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

Date on which reserved : 17/07/2019

Date on which pronounced : 23/07/2019

PRESENT

**The Hon`ble Mr.Justice P.RAJAMANICKAM**

**CRL MP(MD)No.5699 of 2019**

**in**

**Crl.O.P. (MD) .No.3309 of 2019**

1. Venkatesh

2. Ananthi

... Petitioners/Petitioners 1 & 3

Vs

The State Rep.by,  
The Inspector of Police,  
All Women Police Station, Lalgudi,  
Trichy District  
Crime No.4 of 2019.

... Respondent/Respondent

Kanmani

... Petitioner/Intervener  
in Crl.MP(MD)No.2211/2019

For Petitioner : Mr.V.Kathirvelu, Senior Counsel  
for Mr.M.Karthikeya Venkatachalapathy

For Respondent : Mr.V.Neelakandan,  
Additional Public Prosecutor

For intervenor  
/defacto complainant :Mr.S.Deenadhalayan

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

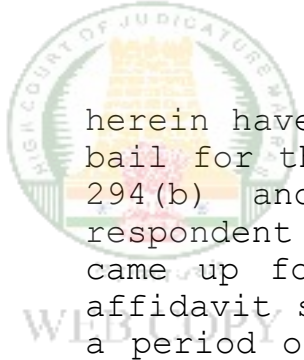
PRAYER :-

To modify the condition No.(b) imposed in Crl.OP(MD)No.3309 of 2019 dated 25.03.2019.

ORDER : The Court Made the following order :-

This petition has been filed by the accused Nos.1 and 3 to modify the condition No.(b) imposed in Crl.OP(MD)No.3309 of 2019 dated 25.03.2019.

2. The learned Senior Counsel for the petitioners has submitted that the first petitioner is the son and the second petitioner is the mother. He further submitted that the petitioners



herein have filed CrI.O.P.(MD).No.3309 of 2019, seeking anticipatory bail for the alleged offences under Sections 417, 420, 328, 376(1), 294(b) and 506(i) I.P.C in Cr.No.4/2019 on the file of the respondent Police. He further submitted that when the said petition came up for hearing on 25.03.2019, the first petitioner filed an affidavit stating that he will marry the defacto complainant within a period of 3 months from the date of receipt of copy of the said order and considering the same, this Court has granted anticipatory bail to the petitioners by imposing certain conditions and one such condition was that the first petitioner has to comply the affidavit within a period of 3 months from the date of receipt of the copy of the said order, failing which, the anticipatory bail granted by the Court shall stand automatically vacated. He further submitted that after passing of the said order, the defacto complainant frequently called the petitioners over phone and threatened to their lives. He further submitted that the defacto complainant sent her henchmen to the petitioner's house and caused serious life threat to them. She further proclaimed that she will take revenge against the first petitioner, even if she got married with him and hence, he had no idea to live with her, after the said incident. He further submitted that since the defacto complainant is very much interested and instigating the respondent Police to arrest the second accused, who is the father of the first petitioner and during the pendency of the anticipatory bail application before this Court, A-2 was in jail for about 15 days, there is no scope for marrying the defacto complainant and after marriage for smooth living with the defacto complainant and therefore, the aforesaid condition could not be complied with. He further submitted that the said condition is onerous one and the same cannot be complied with and hence, he requests to relax the said condition.

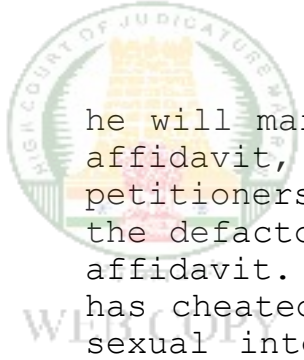
3.In support of the aforesaid contentions, the learned senior counsel for the petitioners has relied upon the following decisions:-

i)**Navaneetha Krishnan Vs State rep. By the Inspector of Police, Natrampalli Police Station, 2015 (2) MWN (Cr.) 53**

ii)**Sakthivel Vs State, rep. By the Inspector of Police, Belukurichi Police Station, Namakkal District, 2015 (2) MWN (Cr.) 438.**

4.Per contra, the learned counsel for the intervenor/defacto complainant has submitted that the first petitioner had sexual intercourse with the defacto complainant by giving false promise that he will marry her, subsequently, refused to marry her. He further submitted that the defacto complainant made a request with the first petitioner and his parents to marry her with the first petitioner and for that, they criminally intimidated her and hence, she lodged a complaint and based on the same, a case was registered. He further submitted that when the petitioners moved CrI.O.P.(MD).No.3309 of 2019, seeking anticipatory bail, the Court refused to grant anticipatory bail and at that time, the first petitioner has voluntarily filed an affidavit stating that

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he will marry the defacto complainant and only considering the said affidavit, this Court has granted anticipatory bail to the petitioners with a condition that the first petitioner should marry the defacto complainant within three months, as stated by him in his affidavit. He further submitted that already, the first petitioner has cheated the defacto complainant by giving false promise and had sexual intercourse with her and subsequently, he refused to marry her and for the purpose of getting anticipatory bail, he again gave a false promise before the Court and after getting anticipatory bail, now, he is trying to cheat the court also. He further submitted that the contention of the petitioners that after granting anticipatory bail by this Court, the defacto complainant criminally intimidated the first petitioner and his family members is totally false. He further submitted that the defacto complainant is always willing to marry the first petitioner. He further submitted that relaxing of the said condition would amount to review of the original order and the same is not permissible under the Law.

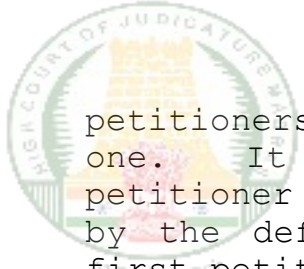
5.The learned Additional Public Prosecutor has adopted the arguments advanced by the learned counsel for the intervenor/defacto complainant and he also prayed to dismiss the said petition.

6.In **Navaneetha Krishnan Vs State rep. By the Inspector of Police, Natrampalli Police Station**, (cited supra), the Assistant Sessions Judge, Thirupattur, while granting bail to the petitioner therein, has imposed a condition that he should deposit a sum of Rs.25,000/- as cash security for each case separately. As against the said order, the accused persons preferred petitions before this Court under Section 439(i)(b) of Cr.P.C seeking modification of the said condition.

7.In **Sakthivel Vs State, rep. By the Inspector of Police, Belukurichi Police Station, Namakkal District**, (cited supra) also the Sessions Court has granted bail, directing the accused to deposit a sum of Rs.3,000/-. As against the same, the accused persons have filed petitions under Section 439(i)(b) of Cr.P.C before this Court. This Court has set aside the said conditions, as the said conditions are onerous and oppressive in nature.

8.The petitioners cannot rely upon the aforesaid decisions because, the petitioners are challenging the order passed by this Court. If the petitioners felt that the said conditions cannot be imposed by this Court, they have to file appeal against the said order. In stead of that, they cannot contend before the same Court that the condition imposed by this Court in the main order is onerous.

9.In this case, the first petitioner himself has voluntarily filed an affidavit stating that he will marry the defacto complainant within 3 months and considering the said affidavit, this Court has granted anticipatory bail to the petitioners. After availing the said benefit, it is not open to the



petitioners to take a plea that the said condition is an onerous one. It is not the case of the petitioners that the first petitioner was compelled to file such an affidavit by this Court or by the defacto complainant or the respondent Police. Since the first petitioner himself has voluntarily filed the affidavit that he will marry the defacto complainant, he has to comply the said condition. The case against the first petitioner is that he had physical relationship with the defacto complainant by giving false promise that he will marry her and thereafter, he did not keep up the said promise. Now, it appears that after filing affidavit before the Court saying that he will marry the defacto complainant, he breached his own promise before the Court also. The conduct of the petitioners cannot be appreciated. Further, if the request of the petitioners is accepted and the aforesaid condition is relaxed, it would amount to review the main order and that is not permissible under the Cr.P.C.

10. For the aforesaid reasons, this court is of the view that this petition is not maintainable and the same is liable to be dismissed. Accordingly, this petition is dismissed.

sd/-  
23/07/2019

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

TO

1. THE JUDICIAL MAGISTRATE, LALGUDI.
2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE  
TRICHY DISTRICT.
3. THE INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION, LALGUDI, TRICHY DISTRICT
4. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

+1.C.C.to M/S.M.KARTHIKEYA VENKATACHALAPATHY, Advocate SR.77134 (F)  
+1.C.C.to M/S.S.DEENADHAYALAN, Advocate SR.12170

ORDER IN  
CRL MP(MD) No.5699 of 2019 in  
Crl.O.P.(MD).No.3309 of 2019  
Date :23/07/2019

VS

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

PK/VR/SAR-4/30.07.2019 : 4P/7C