



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

Tuesday, the Twelfth day of September Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL OP(MD) No.11428 of 2017

SHENBAGAMOORTHY

... PETITIONER / ACCUSED NO.1

Vs

1 THE STATE REP.BY,

THE INSPECTOR OF POLICE,

ALAGAPPAPURAM POLICE STATION, SIVAGANGAI DISTRICT.

CRIME NO.48 OF 2017.

... RESPONDENT/COMPLAINANT

2 THENMOZHI

... RESPONDENT / DEFACTO COMPLAINANT

For Petitioner : M/S.G.THIRUVARUTSELVAN Advocate

For Respondent : MR.A.RAMAR Additional Public Prosecutor

For Intervener : MR.A.KANNAN Advocate

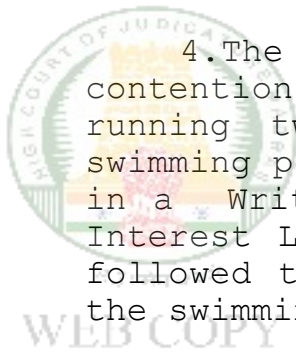
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner / A1, who was arrested on 04.07.2017 for the offences punishable under Section 304 of IPC in Crime No.48 of 2017 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that petitioner is owner of a swimming pool situated at Pon Nagar, Karaikudi without prescribed rules for maintaining the same. On the date of occurrence, when the son of the de facto complainant was drowning in the said swimming pool, no one come to rescue his son and thereafter, his son was taken to hospital and there it was reported that he already died.

3.The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that the swimming pool is properly maintained by him and that was periodically inspected by the officials and he has also received no objection certificate from the officers concerned and there is no negligence on the part of the petitioner. It is further stated that the occurrence took place in the swimming pool and at that time lot of public including de facto complainant's relative were also accompanying with the victim, but, no one came forward to rescue the child and it will create highly a doubtful in the complaint.



4.The learned counsel for the intervenor also reiterated the contention of the respondent Police herein that the petitioner was running two unauthorized swimming pool in Karaikudi and those swimming pools were closed in view of the order passed by this Court in a Writ Petition, which was filed by one Elamaran under Public Interest Litigation. He further submitted that petitioner has not followed the prescribed rules mentioned in the Act for maintaining the swimming pool.

5.The learned Additional Public Prosecutor would submit on instructions that totally there are 4 accused in this case and at the first instance, FIR was registered against 2 named accused and 2 unnamed accused and the petitioner herein is arrayed as A1. He further submitted that earlier bail petition moved on behalf of this petitioner in CrI.O.P(MD)No.9134 of 2017 was dismissed by this Court on 26.07.2017 and the second bail petition in CrI.O.P.(MD)No.10814 of 2017 was dismissed as withdrawn by the petitioner herein on 23.08.2017. He also submitted that the petitioner is not having any similar type of previous case and he was arrested and remanded to judicial custody on 04.07.2017 and the investigation is still pending.

6.Considering the facts and circumstances of the case and considering the period of incarceration of petitioner in prison from 04.07.2017 and the petitioner is not having any similar type of previous case, this Court is inclined to grant bail to the petitioner. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions:

(i)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 learned Judicial Magistrate, Karaikudi;

(ii)the petitioner is directed to appear before the respondent police daily at 10.30 a.m. until further orders;

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

(iv) the petitioner 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].

7.Accordingly, the intervening petition is closed.

sd/-

12/09/2017

/ TRUE COPY /



TO

1 THE JUDICIAL MAGISTRATE,
KARAIKUDI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT.

3 OFFICER IN CHARGE,
SUB JAIL, PUDUKOTTAI.

4 THE INSPECTOR OF POLICE,
ALAGAPPAPURAM POLICE STATION,
SIVAGANGAI DISTRICT.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.S.M.SANJAY Advocate SR.No.30520

ORDER

IN

CRL OP(MD) No.11428 of 2017

Date :12/09/2017

MKV-PM-PN-SAR 2/12.09.2017/3P-7C