

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.11580 of 2020

S.Surendira Kumar

... Petitioner

Vs.

Inspector of Police
Villupuram Taluk Police Station
Villupuram.
Crime No.1490 of 2020

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail pending investigation in crime No.1837 of 2020 on the file of the Inspector of Police, Perambalur Police Station, Perambalur District.

For Petitioner : Mr.A.Ashvathaman

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl. Side)

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 13.07.2020 for the offence punishable under Section 174 Cr.P.C. later altered to Section 304(ii) of IPC and read with Section 3 and 6 of Explosive Substances Act, 1908 in Crime No.1837 of 2020 seeks bail.

2. The case of the prosecution is that on 13.07.2020 the defacto complainant namely Riyaz Ali lodged a complained before the respondent police stating that on 12.07.2020 at about 2.30 p.m. while he was at Villupuram New Bus Stand, he had seen a post in the Face Book in the name of Varma Cartoonist wherein, he called upon the Islamic leaders to come forward to condemn the Islamic Group functioning behind the "Karuppar Kootm". Further he had stated that they must declare that there is no connection between this Islamic Group and Islam people and that all Jamath should remove Hasip Khan, who is functioning behind Karuppar Kootam from Islam within 24 hours, failing which cartoon about Prophet Nabi will be released in another 24 hours. Further, it had been stated that D.K. DMK Islamic groups are to be solely held responsible for the consequences of Hindu Muslim war and that by posting such post, the accused has incited religious violence and also attempted to create unnecessary religious clashes between Hindu- Muslim in Tamil Nadu.

3.The learned counsel appearing for the petitioner would submit that the petitioner is a Cartoonist and that he had only made post stating that the persons behind Karuppar Kootam should take responsibility and action should be taken against those persons. He would further submit that the petitioner had only expressed his anguish and that he had not published any derogatory remarks against Prophet Mohammed. He would submit that the opinion expressed by the petitioner is safeguarded under the freedom of expression under Article 19(1)(a) of the constitution of India and that no untoward incident had happened thereafter. He would further submit that the petitioner has been suffering incarceration from 13.07.2020. Hence, he prays for grant of bail to the petitioner.

4. The responded has filed a detailed counter. The learned Government Advocate (Crl. Side) would vehemently oppose stating that by posting such offensive post in Face Book the petitioner had intended to create and incite violation between Hindus and Muslims in Tamil Nadu.

5. Heard both sides. Perused the materials available on record.

6.Taking into consideration of the facts and circumstances, the submissions made by the learned counsels and considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute his own bond for a sum of Rs.10,000/- (Rupees ten thousand only), before the Superintendent of the concerned prison, in which the petitioner has been confined.

(b) the petitioner on release from prison, shall report before the respondent police daily at 10.30 a.m. until further orders.

(c) thereafter on his release, within a period of two weeks after lifting of lockdown or commencement of the Court's normal functioning whichever is earlier, shall surrender before the 1st Judicial Magistrate, Villupuram, and furnish two sureties for a sum of Rs.10,000/- each failing which the bail granted by this Court shall stand dismissed automatically.

(d) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(e) the petitioner shall not commit any offences of similar nature;

(f) the petitioner shall not abscond either during investigation or trial;

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(h) On breach of any of the aforesaid conditions, the learned Judicial 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];

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

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-

06/08/2020

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, VILLUPURAM

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE
VILLUPURAM TALUK POLICE STATION,
VILLUPURAM.

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

CC to M/S. A.ASHVATHAMAN Advocate on payment of necessary charges

CRL OP.11580/2020

Date :06/08/2020

RVR 14/09/2020