



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

Date : 08/08/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.10386 of 2019

S.Sathishkumar

... Petitioner/Accused No.1

Vs

State through the
Inspector of Police,
All Women Police Station,
Bodinaickanoor,
Theni District.
in Crime No.6 of 2019.

... Respondent/Complainant

Nandhini

... Intervener/Defacto Complainant.

For Petitioner : Mr.C.M.Arumugam, Advocate for
M/s.Dhana Law Associates,

For Respondent : Mrs.M.Anantha Devi,
Government Advocate (Crl.Side)

For Intervenor : Ms.Nandhini
Party in person

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

PRAYER :-

for Anticipatory bail in Crime No.6 of 2019 on the file of the
respondent police

ORDER : The Court Made the following order :-

The petitioner, who apprehends 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, seeks
anticipatory bail.

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

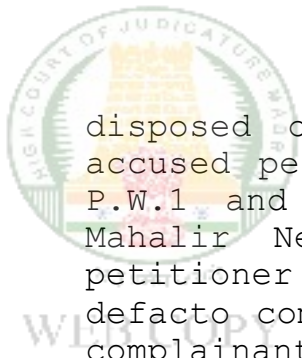


2.This is the second application seeking anticipatory bail for the offences punishable under Sections 417, 376, 294 (b) and 506 (ii) of IPC.

3.Heard both sides.

4.The case of the prosecution is that the defacto complainant and the petitioner herein became friends through face book in the month of August 2018 and loved each other. On 05.02.2019, at about 07.30 p.m, as per the instructions of the petitioner, the defacto complainant went to the petitioner's village, chinnamanur. At that time, the petitioner came in a Ford Figo car bearing Regn.No.TN-60.Z.5644 and in the said car, he picked up the defacto complainant and taken her on the side of Chinnamanur bus stop and at about 10.00 p.m, the petitioner forcibly had sexual intercourse with the defacto complainant. Thereafter, on 04.04.2019, the defacto complainant went to the house of the petitioner's house and met the petitioner's mother and informed her and at that time, the petitioner's mother criminally intimidated her and subsequently, on 05.04.2019, other accused persons came with three hooligans and gave a life threat. Hence, she lodged a complaint on 30.05.2019 before the respondent police. Based on the said complaint, FIR was registered in Crime No.6 of 2019.

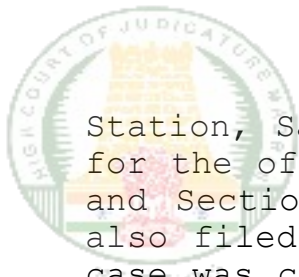
5.The learned counsel appearing for the petitioner has submitted that when the previous anticipatory bail application in Crl.OP.(MD)No.8144 of 2019 was came up for hearing, the petitioner did not have all the relevant materials with regard to the previous complaints filed by the defacto complainant against the third parties and hence, could not put forth the case properly. He further submitted that after dismissal of the earlier application, the petitioner came to know that already the defacto complainant gave a similar complaint against one Sathiskumar son of Kariyappan and his family members before the All Women Police Station, Sathiyamangalam and based on the same, FIR was registered in Crime No.4 of 2016 under Section 417, 294 (b) and 506 (i) IPC. After investigation, charge sheet was filed in that case under Sections 294 (b), 506 (I) and 376 (1) IPC and based on the same, the learned Judicial Magistrate, Sathiyamangalam has taken the case in PRC.No.8 of 2017 and subsequently, the said case was committed to the Court of Sessions, Erode, and the learned Session Judge, Erode, has taken the case on file in SC.No.98 of 2017 and made over to the Mahalir Neethimantram, Erode. He further submitted that in that case, the defacto complainant herein was examined as P.W.1 and she gave evidence that she came to know the accused persons through her friend one Saravanan and does not want to re-call all those things and she did not support the prosecution case and hence, she was treated as hostile witness. He further submitted that the learned Mahila Court Judge, Erode, after examining other witnesses, finally



disposed of the said case on 29.07.2019 and acquitted all the accused persons. He also produced xerox copy of the deposition of P.W.1 and judgment passed in SC.No.98/2017 on the file of the Mahalir Neethi mandram, Erode. He further submitted that the petitioner herein not at all having any physical contact with the defacto complainant and this is the *modus operandi* of the defacto complainant after having friendship with some persons, to give complaint for the purpose of getting money and after the purpose is over she used to turn hostile before the trial Court.

6.He further submitted that in the previous occasion also she lodged a similar complaint against one Nakkeeran and three others before All Women Police Station, Bhawani, Erode District. Based on the said complaint, a case was registered in Crime No.4 of of 2010 under Sections 417, 506 (i) IPC and Section 4 of TNPWH Act. In that case after investigation, charge sheet was filed before the learned Judicial Magistrate, Bhawani and based on the same, case was taken on file in C.C.No.188 of 2010 and in that case also during the trial, the defacto complainant did not support the prosecution and eventually, the said case was ended in acquittal and the said fact also would show the *modus operandi* by the defacto complainant. He further submitted that the defacto complainant is relying upon certain messages said to have been passed between the petitioner and herself through whats-app and those messages were manipulated for the purpose of case and no reliance can be made on the said messages at this stage. He further submitted that the reregistration of case in S.C.No.98 of 2017 and disposal of the said case, came to the knowledge of the petitioner, only after disposal of the previous anticipatory bail application and hence, he could not produce those particulars before this Court, at the time of disposal of the previous anticipatory bail application. He further submitted that the petitioner is ready to co-operate for investigation and he prayed for anticipatory bail to the petitioner.

7.Per contra, the Intervenor/defacto complainant appearing in party in person has submitted that she has not lodged any false complaint against any one. She further submitted that since one Nakkeeran gave false promise that he loved her and subsequently, he cheated her, she lodged a complaint before the All Women Police Station, Bhawani. Based on the same, a case was registered in Crime No.4 of 2010 for the offence punishable under Sections 417, 506 (i) IPC and Section 4 of TNPWH Act. After investigation, charge sheet was also filed and during the trial, since the parents of the accused therein made a request to withdraw the complaint against their sons, considering their requests, on humanitarian ground, she has compromised the matter with the said persons and turned hostile before the trial Court. She further submitted that one Sathiskumar son of Kariyappan gave a false promise and forcibly had a sexual intercourse with her and hence, she lodged a complaint against him. Based on the same, the Inspector of Police, All Women Police

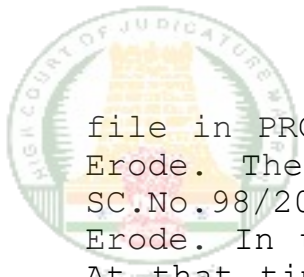


Station, Sathyamangalam had registered a case in Crime No.4 of 2016 for the offence punishable under Sections 417, 294 (b), 506 (i) IPC and Section 4 of TNPHW Act. After investigation, charge sheet was also filed under Sections 294 (b), 506 (i) IPC and 376 (1) IPC and case was committed to the Court of Sessions and during trial, since the accused persons gave life threat as they will kill her and also her mother, she turned hostile in the said case also. She further submitted that she has not received any amount from the accused persons in C.C.No.188 of 2010 or from the accused persons in S.C.No.98 of 2017. She further submitted that the Whats-app message exchanged between the petitioner and herself would clearly prove that the petitioner has demanded dowry like car, gold jewels etc.,. She further submitted that after giving false promise, the petitioner had sexual intercourse with her and subsequently, he refused to marry her. She further submitted that when she went to the house of the petitioner and informed the aforesaid facts to his mother, she also criminally intimidated her and thereafter, the other accused persons criminally intimidated her by engaging hooligans, and finds no other option, she lodged a complaint on 30.05.2019, before the respondent police. She further submitted that she is ready to produce her cell phone for the purpose of getting expert's opinion from forensic department and therefore she strongly opposed to grant anticipatory bail to the petitioner.

8.The learned Government Advocate (Crl.Side) has adopted the arguments advanced by the learned counsel for the Intervenor/defacto complainant and she has also opposed for granting anticipatory bail to the petitioner.

9.Insofar as the defacto complainant is concerned, this is the third complaint for her. The first complaint was lodged by her before the All Women Police Station, Bhawani against one Nakkeeran and three others. Based on the same, a case was registered in Crime No.4 of 2010 for the offence punishable under Sections 417, 506 (i) IPC and Section 4 of TNPHW Act. After investigation, in the said case, charge sheet was filed and the case was taken on file in C.C.No.188 of 2010 on the file of the learned Judicial Magistrate, Bhawani. During trial, the defacto complainant did not support the case of the prosecution. On the contrary, she turned hostile and considering the same, the learned Judicial Magistrate, Bhawani, has acquitted the accused persons in that case.

10.The second complaint was lodged by her against one Sathiskumar, son of Kariyappan and his family members before the All Women Police Station, Sathiyamangalam and based on the same, FIR was registered in Crime No.4 of 2016 for the punishable under Sections 417, 294 (b), 506 (i) IPC and Section 4 of TNPWH Act. After investigation, in that case also charge sheet was filed under Section 294 (b), 506 (i) and 376 (1) IPC and based on the same, the learned Judicial Magistrate, Sathiyamangalam has taken the case on



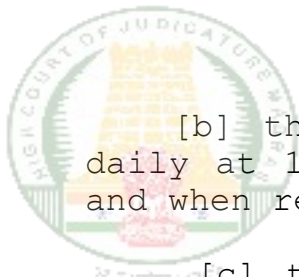
file in PRC.8/2017 and committed the case to the Court of Sessions, Erode. The learned Sessions Judge has taken the case on file in SC.No.98/2017 and made over the same to the Mahalir Neethi Mandram, Erode. In that case, the defacto complainant was examined as P.W.1. At that time also she has not deposed in support of her complaint. On the contrary, she has stated that she does not want to re-call all those things. Further, she has stated that she does not remember anything. Hence, she was treated as hostile witness by the prosecution and she was cross examined on the side of the prosecution. Even during cross examination by Public Prosecutor, she has not stated that she was threatened by the accused persons and hence, she turned hostile. On the contrary, she has admitted that she has compromised with the accused persons. The trial Court taking into consideration of the aforesaid facts finally acquitted all the accused persons in that case.

11.It is also to be pointed out that in the statement, which was recorded under Section 164 Cr.P.C before the learned Judicial Magistrate, Podinaickanoor, on 11.07.2019, the defacto complainant has stated that she has completed her law course and she is waiting to enroll as advocate, but, when she was examined before the Mahalir Neethi Mandram, Erode, in SC.No.98/2017 on 02.01.2019, in her deposition, it was recorded as she was an advocate.

12.Taking into consideration all the aforesaid facts, this Court is of the view that unless the cell phone of the defacto complainant is sent to the forensic lab and retrieved the messages, it would not be safe to rely upon the printout produced by the Intervenor at this stage, and also the conduct of the Intervenor that she already filed two similar type of cases and in those cases, during trial, she did not support the prosecution case and compromised the case with accused persons, this Court is inclined to grant anticipatory bail to the petitioner by imposing conditions.

13.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his 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 petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) 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:

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



[b] 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 for the interrogation.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] 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].

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
08/08/2019

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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,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. CC to M/S.DHANA LAW ASSOCIATES Advocate SR.No.13260
+2 CC to M/s.Nandhni, Party -in-person, SR.No.13377,13288

ORDER
IN
CRL OP(MD) No.10386 of 2019
Date :08/08/2019

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