

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the First day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice R. SURESH KUMAR

CRIMINAL ORIGINAL PETITION No.4339 of 2018

SUNDAR, [PETITIONER / ACCUSED]

Vs

STATE REP. BY ITS [RESPONDENT]
INSPECTOR OF POLICE (CRIME),
E-3, TEYNAMPET POLICE STATION,
CHENNAI.
(CR.NO.2007 OF 2017)

For Petitioner : M/S.R.GANESH KUMAR Advocate[IN CRL.NO.4339/2018]

For Petitioner : M/S.SIMON JEYAKUMAR Advocate
[IN CRL.MP.NOS.5284 & 5035/2018]

For Respondent : MRS. S.THANKIRA PUBLIC PROSECUTOR FOR R2

For Intervener : MR.P.R.RAMAN SENIOR COUNSEL FOR
MR.S.MANIMARAN Advocate

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

ORDER : The Court Made the following order :-

This is a petition filed for Anticipatory Bail.

2. The petitioner apprehending arrest at the hands of the respondent Police has moved this Criminal Original Petition before this Court seeking Anticipatory Bail in the event of his arrest.

3. According to the case of the prosecution, the petitioner alleged to have committed offences punishable under Sections[*] **147,148,365,406,342,323,324,384,506(ii),307,394 r/w 34 I.P.C.** on an alleged occurrence dated 12.12.2007 at about 08.00 p.m.

4. The First Information Report (F.I.R.,) has been registered pursuant to the complaint given by the de-facto complainant one Mr.Karthick Sethupathi. There are nine accused in this case, out of whom, A5 to A9 & A2 were arrested and all of them were released on bail.

5. According to prosecution, in this case, the de-facto complainant has also filed an intervening petition in Crl.M.P.No.3228

of 2018 in CrI.O.P.No.4339 of 2018.

6. I have heard Mr.R.Ganesh Kumar, learned counsel for the petitioner, Mrs.Thankira, learned Government Advocate(CrI.,side) for the respondent State and Mr.P.R.Raman, learned senior counsel for the intervenor/de facto complainant.

7. According to the case of the prosecution as well as the intervenor, though nine accused involved in the instant case, insofar, this petitioner/A4 is concerned, he along with one Sundar/A2 had inflicted injuries on the body of the de-facto complainant and though the same has been clearly stated in the complaint given by the de facto complainant on 18.12.2017 to the Commissioner of Police, the petitioner, so far has not been arrested and therefore, the petitioner has moved this petition stating that he is innocent.

8. Learned senior counsel for the intervenor has drawn the attention of this Court on the discharge summary given by the Government Royapettah Hospital, where the de facto complainant was admitted and had taken treatment. According to the learned Senior counsel, in the discharge summary, it has been mentioned as 'assault and multiple injury'. However, the learned counsel for the petitioner relied upon the very same medical report and submitted that the medical report shows that the condition of abdomen & pelvis as 'normal study'; CT Brain as 'normal study' and Chest & Abdomen as 'no significant abnormality and further a report on the bone shows that "there is no fractures"'.

9. By relying upon the records, the learned counsel for the petitioner has submitted that in fact, the petitioner had given a written complaint by way of manuscript on 18.12.2017 wherein each page of the said complaint has been signed by the defacto complainant and the photocopy of the manuscript and clean copy have been filed before this Court. Relying upon them, the learned counsel for the petitioner submitted that, on reading the entire complaint report one can very easily find that there is no punishable offence under any law is made out.

10. Learned counsel for the petitioner would further submit that, subsequently, another complaint has been preferred where certain allegations have been made against the persons, including the petitioner. This factor was also referred by the learned senior counsel appearing for the intervenor and stating that this actual complaint of the defacto complainant is not registered and only different complaint was registered and taken note for the purpose of investigation by the respondent Police.

11. I have heard the counsels appearing for the petitioner, respondent Police and the intervenor.

12. It is brought to the notice of this Court that A1 who has already being apprehending arrest, moved a petition for Anticipatory Bail in CrI.O.P.No.29556 of 2017, wherein similar contentions have been raised by both the prosecution side and Intervenor side before

the learned Judge of this Court, who dealt with the Anticipatory Bail, ultimately by his order dated 20.02.2018, after having taken note of the entire factors submitted by both the parties, has given a reason for entertaining the Anticipatory Bail and the same is extracted here under:

"5.The learned counsel would further contend that the petitioner getting himself admitted in the hospital would show his very conduct. Even as per the defacto complainant, he had given a T.V. interview on the previous day where he has given a complaint to the Commissioner of Police and thereafter, the case has been improved day by day. He would also submit that the arrested accused have been released on bail by the High Court and that the so called victim was discharged. He would also further submit that the petitioner is prepared to appear before the respondent for any kind of enquiry.

6. The learned Additional Public Prosecutor would submit that the investigation is pending and only if the petitioner is arrested, 33 crores of jewellery that is said to have been taken from the custody of the wife of the defacto complainant could be recovered.

7. The learned Senior counsel for the intervener would vehemently oppose to anticipatory bail stating that the jewellery worth about Rs.33 crores have to be recovered from the custody of the petitioner herein and would submit that the defacto complainant was brutally assaulted and he had suffered severe injuries. He would submit that the original complaint given by him was not taken into account and a case has been registered only on the statement recorded in the hospital and thereby certain allegations were left out."

13. Since the plea now raised by the prosecution side was already raised by the defacto complainant at the time of hearing of the Anticipatory Bail of A1 and the same has been considered by the learned Judge of this Court. After considering the reasons stated by the prosecution, the learned Judge has granted Anticipatory Bail to A1. Also, it is the fact that, even the detailed complaint said to have been given by the defacto complainant to the Commissioner of Police on 18.12.2017, on perusal, nowhere it has been stated specifically, that this accused has inflicted injuries on any particular part of the body of the defacto complainant. This specific factor is missing in the complaint dated 18.12.2017. At any rate, it is for the further investigation of the prosecution of this case. Hence, this Court does not want to make any opinion on this aspect.

14. The present petition is considered, in view of the reasons discussed above and as a number of accused persons in this case, have already been released either on Bail or Anticipatory Bail, and there is no specific overt act against the petitioner in the complaint dated 18.12.2017 and also the fact that the defacto complainant after

taking treatment had been discharged from the hospital and the hospital report also shows every thing as normal as of now, this Court is inclined to pass the following orders:-

(i) The petitioner in the event of his arrest shall be released on bail on appearance before the 18th Metropolitan Magistrate Court, Saidapet, Chennai within a period of 2 weeks from the date of receipt of copy of this order;

(ii) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand) with two sureties each for a like sum to the satisfaction of the said Court;

(iii) Also, the petitioner shall appear before the respondent Police every day at 10:30 a.m. and 5:30 p.m. until further orders;

(iv) The petitioner shall surrender his pass port, if any in his possession;

(v) The petitioner shall not tamper with the evidences or witnesses throughout the investigation or the trial;

(vi) The petitioner shall not absent himself during the course of investigation or trial;

(vii) If any of the aforesaid conditions are not complied with or breached by the petitioner or if the accused so absconds, a fresh FIR can be registered under Section 229 (A) of IPC.

With these conditions, this **Criminal Original Petition is ordered** accordingly.

-sd/-
01/03/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

[*]Amended and time granted by this court to comply with the conditions imposed vide order dated 01.03.2018 in Crl.Op.No.4339 of 2018 is extended for a period of two weeks from the date of receipt of amended copy of this order, as per the order of this court dated 05/04/2018 made in CRL OP.4339/2018 IN CRL.MP.NOS.5284 & 5035 OF 2018 BY The Hon`ble Mr Justice MR. A.D.JAGADISH CHANDIRA

TO

1 THE METROPOLITAN MAGISTRATE,
COURT NO.18TH ,SAIDAPET,CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE,EGMORE[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 STATE REP. BY ITS
INSPECTOR OF POLICE (CRIME),
E-3, TEYNAMPET POLICE STATION,
CHENNAI.

+1 CC to M/S.M.SIMON JEYAKUMAR Advocate on payment of
necessary charges SR.NO. 6709

CRL OP.4339/2018

Date :01/03/2018

RD 08/03/2018

RD 11/04/2018