



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

Monday, the Twenty Fourth day of April Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice S.VAIDYANATHAN

CRL OP(MD) No.3183 of 2017

T.MICHAEL STANIS PRABHU

... PETITIONER / ACCUSED No.1

Vs

STATE THROUGH THE INSPECTOR OF POLICE
TUTICORIN SOUTH POLICE STATION,
TUTICORIN DISTRICT
CRIME NO.1193 OF 2016

... RESPONDENT / COMPLAINANT

L.RAGU RAMAN

... PETITIONER/VICTIM

For Petitioner : Mr.R.GANDHI, Senior Counsel for
Mr.G.BALAJI Advocate in CRL OP(MD)No.3183

For Intervenor : Mr.L.SHAJI CHELLAN, Advocate

For Respondent : Mr.R.RAJARATHIAM, PUBLIC PROSECUTOR

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who is arrayed as A-1 in Crime No.1193 of 2016 on the file of the respondent police, apprehending arrest at the hands of the respondent police for the alleged offences punishable under Sections 147, 148, 294(b), 323, 307 and 506(ii) of I.P.C., has come up with this Petition seeking anticipatory bail for the second time.

2. The case of the prosecution is that the petitioner along with the other accused is alleged to have assaulted one Mr.Raguraman, Advocate, outside Tuticorin District Court Campus, with deadly weapons, due to which, the intestine of the victim was protruding.

3. This Court, by an order dated 10.11.2016 dismissed the earlier Anticipatory Bail Petition filed by the petitioner in Crl.O.P.(MD) No.20608 of 2016. Admittedly, the petitioner and the injured victim are Advocates. Before going into the various aspects of the subsequent change of circumstances said to have taken place after the dismissal of the earlier Anticipatory Bail Petition, this Court would like to reiterate the observation made in paragraph 9 of the order dated 10.11.2016, as under:



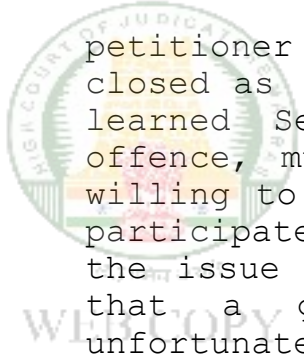
"9. In olden days, respect extended to lawyers were inexplicable and that they were given utmost importance in the society. Even many of the leaders of our nation, like Mahatma Gandhi, Jawaharlal Nehru and Dr.B.R.Ambedkar are lawyers, who sacrificed their lives for the noble cause of justice besides 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 decade due to enrollment 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 six feet beneath the earth; whereas, if an Advocate commits mistake, his client will go six feet above the earth (death sentence by hanging). I think it is appropriate to extract only one passage from the judgment of the Constitution Bench in the celebrated case in Bar Council of Maharashtra vs. M.G.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." "

4. While dismissing the earlier Anticipatory Bail petition, this Court had directed the respondent police to act in accordance with law and further instructed the Police Officer concerned to file a charge sheet in this case, expeditiously.

5. Heard Mr.R.Gandhi, learned Senior Counsel appearing for the petitioner, Mr.R.Rajarathinam, learned Public Prosecutor appearing for the State and Mr.L.Shaji Chellan, learned counsel for the Intervenor.

6. Learned Senior Counsel appearing for the petitioner/accused submitted that the petitioner is a Bar Council member and he is also the President of Tuticorin Bar Association and that he has been falsely implicated in several cases. He further added that the



petitioner has been acquitted in many cases and some cases were closed as 'mistake of fact' and 'action dropped'. According to the learned Senior Counsel, the petitioner has not committed any offence, muchless the offence alleged against him and that he is willing to abide by any conditions to be imposed by this Court and participate in the trial without seeking any adjournment, to bring the issue to a logical conclusion. It is his further submission that a group of persons have attacked the victim, but, unfortunately, the petitioner is roped in and that some of them have been granted anticipatory bail, while some of them have been released on bail. He also added that unnecessarily, the petitioner and his family members have been harassed.

7. In support of his case, learned Senior Counsel for the petitioner has relied on the following :

(i) a decision of the Apex Court in the case of **M.C.Abraham and another vs. State of Maharashtra and others, (2003) 2 SCC 649**, wherein, it is held as under:

"19. In these circumstances, therefore, we set aside the direction contained in the order of the High Court dated 10th January, 2002 directing the arrest of the appellants. We also set aside the direction made by the High Court directing the investigating agency to submit a charge-sheet. However, the investigating agency must promptly take all necessary steps, conclude the investigation and submit its report to the concerned Magistrate. It is open to the investigating agency to submit such report as it considers appropriate, having regard to the facts and circumstances of the case and result of the investigation. After such a final report is submitted by the investigating agency, the concerned Magistrate will proceed to deal with the matter further in accordance with law without being influenced by any observation made by the High Court in the impugned orders. "

(ii) a decision of this Court in the case of **Nataraj vs. State represented by Inspector of Police, (2012 (2) MWN (Cr.) 416)**

"25. ... the Accused persons sought the benefit under Section 167(2), on the ground that the charge-sheet having not been filed within the period mentioned under Section 167(2), the benefits will have to be given by way of a default bail. Repelling the contentions, this Court as well as the Honourable Apex Court have held that the moment a charge-sheet is filed, the Accused stands on a different footing and the matter has to be considered on merits. Further, in the said case, an absconding charge-sheet was filed and thereafter the accused was arrested which is not the factual position herein. In the said case, after the arrest of the accused, further investigation has been taken up under Section 173(8), Cr.P.C. as he was not available for interrogation prior to the filing of



the charge-sheet. Therefore, the facts involved in this case are totally different from the judgments relied upon by the learned Special Public Prosecutor."

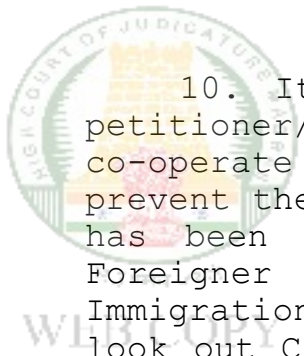
8. Learned Public Prosecutor, in reply, refuting the contentions of the learned Senior Counsel for the petitioner, submitted that there are 20 cases against the petitioner and while some of them ended in acquittal, a few cases were closed as 'mistake of fact', yet there are a few cases pending against him. He further submitted that the petitioner is a History-sheeter vide H.S.No.722 of 2009 and that a Non-Bailable Warrant has already been issued against the petitioner and whenever, the police apprehends to arrest him, he flees away from the scene and hence, a petition has been filed seeking an order of proclamation of offender.

9. Relevant paragraphs of the counter affidavit filed by the respondent police, as referred by the Public Prosecutor, are extracted hereunder:

"5. It is submitted that, charge sheet was taken on file before the Judicial Magistrate No.1, Thoothukudi on 01.02.2017 in P.R.C.No.07/2017 and the case was posted to 28.03.2017. Moreover, on 02.02.2017, the Hon'ble Judicial Magistrate issued non-bailable warrant of arrest to the Accused No.1/ Petitioner in the said case and the same was pending. So far, the proceedings in this case was going on in a fair and impartial manner in accordance with law. If the above said petitioner is released on Anticipatory Bail, he will not co-operate with the proceedings in the future and also he will commit the similar type of offences, which will affect the society. Furthermore, the above said accused if let out in Anticipatory bail, there is every chance of him influencing or intimidating the prosecution witnesses or tampering with the evidence and also chances of him fleeing from clutches of law once and for all.

6. It is submitted that the above said respondent vehemently opposed the Anticipatory Bail application on the ground that there is a prima facie material against this petitioner/accused in commission of alleged offence. From the date of the incident, the petitioner is absconding and not co-operating with the investigation and he is very much necessary for custodial interrogation to collect material evidence from the above said accused and also take his confession statements.

7. It is most humbly submitted that the above said petitioner/accused is a habitual offender and also a lowly sheeter in North PS H.S.No.722/09. ...
"



10. It is further stated in the counter affidavit that the petitioner/accused is a well influenced person and that he will not co-operate with the investigation proceedings. Further, in order to prevent the petitioner from escaping to foreign countries, a request has been made by the Superintendent of Police, Thoothukudi to Foreigner Regional Registration Officer (FRRO), Bureau of Immigration, Sastri Bhavan Annex, Nungambakkam, Chennai to issue a look out Circular against him and they have also produced the Bank Transaction details with regard to the petitioner and his wife. Also, the respondent police got the call details of nearly 400 persons, who happened to be the friends, relatives and Junior Advocates of the petitioner and enquired about his whereabouts. Since the petitioner could not be traced and NBW could not be executed despite the best efforts of the police, it was returned to the Judicial Magistrate No.I Court, Thoothukudi on 11.04.2017 by the respondent police and immediately after returning the NBW to the Judicial Magistrate No.I Court, Thoothukudi, the respondent filed a petition in the Court to issue a proclamation notice under Section 82 Cr.P.C. and the said petition is still pending before the Judicial Magistrate No.I Court, Thoothukudi.

11. It is the further case of prosecution that in the meantime, the victim in the present case, viz. N.Raghuraman, who is also an Advocate, filed CrI.O.P.(MD) No.1002/2017 before this Court praying to cancel the statutory bail granted to the 2nd accused, viz. Kali @ Kaleeswaran in this case, by the Judicial Magistrate No.I Court, Thoothukudi in Cr.M.P.No.460 of 2017, on 25.01.2017 and the matter is pending disposal.

12. It is stated by the prosecution that out of eight persons involved in this case, A1, A5, A6, A7 and A8 are Advocates; A2 obtained statutory bail; A3, A6 and A7 got bail; and A5 and A8 were granted Anticipatory Bail. According to the prosecution, the allegation against the accused, who got anticipatory bail are not serious in nature; whereas, with regard to the present petitioner, he has stabbed the victim in the abdomen, in the District Court campus.

13. Learned counsel appearing for the Intervenor/defacto complainant submitted that there are eight accused in this case and the petitioner/A1 is the main accused, who brutally attacked the victim with deadly weapons. It is his contention that the petitioner is still absconding and grant of anticipatory bail to the petitioner will affect the trial proceedings to a great extent. To substantiate his case, learned counsel has relied on the following:

(i) an Apex Court decision in the case of **State of Maharashtra vs. Captain Buddhikota Subha Rao (AIR 1989 SC 2292)**

"Liberty occupies a place of pride in our socio-political order. And who knew the value of liberty more than the founding fathers of our Constitution whose liberty was curtailed time and again under Draconian laws by the colonial rulers. That is why they provided in Article 21 of the Constitution that



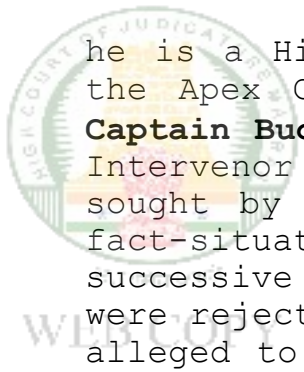
no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural law. That law permits curtailment of liberty of anti-social and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of a crime against society or the Nation. ..."

(ii) a decision of this Court in the case of **State by Superintendent of Police, Central Bureau of Investigation (Special Crime Branch), Madras vs. Adi Rajaram (1996 (1) MWN CrI. 281)**

"9. Filing of a charge sheet is only a compliance with the procedure within the stipulated period and it has nothing to do with the relative merits in this case. It may be stated that filing of a chargesheet cannot be construed to be a substantial change in circumstance. So far as the merits of the case is concerned, it is not appropriate to weigh the evidence at the state of considering prayer for bail. When this Court has already recorded a finding that there is a prima facie case and even factually, the statement of the learned Judge is incorrect, because there are more than one witnesses to speak to the participation or the part played by the respondent in the alleged commission of the offences.

11. In State v. Captain Jagjit Singh, AIR 1962 SC 253 : 1962 MLJ (CrI.) 296; (1962) 1 S.C.J. 408 : (1962) 3 SCR 622; 1962 CrI.L.J. 215 : (1961) 2 Ker. L.R. 534, the Supreme Court has held that the fact accused may not abscond by itself is not sufficient to induce the Court to grant bail. The Court has to take into consideration, the serious nature of the offence alleged among other considerations, how committed, participation of the accused, impact of release on witnesses, prejudice it may likely to cause during trial and likelihood of tampering and the atmosphere that may be created if released, are the circumstances that have to weigh with the Court."

14. It is not the case of the prosecution or the intervenor that the Trial Court will have to exercise powers under Section 309 Cr.P.C. and the High Court cannot entertain the Anticipatory Bail Petition under Section 439 Cr.P.C. According to them, the petition under Section 439 Cr.P.C. is maintainable. The main contention of the Public Prosecutor and the learned counsel for the Intervenor is that anticipatory bail should not be granted to the petitioner, as



he is a History-sheeter, involved in several cases. Referring to the Apex Court decision in the case of **State of Maharashtra vs. Captain Buddhikota Subha Rao** (cited supra), learned counsel for the Intervenor submitted there is no justification to grant the relief sought by the petitioner in the absence of substantial change in fact-situation. He further submitted that in the case cited supra, successive bail applications preferred by the respondent therein were rejected on merits, having regard to the gravity of the offence alleged to have been committed. According to the learned counsel, once the charge sheet is filed within time, even if it is considered as change in circumstances, the present offence alleged against the petitioner would disentitle him to get the relief of Anticipatory Bail.

15. Admittedly, in the case on hand, the petitioner claims that there is change in circumstances. Similarly, there are adverse circumstances against the petitioner, i.e. the petitioner is said to have been involved in offences under Sections 420, 294(b) and 506(i) I.P.C. in Crime No.32 of 2017 for the alleged occurrence on 01.02.2017, which is subsequent to the dismissal of the petitioner's first anticipatory bail petition. The petitioner is absconding till date and NBW could not be executed against him, as the same has been returned seeking proclamation, which is pending against him, apart from the fact that there is a request by the respondent police to the Foreigner Regional Registration Officer (FRRO), Bureau of Immigration, Chennai to issue a look out Circular against him.

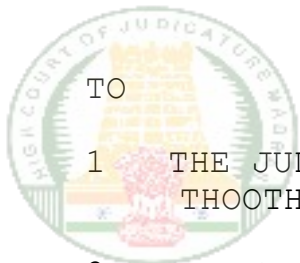
16. The contention of the learned Senior Counsel appearing for the petitioner that the petitioner is a member of the Bar Council of Tamil Nadu and is the President of Tuticorin Bar Association, cannot be a ground to grant Anticipatory Bail. Everyone is equal in the eye of law. Different yardsticks cannot be applied for the poor and rich and the meek and strong. It is disheartening that an Advocate is said to have assaulted another Advocate without having control over his actions. Whether the offence alleged against the petitioner is a calculated crime or not is a matter for investigation without obstacles.

17. Thus, taking into account the seriousness involved in this case, this Court is not inclined to grant the relief sought by the petitioner. Accordingly, this Criminal Original Petition is dismissed.

18. Before parting with, this Court is of the view that it is open to the petitioner to surrender and seek bail from the jurisdictional Court.

sd/-
24/04/2017

/ TRUE COPY /



TO

1 THE JUDICIAL MAGISTRATE NO.I
THOOTHUKUDI

2 THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI

3 THE INSPECTOR OF POLICE
TUTICORIN SOUTH POLICE STATION,
TUTICORIN DISTRICT

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

+1. CC to Mr.G.BALAJI Advocate SR.No.21122

+1 cc to MR.L.SHAJI CHELLAN, ADVOCATE, SR NO: 21175

JAM/28.04.17/KKR/SAR 4 / 8P-7C

ORDER

IN

CRL OP(MD) No.3183 of 2017

Date :24/04/2017