



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19/08/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.11391 of 2019

Ayyappan

... Petitioner/ A3

Vs

The State rep by
The Inspector of Police,
Patteeswaram Police Station,
Kumbakonam,
Thanjavur District.
Crime No.70 of 2013

... Respondent/Complainant

For Petitioner : M/s.C.Hitesh Kumar,
Advocate.

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

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

for bail in Crime No.70 of 2013 on the file of the Respondent Police

ORDER : The Court Made the following order :-

The petition has been filed by Accused Nos.3 seeking bail for the alleged offence punishable under Sections 147, 148, 294 (b), 324 and 302 of IPC, in Crime No.70 of 2013.

2. Heard both sides.

3.The respondent herein has registered a case against one Ambikavathi and seven others in Crime No.70/2013 under Sections 147, 148, 294 (b), 302 (2 counts) r/w 34 IPC and 149 IPC. The petitioner herein has been arrayed as A3 and he was arrested and remanded to judicial custody. Since investigation was not completed and charge-sheet not filed within 90 days, the petitioner herein was released



on bail under Section 167 (2) Cr.P.C., by the learned Judicial Magistrate, Kumbakonam on 23.07.2013. Subsequently, in the said case, charge sheet was filed and the case was committed to the Court of Sessions, Thanjavur and the case was taken on file in SC.No.71/2015 and made over to the Additional District and Sessions Judge, Kumbakonam. When the petitioner herein went to the said Court to attend the hearing on 17.11.2016, it was alleged that the petitioner herein and his mother attempted to commit murder of the defacto complainant namely, Oviya and hence, the defacto complainant lodged a complaint before the Inspector of Police, Kumbakonam East Police Station, Thanjavur and based on the same, FIR in Crime No.492/2016 under Sections 294 (b), 323, 307 and 195 A IPC has been registered against the petitioner herein and his mother. In that case, the petitioner herein and his mother were arrested and remanded to judicial custody on 29.11.2016. Subsequently, the learned Sessions Judge, Thanjavur, has granted bail to the petitioner herein and his mother on 08.06.2017. Based on the said FIR, the respondent has filed Crl.M.P.No.127 of 2016 in S.C.No.71/2015 before the Mahila Court, Thanjavur to cancel the bail, which was granted to the petitioner herein and his mother (A4). The learned Mahila Court Judge, Thanjavur, by the order dated 17.07.2019 has partly allowed the Crl.M.P.No.127 of 2016 and cancelled the bail insofar as the petitioner herein is concerned, however, dismissed the said petition insofar as A4 is concerned. In pursuance of the said order, the petitioner has surrendered before the Mahila Court, Thanjavur on 17.07.2019 itself. Aggrieved by the cancellation of bail, the petitioner has filed the present petition.

4.The learned counsel appearing for the petitioner has submitted that since the petitioner was released on bail under Section 167 (2) Cr.P.C., the defacto complainant gave a false complaint stating that the petitioner herein and his mother attempted to commit murder her by stating that she should not give evidence in the above case and based on the same, the petitioner and his mother were arrested and remanded to judicial custody. He further submitted that when the petitioner and her mother moved bail application before the learned Sessions Court, Thanjavur in Crime No.492/2016, the Inspector of Police, Kumbakonam East Police Station has not raised serious objection. Considering the same, the learned Sessions Judge, Thanjavur has granted bail to the petitioner on 08.06.2017. But the respondent has moved Crl.MP.(MD)No.127 of 2016 before the learned Mahila Court, Thanjavur. The learned Mahila Court Judge, without considering the fact that the petitioner has not made any attempt to tamper the witnesses and only with a view to detain the petitioner in jail, the defacto complainant has lodged a false complaint. He further submitted that the petitioner has voluntarily surrendered before the Mahila Court on 17.07.2019 itself and from that date onwards he is in custody, and therefore, he prayed to grant bail to the petitioner.



5.Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that on 17.11.2016, the petitioner and other accused persons went to the Court of Additional Session Judge, Kumbakonam to attend the hearing and that, the defacto complainant also came there and that on seeing the defacto complainant, the petitioner attempted to commit murder of the defacto complainant by pressing her neck and his mother has also assaulted on the back of the defacto complainant with hands. He further submitted that with regard to the said occurrence, a case was registered in Crime No.492/2016 under Sections 294 (b), 323, 307 and 195 A IPC before the Kumbakonam East Police Station, Thanjavur and the petitioner and his mother were arrested in that case and subsequently, the learned Sessions Judge, Thanjavur has granted bail to them. He further submitted that since the petitioner and his mother attempted to commit murder of the witness, the respondent has moved Crl.M.P.No.127 of 2016 before the Mahila Court, Thanjavur, to cancel the bail and the learned Judge after considering the rival submissions has cancelled the bail insofar as the petitioner herein concerned. However, she dismissed the said petition as against the petitioner's mother (A4). He further submitted that on 17.07.2019 itself, the petitioner has surrendered before the concerned Court and from that date onwards, he is in custody. He further submitted that if the petitioner is released on bail, he may again indulge in threatening the witnesses and tamper the evidence and therefore, he strongly opposed this petition. However, he fairly conceded that trial not yet commenced in S.C.No.71/2015.

6.Though the learned Additional Public Prosecutor has fairly conceded that trial not yet commenced in S.C.No.71/2015, in the FIR, which was registered in Crime No.492/2016, it is stated that the defacto complainant went to the Additional Sessions Court, Kumbakonam, to give evidence in pursuance of the summons received by her. Further, she has stated that the petitioner herein has pressed her neck and tried to murder her. But, the Wound Certificate would show that there was no external injury on her. Taking into consideration of the aforesaid facts, it appears that the learned Sessions Judge has granted bail to the petitioner in Crime No.492 of 2016 on the file of the Inspector of Police, Kumbakonam East Police Station, Thanjavur. But, without taking into consideration of the aforesaid facts, the learned Mahalir Neethimandram Judge (Fast Track Mahila Court), Thanjavur, has cancelled the bail which was already granted to the petitioner. Therefore, this Court is inclined to grant bail to the petitioner by imposing conditions.

[a]the petitioner is ordered to be released on bail on his executing 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 learned Additional Sessions Judge, Kumbakonam.



[[b]the petitioner shall report before the respondent/police daily at 10.00.a.m for a period of one month and thereafter, as and when required for the interrogation.

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

[d]the petitioner shall not tamper the evidence or witness 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 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].

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

sd/-

19/08/2019

/ TRUE COPY /

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

TO

1.THE ADDITIONAL SESSIONS JUDGE, KUMBAKONAM.

2.THE INSPECTOR OF POLICE,
PATTEESWARAM POLICE STATION,
KUMBAKONAM, THANJAVUR DISTRICT.

3.THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to Mr.C.HITESH KUMAR Advocate SR.No.13664

ORDER

IN

CRL OP(MD) No.11391 of 2019

Date :19/08/2019

dss

TK/VR/SAR.4/19.08.2019/4P/6C