granted anticipatory bail on 15.06.2016. Subsequent to the grant of anticipatory bail, suppressing the criminal case pending on the file of the respondent police, A.1 Charlin has obtained passport. Despite all these things, the petitioner submits that till date A.2 has not obtained any anticipatory bail and the respondent police have also not taken any steps to secure him.

7. The petitioner submits that subsequent to the grant of anticipatory bail to the first accused, on 17.03.2017, when the petitioner's sister and the petitioner were travelling in a two wheeler near swami thoppu railway gate, A.1 with one another unknown person at the instigation of A.2, using abusive languages, attempted to hurt the petitioner and her sister. They also threatened to withdraw the earlier case in Crime No.37 of 2016 filed on the file of the respondent Police.

8. The petitioner further submits that in this connection, a complaint was lodged by the petitioner's sister, namely, the said Christy Punitha for the occurrence happened on 17.03.2017. The respondent police after investigation has registered a case in Crime No.66 of 2017 for the offences punishable under Sections 294(b), 506 (ii) of IPC and Section 66(E) and 67(A) of the Information Technology Act, 2000. Both the accused are still absconding.

9. The petitioner further submits that on the strength of the anticipatory bail granted by this Court in CrI.OP(MD).No.9340 of 2016, the accused are indulging in mischievous activities and are also causing threat to the petitioner and her mother and her sister to withdraw the criminal case in Crime No.37 of 2016. The second respondent/A.1 herein is also tampering with the witness and making extraneous efforts to threaten the petitioner and her sister and her mother to withdraw the case.

10. Learned counsel for the petitioner submits that in the case on hand, even after granting bail to the accused, he did not choose to mend in his activities and therefore, the attitude of the accused has to be taken note of by this Court. The helpless women has been put to mental torture and untold sufferings created by the accused by posting the profile of the sister of the petitioner is highly condemnable and challenge to a modesty of a decent woman living in this peaceful Society. Hence, he prayed for appropriate orders.

11. The learned Additional Public Prosecutor would submit that the investigation is pending.

12. Learned counsel appearing for the second respondent denied the averments made by the petitioner herein.



13. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor (Crl. Side) for the respondent/State and perused the materials available on record.

14. Before starting the judgement, it is apt to mention the most celebrated judgment made in **Bhadresh Bipinbhai Sheth Vs. State of Gujarat and others, Crl.Appeal Nos.1134-1135 of 2015, dated 01.09.2015**, wherein, the relevant portion indicated by the Apex Court is usefully extracted below:-

"19.Before we proceed further, we would like to discuss the law relating to grant of anticipatory bail as has been developed through judicial interpretative process. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case of **Gurbaksh Singh Sibbia and Others v. State of Punjab**. The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in **Section 438** of the Code is conceptualised under **Article 21** of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of **Section 438** of the Code in light of **Article 21** of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under **Section 438** is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by **Section 46** of the Code. The essence of this provision is brought out in the following manner:

"26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of **Section 438**, especially when no such restrictions have been imposed by the legislature in the terms of that section. **Section 438** is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in **Section 438** can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in **Section 438** must be saved, not jettisoned. No doubt can linger after the decision in **Maneka Gandhi v. Union of India**, (1978) 1 SCC 248, that in order to meet the



challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."

20. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not



being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State v. Captain Jagjit Singh, AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

21. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in Section 438(1) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a "special case". The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

22. Another case to which we would like to refer is the judgment of a Division Bench of this Court in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Others [2]. This case lays down an exhaustive commentary of Section 438 of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

"1. Leave granted. This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely,

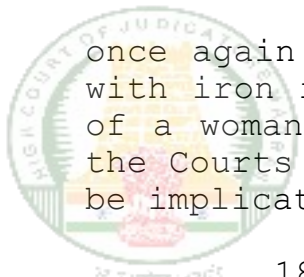


sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty." The principles which can be culled out, for the purposes of the instant case, can be stated as under:

15. To sum up, the principles which can be culled out in the present case has to be thoroughly examined from the date of complaint till the date in which the second complaint was registered by the respondent police and the proceedings were pending before this Court against the accused. Interestingly, the second accused has not filed an anticipatory bail till date and the police has also not arrested him. As far as the first accused is concerned, who is the driver cum friend of the A.1, brutally attacked the mother of the petitioner in which she suffered severe injuries and though the petitioner/ defacto complainant had given a complaint earlier, only after the petitioner's mother suffered severe injuries, a case was registered in Crime No.66 of 2017 and the Courts below as well as this Hon'ble Court considering the serious nature of the case did not grant anticipatory bail and due to the lethargic attitude of the respondent police by which they did not take any step to arrest the accused, another learned Judge of this Court had granted anticipatory bail to the accused with certain conditions.

16. In the case on hand, the accused attacked the defacto complainant and her sister at the instigation of A.2 and threatened to withdraw the earlier complainant given by her, which was registered in Crime No.37 of 2016 and therefore, the present incident which culminated to register a case in Crime No.66 of 2017. This is where the Courts held that while exercising judicial power inevitably it has to take care of the evil consequences which are likely to flow out of its intemperate use. It is the duty of the Court to shield the Society at the time of granting bail to the accused. This Court has very meticulously gone through the facts of the case and also gone through the entire proceedings and the subsequent events which had taken place in this case.

17. It is well settled legal position as per Section 439 (2) of the Criminal Procedure Code that the Court which can grant anticipatory bail can also cancel the bail granted to the accused either at the instance of the accused or at the instance of the Public Prosecutor or at the instance of the defacto complainant on finding new material at any point of time. Here is the case where three deserted women who are living separately has been humiliated and subjected to cruelty by the accused and even dealing with the anticipatory bail filed by the second accused, the Courts had initially refused to grant bail. Subsequently, since the petitioner's mother was discharged from the hospital, bail was granted to the accused. Contrary to that, the second accused has



once again attempted to hurt the defacto complainant and her sister with iron rod and had used abusive languages and damaged reputation of a woman by posting her profile in the Facebook. This is where the Courts should be conscious to avoid evil consequences which will be implicated on the Society while granting bail to the accused.

18. Therefore, in the facts and circumstances of the case and foregoing the reasons stated above, this Court is inclined to cancel the anticipatory bail granted to the accused in CrI.O.P.(MD). No.9340 of 2016 dated 15.06.2016. Consequently, this CrI.(MP).(MD) No.3752 of 2017 is allowed. This Court hopes and trust that atleast the respondent police will take their earnest steps to secure the accused/second respondent to bring into book and do justice to the poor deserted women.

sd/-
01/08/2017

/ TRUE COPY /

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

TO

- 1 THE JUDICIAL MAGISTRATE, NAGERCOIL
- 2 -DO-THRO THE CHIEF JUDICIAL MAGISTRATE,
NAGERCOIL AT KANYAKUMARI
- 3 THE SUB INSPECTOR OF POLICE,
SOUTH THAMARAIKULAM PS, KANNIYAKUMARI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1. C.C. to M/S.M.MARIA VINOLA Advocate SR.No.27825

ORDER
IN
CRL MP(MD) No.3752 of 2017
IN
CRL OP(MD) No.9340 of 2016
Date :01/08/2017

SM:PM-PN:SAR 2:4.8.2017:8P/6C