

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

Friday, the Twenty Eighth day of June Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) Nos.8144 & 8155 of 2019

S.SATHISHKUMAR PETITIONER/ ACCUSED NO.1
IN CRL OP(MD) . 8144/ 2019

1. S.NITHISHKUMAR

2. VIJAYA

3. ANUSHAA @ ULAGALAKSHMI PETITIONER/ACCUSED NO.2 TO 4
IN CRL OP(MD) . 8155/ 2019

- VS. -

STATE REP. BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
BODINAICKANOOR,
IN CRIME NO.6/2019,
THENI DISTRICT.

.... RESPONDENT/ COMPLAINANT
IN BOTH THE PETITIONS

NANDHINI

.... INTERVENOR/DEFACTO COMPLAINANT
IN BOTH THE PETITIONS

FOR PETITIONER : M/S.C.M.ARUMUGAM, ADVOCATE
(IN CRL OP(MD) . NO.8144 OF 2019)

FOR PETITIONERS: MR.V.A.DHANA ARAVINDHA BALAJI, ADVOCATE
FOR M/S.DHANA LAW ASSOCIATES
(IN CRL OP(MD) . NO.8155 OF 2019)

FOR RESPONDENT : MRS.M.ANANTHA DEVI,
GOVERNMENT ADVOCATE (CRL.SIDE) .
(IN BOTH THE PETITIONS)

FOR INTERVENOR : M/S.K.VIDYA, ADVOCATE
(IN BOTH THE PETITIONS)

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

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 417, 376, 294 (b) and 506 (ii) of IPC,, in Crime No. 6 of 2019, seek anticipatory bail.

2. Heard both sides.

3.The learned counsel appearing for the petitioners has submitted that through face book, the petitioner in in CrI.OP(MD) No.8144 of 2019/A1 had friendship with the defacto complainant and the defacto complainant introduced herself as Advocate and on believing her words, the petitioner continued his relationship with her. He further submitted that the father of the 4th accused namely Ganapathy was a defendant in O.S.No.132 of 2017 on the file of the District Munsif Court, Uthamapalayam and said Ganapathy has filed R.C.O.P.No.1 of 2018 on the file of the District Munsif Court, Uthamapalayam against one K.Varatharaj and with reference to the aforesaid cases, the petitioner/A1 consulted with the defacto complainant and asked legal opinion and thereafter, he came to know that the defacto complainant has not completed her law course and she is not an Advocate and from that date onwards, the petitioner/A1 discontinued the relationship with the defacto complainant. Thereafter, the defacto complainant lodged a false complaint on 13.05.2019 stating that on 05.02.2019 at about 7.30 p.m nearer to Chinnamanoor Parani Tiles, the petitioner/A1 raped her. He further submitted that in the typed set of papers filed by the defacto complainant, there is no material produced to show that from 02.02.2019 to 05.02.2019, the petitioner/A1 had contacted the defacto complainant. He further submitted that already the defacto complainant gave a similar complaint against one Nakkeeran and three others before the All Women Police Station, Bhavani and based on the same, a case was registered in Crime No.4 of 2010 under Sections 417, 506 (I) and Section 4 of TNPWH Act. He further submitted that in that case, after investigation charge sheet was filed and the case was taken on file in C.C.No.188 of 2010 by the learned Judicial Magistrate, Bhavani. During the trial, the defacto complainant herein compromised with the said accused persons and turned hostile and considering the same, the learned Judicial Magistrate, Bhavani, has acquitted the accused persons in that case. He further submitted that the aforesaid fact shows that only for the purpose of extracting money, she used to give complaints against some persons and after getting money, she will compromise the matter. Likewise in this case also, taking advantage of the contact over the face book, the defacto complainant has lodged a false complaint against the petitioner/A1 and his family members. He further submitted that the petitioner/A1 not at all met with the defacto complainant at any point of time and therefore the contention of the defacto complainant that the petitioner/A1 had raped the defacto complainant on 05.02.2019 is totally false. He further submitted that on

04.04.2019, the defacto complainant came to the house of the petitioner/A1 and created problem and against to that act, the petitioner/A1 has lodged a complaint before the Superintendent of Police, Theni, on 05.04.2019 and only thereafter, the defacto complainant has lodged a complaint against the petitioner and his family members on 30.05.2019. Therefore, he prayed to grant anticipatory bail to the petitioners.

4.Per contra, the learned counsel for the Intervenor/defacto complainant has submitted that the defacto complainant is only a student studying in the law college and she never stated that she is an advocate. She further submitted that since the parents of the accused in C.C.No.188 of 2010 made a request to withdraw the complaint and considering their request on humanitarian ground, the defacto complainant has compromised the matter with the said persons and she has not received any amount. She further submitted that merely because the defacto complainant has compromised the case in C.C.No.188 of 2010, it does not mean that she received any amount from the said accused persons. She further submitted that there is no material produced before the Court that she compromised the said case only after receipt of money from the accused in that case. She further submitted that even on 05.04.2019, the petitioner/A1 has sent a message to the defacto complainant about his location and invited her to that place and that itself shows that as an after thought, the petitioner has lodged a complaint on 08.04.2019 by putting anti date 05.04.2019. She further submitted that the petitioner had contact with the defacto complainant only from 12.09.2018 and that being so the contention of the petitioner/A1 that the petitioner/A1 had obtained legal opinion with regard to the cases filed in O.S.No.132 of 2017 and R.C.O.P.No.1 of 2018 is totally false. She further submitted that the petitioner had sent message stating that marriage would be performed in the month of June and that itself also shows that the petitioner had contact continuously with the defacto complainant. She further submitted that after having sexual intercourse with the defacto complainant by giving false promise that he will marry her, now, he refused to marry her and therefore, he strongly opposed this petition.

5.The learned Government Advocate (Crl.Side) appearing for the respondent has adopted the arguments of the learned counsel for the Intervenor/defacto complainant and she further submitted that the custodial interrogation of the petitioner is absolutely necessary, and hence, she also strongly opposed this petition.

6. (i) It is seen from the typed set of papers filed by the learned counsel for the defacto complainant that only from 12.09.2018, the petitioner and the defacto complainant have a contact and that being so, the contention of the petitioner that he asked the defacto complainant to give opinion with regard to the suit in O.S.NO.132 of 2017 and R.C.O.P.No.1 of 2018 is doubtful. further, in the message dated 12.09.2018 itself, the defacto complainant has not stated that she is an Advocate, but, she stated

that she works at Advocate. It is also to be pointed out that if the petitioner had entertained any doubt with regard to the profession of the defacto complainant, he should have snapped the relationship with her, but, the message dated 05.04.2019, shows that even on 05.04.2019, the petitioner sent a message to the defacto complainant informing about his location and that also led to an inference that the petitioner had sent invitation to the defacto complainant to meet him on 05.04.2019.

(ii) It is seen from the copy of the judgment produced by the petitioner in C.C.No.188 of 2010 on the file of the learned Judicial Magistrate, Bhavani, the defacto complainant has lodged a complaint against one Nakkeeran and three others under Sections 417 and 506 (i) IPC and Section 4 of Tamilnadu Harassment of Women Act, 2002. But, during the trial in the said case, both the parties compromised and in pursuance of the said compromise, the defacto complainant did not support the case of the prosecution. But, the petitioner/A1 has not produced any material to show that only after receipt of the amount from the accused persons, the defacto complainant compromised the matter.

(iii) It is also to be pointed out that though the petitioner/A1 claimed that he gave a complaint against the defacto complainant on 05.04.2019 before the Superintendent of Police, Theni, the CSR receipt shows that the said complaint was received through on-line only on 08.04.2019 at about 12.00 p.m. It shows that only after sending the message on 05.04.2019 with regard to the location, the petitioner/A1 has lodged a complaint on 08.04.2019 by putting antedate.

7. Taking into consideration of all the aforesaid facts and also submission of the learned Government Advocate (CrI.Side) that the custodial interrogation of the petitioner/A1 is absolutely necessary and also the fact that the petitioner/A1 has no made out a case for getting anticipatory bail, this Court is not inclined to grant anticipatory bail to the petitioner in CrI.OP(MD)No.8144 of 2019/A1. Insofar as the petitioners in CrI.OP(MD)No.8155 of 2019/A2 to A4 are concerned they are only parents and family members of A1. The main allegations are only against A1 and hence this Court is inclined to grant anticipatory bail to A2 to A4 with certain conditions.

8. Accordingly, A2 to A4 are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Bodi, on condition that the A2 to A4 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 A2 to A4 fail to surrender before the concerned Magistrate within a period of 15 days, this order shall stand automatically cancelled;

(ii) the A2 & A4 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. **Since A3 is a physically challenged person, the appearance of A3 is dispensed with;**

(iii) the A2 to A4 shall not tamper with evidence or witness either during investigation or trial.

(iv) the A2 to A4 shall not abscond either during investigation or trial.

(v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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].

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

9. The petition filed by A1 in CrI.OP(MD)No.8144 of 2019 is dismissed.

sd/-

28/06/2019

/ TRUE COPY /

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

TO

1 THE JUDICIAL MAGISTRATE,
BODI.

2 DO-THROUGH :
THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
BODINAICKANOOR, THENI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
<https://hcservices.ecourts.gov.in/hcservices/>
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

- +1. CC to M/S.C.M.ARUMUGAM, Advocate SR.No.10766
- +2. C.C. to M/S.C.ABUL KALAM AZAD, Advocate SR.No. 10729 & 10730
- +2. C.C. to M/S.DHANA LAW ASSOCIATES, Advocate SR.No. 10767 & 10787

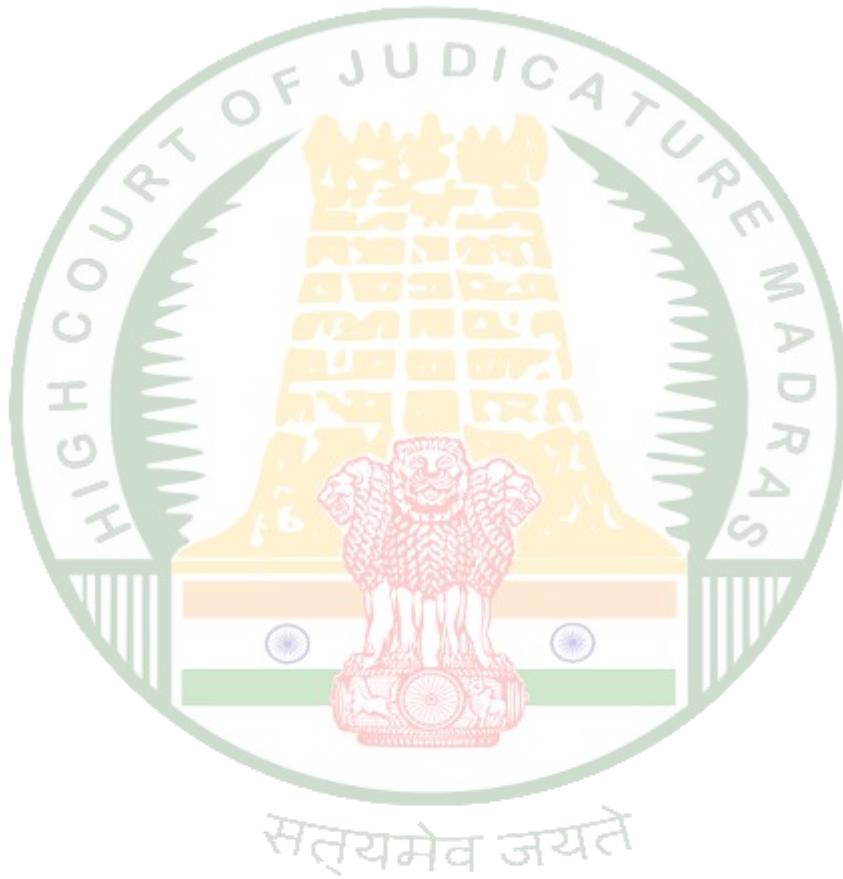
ORDER

IN

CRL OP(MD) Nos.8144 & 8155 of 2019

Date :28/06/2019

JM/JC/SAR 2/04.07.2019/6P/10C



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