

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Third day of May Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL ORIGINAL PETITION No.13677 of 2018

K.BHARATHIRAJA,

[PETITIONER / ACCUSED]

Vs

STATE REP.BY

[RESPONDENT]

INSPECTOR OF POLICE,

VADAPALANI POLICE STATION,

CHENNAI-26. CR.NO.284/2018

For Petitioner : M/S.R.PRABAKARAN Advocate

For Respondent : MRS.PRABHAVATHI, ADDL. PUBLIC PROSECUTOR

For INTERVENER : M/S.K.SEETHA RAM, Advocate

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 alleged offences punishable under Sections 295(A) and 506(i) of I.P.C seeks anticipatory bail.

2.Heard both sides.

3. The case of the prosecution is that the petitioner had called the Hindu god Ganesha as "imported god" at an event. He had also allegedly said that if poet Vairamuthu were to face any dishonour, he wouldn't hesitate to behead those who had caused it.

4. The learned counsel for the petitioner has submitted that as per the First Information Report, in a public meeting, the petitioner herein has stated that the Hindu God, Vinayaga has been imported and he also criminally intimidated the Hindu people and hence, the petitioner has to be punished under Sections 295(A) and 506(i) of I.P.C. He further submitted that the petitioner has not committed any offence as alleged by the de-facto Complainant. The petitioner has simply expressed his views that the Hindu God, Vinayaga has been imported from North India and it cannot be said that he had made the said statement with a deliberate and malicious intention of outraging religious feelings. He further submitted that the said statement was made on 19.01.2018, but the defacto complainant has lodged a complaint belatedly on 12.05.2018. He further submitted that the

aforesaid statement has not disrupted the public order. He further submitted that the petitioner is a cinema director and he will co-operate for investigation and he will not tamper the witnesses and he will not abscond and hence, prayed to grant anticipatory bail.

5.The learned counsel appearing for the intervenor/de-facto complainant on the other hand submitted that the petitioner being a cinema director, he should speak carefully in public meetings. He has further submitted that he intentionally and maliciously uttered the words that the Hindu God, Vinayaga has been imported and thereby, he has committed offence under Section 295 A of IPC and also criminally intimidated the hindu religious people and hence, he prayed to dismiss this Criminal Original Petition.

6.The learned Additional Public Prosecutor has submitted that the statement of the petitioner clearly attracts Sections 295 (A) and 506 (i) of IPC. She has further submitted that since the investigation is at the initial stage, she strongly opposed this petition.

7. At this juncture, it would be relevant to refer the decision in ***Bhadresh Bipinbhai Sheth Vs. State of Gujarat & another, reported in (2015) 10 SCR 398***, wherein, the Hon'ble Supreme Court after referring to the Constitution Bench judgment in the case of ***Gurbaksh Singh Sibbia and Others Vs. State of Punjab (1980) 2 SCC 565***, has observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial, otherwise, bail is not to be withheld as a punishment. It was also observed that the court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc and once these tests are satisfied, bail should be granted to an under trial, which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody.

8. It was also observed by the Hon'ble Supreme Court that in regard to the anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made.

9.In the case on hand, the petitioner is a cinema director and it is not the case of the prosecution that if the petitioner is granted anticipatory bail, he would abscond and he would not appear before the Court for trial. It is also not the case of the prosecution that the arrest of the petitioner is absolutely necessary for the investigation purpose. Further, the learned counsel appearing for the petitioner has submitted that the petitioner will co-operate for

investigation and he will abide by any condition that may be imposed by this Court.

10. Taking into consideration all the above facts and the submissions made by both the counsel and also keeping in mind the above observations of the Hon'ble Supreme Court, this Court is inclined to grant anticipatory bail to the petitioner on certain conditions.

11. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned XVII Metropolitan Magistrate, Saidapet, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(i) if the petitioner fails to surrender before the concerned Magistrate within a period of 15 days, this order shall stand automatically cancelled.

(ii) the petitioner shall report before the respondent police daily at 10.30 a.m for a period of three weeks and thereafter, as and when required before the respondent police for interrogation.

(iii). The petitioner is directed to co-operate with the respondent for investigation/enquiry.

(iv) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(v) the petitioner shall not abscond either during investigation or trial.

(vi) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

(vii) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

-sd/-
23/05/2018

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.

TO

1 THE METROPOLITAN MAGISTRATE,
NO.XVII, SAIDAPET, CHENNAI.

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI.
[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
VADAPALANI POLICE STATION,
CHENNAI-26.

+2 CC to M/S.R.PRABAKARAN Advocate on payment of necessary
charges-Sr.9393

+1 CC to M/S.K.SEETHA RAM, Advocate on payment of necessary
charges-Sr.9410

CRL OP.13677/2018

Date :23/05/2018

ths : 28.05.2018