



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

Thursday, the Twentieth day of July Two Thousand Seventeen

PRESENT

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

CRL OP(MD) No.9016 of 2017

E.SURESH KUMAR

... PETITIONER/SOLE ACCUSED

Vs

STATE THROUGH
THE INSPECTOR OF POLICE
SATHANKULAM POLICE STATION,
TUTICORIN DISTRICT,
CRIME NO.224 OF 2017

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.G.KARUPPASAMY PANDIYAN Advocate

For Respondent : MR.A.RAMAR, Additional Public Prosecutor

For Intervenor : M/S.T.A.EBENEZER, Advocate

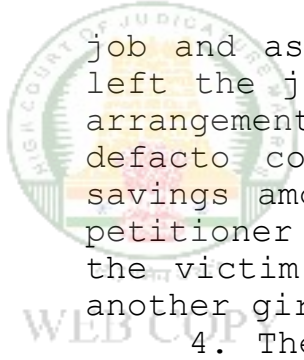
PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner/sole accused, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 417, 406 and 376 of IPC, in crime No.224 of 2017, seeks anticipatory bail.

2. The learned counsel appearing for the petitioner states that as per the FIR, the victim is having sexual intercourse with the petitioner with consent and the alleged amount is a loan amount and hence, section 406 of IPC is not attracted in this case and Section 376 of IPC is also not applicable to the facts of the present case.

3. The learned counsel appearing for the intervenor states that the relationship between the petitioner and the victim in this case is a Master and Servant and the victim is not having any love affair with the petitioner herein and at the first instance, the petitioner herein has forcibly had intercourse with the victim and thereafter, on promise of marriage, the petitioner and the victim are having sexual intercourse on many times. While so, the petitioner planned to have another marriage and he requested the victim to leave the

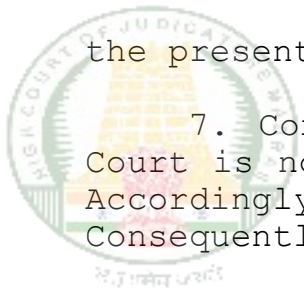


job and as per the request of the petitioner, the victim was also left the job on 10.06.2017 and thereafter, the petitioner has made arrangement marriage with another girl on 30.06.2017. Further, the defacto complainant has also given a sum of Rs.1,70,000/- as a savings amount of the victim girl for the marriage as loan to the petitioner herein. Since the petitioner refused to marriage with the victim girl herein and he has also arranged the marriage with another girl, the victim girl has preferred the present complaint.

4. The learned Additional Public Prosecutor appearing for the respondent states that the petitioner is herein is the sole accused in this case and he is running a Muthu TV Channel as proprietor. The victim in this case aged about 22 years, who is a B.A., graduate and also the Computer Diploma holder joined duty on 01.06.2016, in the concern of the petitioner herein and the petitioner has disclosed that he is going to marry the victim and thereafter, on 14.02.2017, while the victim was working in the said Channel, the petitioner came to her room and he was forced to have intercourse with the petitioner herein and since she refused, the petitioner had forcibly intercourse with the victim and thereafter, on promise of marriage given by the petitioner herein, both are having sexual intercourse on many times and on 10.06.2017, while the petitioner was having intercourse with the victim, the victim left her job on request by the petitioner and thereafter on 30.06.2017, the petitioner arranged marriage with another girl, then only the victim got knowledge of the intention of the refusal of the marriage by the accused with the victim girl and she has given a complaint on 27.06.2017. He further states that the petitioner has borrowed a sum of Rs.1,70,000/- which is a savings amount of the victim girl and thereafter, he has not paid that amount also and investigation is still pending.

5. In support of his contention, the learned counsel appearing for the petitioner referring the decision reported in **(2003) 4 Supreme Court Cases 46 (Uday Vs. State of Karnataka)** and also the another Judgment of Madras High Court reported in **(2017) 2 MLJ (Crl) 175, (S.Kumaresan Vs. State Represented by The Inspector of Police, All Women Police Station, Omalur)**. In the Judgment of the Apex Court reported in (2003) 4 SCC 46 held that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. The tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact.

6. In this case on hand as per the FIR averments, the petitioner has forcibly intercourse with the victim and thereafter, on the false promise of marriage, the petitioner and the victim are having sexual intercourse on many times. Further, the relationship between the petitioner and the victim is Master and Servant. Hence the cases cited by the petitioner is not applicable to the facts of



the present case.

7. Considering the facts and circumstances of the case, this Court is not inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original petition is dismissed. Consequently, intervening Petition is also closed.

sd/-

20/07/2017

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

TO

1 THE INSPECTOR OF POLICE,
SATHANKULAM POLICE STATION, TUTICORIN DISTRICT.

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

+1. CC to M/S.T.A.EBENEZER, Advocate SR.No.26970

TRP

CSL/CM-MSA/SAR-II/26.07.2017 : 3P/4C

ORDER

IN

CRL OP(MD) No.9016 of 2017

Date :20/07/2017