



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

Wednesday, the Fifth day of July Two Thousand Seventeen

PRESENT

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

CRL OP(MD) No.8394 of 2017

GEETHA

... PETITIONER / A2

Vs

THE STATE REP.BY,
THE SUB INSPECTOR OF POLICE
VATTATHIKOTTAI POLICE STATION,
VATTATHIKOTTAI, THANJAVUR DISTRICT,
(CRIME NO. 71 OF 2017)

... RESPONDENT / COMPLAINANT

For Petitioner : M/S. N.S. RAMA KRISHNADASS Advocate

For Respondent : MR.A.RAMAR Additional Public Prosecutor

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

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent Police for the offence punishable under Sections 352 and 427 IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002 in Crime No.71 of 2017 on the file of the respondent Police, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner and the de facto complainant are adjacent land owners. The de facto complainant's cattle were grassing in the petitioner's paddy field and thereby damaged the black grams and when the same was questioned, a dispute arose between them.

3.Admittedly, the offence under Sections 352 and 427 of IPC., are bailable one, as shown in the classification of offences of IPC., shown in the First Schedule of Cr.P.C.,

4.The learned counsel appearing for the petitioner contends that the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act is non-bailable one and hence, the petition seeking anticipatory bail is maintainable.

5.Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, reads as follows:-

"Penalty for harassment of woman. -- Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of



festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees."

6.As per Schedule II Classification of Cr.P.C., offences against other laws, the offences punishable with imprisonment for less than three years or with fine only is bailable.

7.The offence punishable with imprisonment for three years and upwards, but not more than 7 years is non-bailable. Under Section 4 of the said Act, the punishment provided is imprisonment of either description for term which may extend to three years and also fine. That means, imprisonment can be for a clear period of 3 years or less. Hence, it could not be said that minimum sentence would be 3 years or more. The expression, "punishment for the term which may extend to three years" is certainly not similar to the expression, "punishment for three years and upwards"

8.In view of the authoritative pronouncement of Apex Court in Rajeev Chaudhary Vs. State (NCT) of Delhi reported in (2001 (5) SCC 34) : (AIR 2001 SC 2369), the expression used in second category of II Part of Schedule of Cr.P.C., viz., the term of imprisonment for three years or upwards, but not more than seven years cannot be equated with the expression used in Section 4 of the said Act, viz., the imprisonment which may extend to three years. The above principle laid down in the above Apex Court Judgment is also relied on in the Judgment in Amarnath Vyas Vs. State of A.P. reported in (2007 CrI.L.J 2125). Since the offences are bailable one, the petitioner can approach the concerned trial Court for bail and anticipatory bail does not attract and therefore, this petition for anticipatory bail is liable to be dismissed.

9.In the result, this Criminal Original petition for anticipatory bail stands dismissed.

sd/-
05/07/2017

/ TRUE COPY /

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

TO

- 1 THE SUB INSPECTOR OF POLICE
VATTATHIKOTTAI POLICE STATION,
VATTATHIKOTTAI, THANJAVUR DISTRICT.
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S. N.S. RAMA KRISHNADASS Advocate SR.No.26001

ORDER IN
CRL OP(MD) No.8394 of 2017
Date :05/07/2017