

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Thursday, the Nineteenth day of September Two Thousand Nineteen

PRESENT

The Hon`ble Mrs Justice V.BHAVANI SUBBAROYAN
CRIMINAL ORIGINAL PETITION No.17681 of 2019

B.NATARAJAN [PETITIONER / ACCUSED]

Vs

THE STATE OF TAMIL NADU, [RESPONDENT]
REP. BY THE INSPECTOR OF POLICE,
PANRUTI POLICE STATION,
CUDDALORE DISTRICT,
(CRIME NO.79 OF 2019).

For Petitioner : MR.R.SHANMUGA SUNDARAM SENIOR COUNSEL
FOR M/S.ARIVUDAINAMBI P. Advocate

For Respondent : MRS.T.P.SAVITHA, Govt. Advocate (Crl. Side)

For Intervenor : M/S A.SASIDHARAN 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 offence under Sections 201 and 302 of IPC in Crime No.79 of 2019, seeks anticipatory bail.

2. This is the third bail application filed by the petitioner, whereupon this Court by its order dated 15.05.2019 in Crl.O.P.No.11698 of 2019 had dismissed the anticipatory bail. After four months, the present anticipatory bail has been moved. An FIR has been lodged in FIR.No.79 of 2019 dated 20.02.2019 by the respondent police against one lady Kamali as A1 and the present petitioner, namely, Natarajan, as A2 under Section 201 and 302 of IPC. The FIR is based on the confession statement made by the first accused Kamali who is lodged in the prison, the FIR came to be registered when initially the said Kamali (A1) confessed before the Panruti Village Administrative Officer Tr.Thangamani on 20.02.2019, whereupon the confession statement was recorded has complied by the respondent police and thereafter, the confession statement of the said Kamali was also recorded.

3. As per the confession statement given by the said Kamali (A1) is known to one Thairiyalakshmi and Sivaranjani, who are friends. The petitioner is a third husband to the said Thairiyalakshmi and the Thairiyalakshmi is a second wife to the petitioner. However, at later

point of time, the said Kamali fell out of her marriage, fell in love with the petitioner and was having an affair with him. It seems that the said Thairiyalakshmi, the petitioner's wife, stood in the way of their affair and hence, broughted a plan to entangle the said Thairiyalakshmi in some problem and decided to murder the daughter of Sivaranjani who is the friend and shift the blame on the said Thairiyalakshmi. As conspired between the petitioner and the said Kamali, the said Kamali on 19.12.2018 at 13.00 hours, when the said Sivaranjani went to pick her son from the school, the accused Kamali who posed that she will take care of the child, seems to have murdered the one and half year old baby, namely, Priyadarshini, by smothering pillow on her face and left the scene of occurrence when the said Sivaranjani returned from the school, stating that she has got her periods and hence she has to take bath. Thereafter, when the mother Sivaranjani came to know the immobilise child, took her child out and shouted. The said Kamali also joined with the mother Sivaranjani, took the child to a private hospital and thereafter, taken the child to the Government hospital, wherein, the doctors informed that the child was brought dead. Without knowing the cause of death, the parents also buried the child on 20.12.2018. It is thereafter, the Kamali seems to have accepted the murder and gave confession to the respondent police, and upon the said confession, an FIR was registered on 20.02.2019 under Section 201 and 302 of IPC and the said Kamali was remanded to the Judicial Custody. However, the petitioner in this case is still not arrested for the reasons best known to the respondents.

4. Earlier this Court had dismissed the petitioner's anticipatory bail on 15.05.2019. The present anticipatory bail petition is filed by the petitioner with a plea that the petitioner is a practising advocate, practising before the Panruti Court and he has been appointed as a Law Officer by G.O.(D).513 Home Department (Cts-VIA) Department dated 15.05.2018 for a period of three years, and those people who is not able to tolerate the appointment of the petitioner's law officer who is doing the Government job, the rival group among the lawyers from the bars have conveyed with the brokers and have manufactured this theory and a complaint has been filed through their acquaintance who has not completely retracted all their earlier statement.

5. The learned Senior Counsel Mr.R.Shanmuga Sundaram appearing for the practitioners stated that the said Kamali who had initially given a confession statement has given a retracted statement during the time of extension of remand on 05.04.2019 before the Judicial Magistrate, Panruti. The learned Senior Counsel also emphasise that the FIR given by the said Kamali is only due to force and coercion, and further to save her image.

6. The learned Senior Counsel also vehemently contended that there is no specific overt act at all against the petitioner and the petitioner is innocent has got no nexus with the said offence. In

fact, the learned Senior Counsel also brought to the knowledge of this Court that the Kamali (A1) subsequently was released on bail in CrI.O.P.No.9897 of 2019 on 15.05.2019. The change of circumstances as stated by the learned Senior Counsel was that the retracted statement made by the said Kamali (A1) was not placed before this Court when CrI.O.P.No.11698 of 2019 was filed and heard, which came to be dismissed as the petitioner had no knowledge about the same.

7. In support of his arguments, the learned Senior Counsel had relied upon the Judgment reported in 2009 14 SCC 415 in the case of [Subramaniam Vs. State of Tamil Nadu and Another].

8. In counter to the argument, the mother of the deceased child Sivaranjani has filed Intervening Petition in CrI.M.P.No.10758 of 2019. The learned counsel Mr.A.Sasidharan appearing for the Intervenor vehemently contended that the entire case came into light only when the said accused Kamali has given a Judicial confession statement before the Panruti Village Administrative Officer on 20.02.2019 and when her daughter died due to asphyxia on 19.12.2018, without knowing the cause of the death, the child was buried on 20.12.2018. Only on 20.02.2019, the said Kamali confessed about the ploy made by the petitioner and the said Kamali and everything came to light and it is thereafter, the registration of the case of the daughter's murder, the body was exhumed and autopsy over the body was performed by the doctors.

9. The Intervenor Counsel also vehemently objected for grant of anticipatory bail as the investigation has not been done in a proper manner since the petitioner is a Government Advocate in the District Munsif Court and who is an influential person and having nexus with the police department. Under these circumstances, the Intervening Petitioner sternly objected for granting anticipatory bail.

10. In reply to the present anticipatory bail petition, the second respondent police department has filed a status report, stating that a preliminary investigation was conducted by one Tmt.Malarvizhi and A1 Kamali was arrested on 20.02.2019 and her confession statement was recorded. After registration of the complaint, the accused was remanded to Judicial Custody and then produced before the Judicial Magistrate. Thereafter, statement of 12 witnesses have been recorded and on the request of the Tahsildar, the deceased child body was exhumed in the presence of Tahsildar, VAO and the team of doctors who conducted postmortem, and after completion of the postmortem, the skull, hyoid bone were sent through proper channel for chemical analysis and the reports are awaited.

11. It was further contended in the status report that they have received the postmortem certificate along with the final opinion, where the doctors have opined that no definite conclusion or opinion to be obtained regarding the cause of death as the body is in the advance stage of decomposition. The respondent police also submitted that A2 having illegal intimacy with A1, and as per the suggestion given by him, A1 committed the offence of murdering the one and half year baby by smothering her face by using a pillow.

12. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the intervenor and the learned Government Advocate Mrs.T.P.Savitha (Crl.Side), and perused the materials produced before this Court.

13. It is the case of the prosecution, wherein, one and half year old child was murdered on 19.12.2018 and without knowing the cause of the death, the parents have buried their child.

14. It is seen that the Kamali (A1) has made a confession statement before the Village Administrative Officer and based on the confession statement, the investigation was initiated. The petitioner herein who is a Government Advocate in the Court at Panruti, who is arrayed as A2. Based on the confession statement of A1 Kamali who had confessed before the Village Administrative Officer, Panruti and thereafter before the respondent police on 20.02.2019, an FIR has been lodged on the same day in FIR.No.79 of 2019. When the A1 was taken on custody on the very same day and remanded to Judicial Custody after producing her before the Judicial Magistrate, Panruti, it is almost arrested after two months, the petitioner A2 has been left scord free by the respondent police. Attends events for petty offences, the police officials take swift action, thereby, trying to arrest or arresting certain offenders. However, surprisingly when A2, the petitioner herein, before this Court is accused of murder and charged with Section 302 IPC is still roaming outside and even given a red carpet welcomed by the police authority calling him for an enquiry in the police station.

15. Earlier when the Senior Counsel has prayed that the A2 will cooperate with the police official for an enquiry, this Court also permitted the petitioner to appear before the said polices and complete the enquiry between 15.07.2019 to 28.07.2019 and the police has filed a status report. It is seen from the CD file that the petitioner seems to have attended the enquiry but has not given a proper reply.

16. Just because the petitioner herein is a Government Advocate, the respondent police are not taking any steps to arrest the petitioner despite the knowledge that earlier this Court had dismissed the anticipatory bail on 15.05.2019 in Crl.O.P.No.11698 of 2019 and subsequently on 14.06.2019 in Crl.O.P.No.13924 of 2019 respectively. However, despite two anticipatory bail petitions being dismissed, the respondent police has not taken any steps forward in arresting the petitioner.

17. It is not known as to why the respondent despite the fact that the anticipatory bail has been dismissed has not arrested the A2. No arrest procedure was initiated against the petitioner herein. The Crime being very heinous in nature, that too murdering a one and half year baby who alleged to have been killed by A1 Kamali on the advice of the petitioner herein who have conspired along with the said A1 as per the confession statement given by A1 Kamali before the Village Administrative Officer.

18. This Court is of the view that the only ground taken by the petitioner in the third anticipatory bail application is that he has been serving as a Government Advocate in the Panruti Court and the A1 has retracted her original statement made before the Judicial Magistrate. Hence, this is the change of circumstances brought in by the petitioner.

19. This Court is unable to accept the change of circumstances as put fourth by the learned Senior Counsel and this Court holds that the petitioner has not made any case for anticipatory bail and the same is liable to be rejected. Merely because the petitioner is an advocate and he is working as a Government Advocate in the Panruti Court does not create any special status and the respondent also should not have shown any leniency on him.

20. One P. Shanmugam Inspector of Police, Panrutti Police Station, Cuddalore District is present and has filed a status report dated 16.08.2019, in which he has stated that preliminary investigation has been conducted on 01.03.2019 and the postmortem report, chemical analysis report was perused, wherein, the Doctor opined that 'No Definite opinion could be obtained regarding the cause of death since the body is in the advanced stage of decomposition'. Further, as per the orders of this Court, enquiry was conducted and the detail report reveals that the petitioner has given contra reply to the question raised and not co-operated in the investigation and he also represented before this Court that the offence committed by the accused A.1 and A.2 can be investigated only if custodial interrogation is granted and hence prays for dismissal of the present Anticipatory Bail Petition.

21. In view of the statement made by the police officer, who has conducted investigation and that there is no materials produced showing change of circumstances for this Court to grant an order of anticipatory bail to the petitioner, this Court is not inclined to grant anticipatory bail to the petitioner, who has alleged to have committed crime of murder of one and half year baby conspired along with A1. Accordingly, this petition seeking anticipatory bail is dismissed and the respondent police is permitted to act in accordance with law.

-sd/-

19/09/2019

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 JUDICIAL MAGISTRATE,
NO.I, PANRUTI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
PANRUTI POLICE STATION,
CUDDALORE DISTRICT.

4 MR.P.SHANMUGAM
INSPECTOR OF POLICE,
PANRUTI POLICE STATION,

CC to M/S.ARIVUDAINAMBI P. Advocate on payment of necessary
charges SR.NO.19577

CC to M/S.A.SASIDHARAN Advocate on payment of necessary charges
SR.NO.19543

CRL OP.17681/2019

Date :19/09/2019

RVR 26/09/2019