

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

Thursday, the Sixth day of April Two Thousand Seventeen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CRL OP(MD) No.3038 of 2017

1 M.RAJENDRAN
2 M.JAYAKUMAR
3 K.KANI
4 M.PREMA

...PETITIONERS/ACCUSED 2 to 5

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION POLICE STATION,
MADURAI, MADURAI DISTRICT.
(CRIME NO. 2 OF 2017) ... RESPONDENT

S.R.VANARAJA ...INTERVENING PETITIONER /
DEFACTO COMPLAINANT

For Petitioner : M/S.E.V.N.SIVA Advocate

For Respondent : MRS.S.PRABHA, Govt. Advocate (Crl. Side)

For Intervenor: MR.VEERAKATHIRAVAN, Senior Counsel for C.JEGANATHAN
for M/S.VEERA ASSOCIATES

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

ORDER : The Court Made the following order :-

The petitioners, who are arrayed as accused Nos.1 2 to 5, in Crime No.2 of 2017 on the file of the respondent police, apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 167, 409, 465, 468, 477-A r/w.120-B IPC and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and hence, seek anticipatory bail.

2. Heard the learned counsel for the petitioners and the learned Government Advocate(Crl.Side) for the respondent/State as well as learned counsel appearing for the intervener.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Learned counsel for the petitioners submit that the respondent police without adverting to the provisions of the Tamil Nadu Private Colleges (Regulation) Act and Rules have unnecessarily interfered in the appointment of non-teaching staff in a private

aided college. When this Hon'ble Court in various cases has held that there is no need to get any prior permission for filling up of non-teaching staff in a private aided college, the respondent herein cannot register the First Information Report against the petitioners herein, who are only the Selection Committee Members and do not have any individual power to make any appointments in private colleges. Hence, he prayed for appropriate orders.

4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police through his counter affidavit submits that the College has been sanctioned with 10 posts of non-teaching staff. However, it reveals that 16 appointments including promotion for the 2 posts (non-teaching staff) were done during the year 2016. It is pertinent to note that the Director of Collegiate Education, Chennai permitted to appoint only 10 non-teaching staff to be filled by the college authorities through their sports fund. However, the accused have issued notification as if 16 posts were sanctioned and they called for an application to fill up the above said posts. By giving false representation, they have issued the said notification on 13.09.2016 and the said notification is contrary to the proceedings of the Director of Collegiate Education, Chennai. The first petitioner is the Principal of College and the petitioners 2 and 3 are the Associate Professors and the 4th petitioner is the Superintendent of College and they are getting salary from the government grant and therefore, the petitioners are amenable under the definition of public servant.

5. He further submits that if there is any malpractice in filling up the vacancies, action will be taken against the persons concerned, since the State is granting fund to the aided colleges. By appointing the persons without following the procedures, the intention of the management is to cheat the government and to get fund from the government which amounts to misappropriation of funds and therefore, the police is entitled to take action against them. Hence, he prays for appropriate orders.

6. Learned counsel appearing for the intervener would submit that he is the Member of Kallar Kalvi Kalagam, Usilampatti and the same was registered under the Societies Registration Act before the District Registrar of Societies, Periyakulam vide Reg.No.138/67 and submit that the elections for election of office bearers for the said Kallar Kalvi Sangam were held on 29.11.2015 and the first accused Pandian has been selected for the post of Secretary/Correspondent and other office bearers. The said Secretary/1st accused, namely, Pandian in collusion with the other accused/respondents 1 to 4 have been continuously misusing their official powers, more particularly, in the various appointments for the said educational institution.

7. He further alleges that the Committee has received illegal gratification for filling up the posts in question besides appointing the persons of their own kith and kin. When the Director of Collegiate Education, Chennai had sanctioned only 10 posts of non-teaching staff, in pursuance to the said sanction, the first accused issued a notification on 04.02.2016 calling for applications to fill up initially 10 posts, but, subsequently he issued another

notification dated 04.03.2016 stating that the earlier notification calling for applications for the non-teaching staff 10 nos stand postponed. As per the vacancy, only 10 posts were available, however, the accused gave publication to the effect that as though 16 posts were available and appointed 14 new non-teaching staff and thus violated the government orders, procedures and conditions imposed by the Directorate of College Education and the District Employment Exchange. Thus, it is clear that the accused have abused their official position and entered into criminal conspiracy.

8. Regarding the said factual position, the petitioner/intervener has sent a detailed representation to the Director Vigilance and Anti-Corruption Wing and also Deputy Superintendent of Police and Anti-Corruption Wing, Madurai. Since there was no action by the official respondents, he filed a writ petition in W.P.(MD).No.24404 of 2016 and this Court, by its order, dated 06.01.2017, directed the respondents to look into the complaint of the intervening petitioner and to dispose of the said representation, if any offences were made out against the petitioners. Based on the above direction issued by this Court, the respondent police has resorted to register a complaint against the first accused/Pandiyan and the petitioners 1 to 4 in the Criminal Original Petition. Hence, he prayed for appropriate orders.

9. Be that as it may, as far as the private colleges are concerned, the appointments are not made through an individual and it is done by the Selection Committee and the petitioners are the Members of the Committee and had interviewed the candidates and they had given to the authorities concerned to issue appointment order. They are not the persons who issued the appointment order and they only do the selection process as per the requirement of the College. Even as per the Tamil Nadu Private Colleges (Regulation) Act and Rules, the petitioners have only right to participate in the selection process as Selection Committee Members and they do not have any individual role in the above appointments made in the aided college. All the appointments have been made as per the provisions of the Tamil Nadu Private Colleges (Regulation) Act and Rules and there is absolutely no violation as alleged by the respondent police. No authorities have given complaint against the petitioners, whereas, due to private motive, the defacto complainant has given a complainant against the petitioners.

10. Considering the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioners, with certain conditions. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance before the learned Special Judge, Special Court for Trial cases under the Prevention of Corruption Act, Madurai, Madurai District and on each of them executing 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 Magistrate concerned and on further condition that the petitioners shall appear before the respondent police as and when required for the purpose of interrogation.

11. The petitioners are directed to co-operate with the enquiry proceedings and the respondent police is directed to file a charge

sheet against the petitioners, as expeditiously as possible. The petitioners shall comply with the conditions stipulated under Section 438 Cr.P.C. scrupulously.

12.The petitioners shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready, failing which, the petition for anticipatory bail stands dismissed.

sd/-
06/04/2017

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

TO

- 1 THE SPECIAL JUDGE,
SPECIAL COURT FOR TRIAL OF THE CASES UNDER
PREVENTION OF CORRUPTION ACT,
MADURAI, MADURAI DISTRICT.
- 2 THE PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION POLICE STATION,
MADURAI, MADURAI DISTRICT.

+1 cc to M/R.VEERA ASSOCIATES ,Advocate, SR.NO:19674

SVA/CM/MSA/24.04.2017/SAR3/4P/5C

ORDER
IN

CRL OP(MD) No.3038 of 2017
Date :06/04/2017

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