

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.09.2020

CORAM :

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

Cr1.O.P.No.12839 of 2020

S. Ve. Shekher

... Petitioner

Vs.

The State Rep by its
The Inspector of Police,
Central Crime Branch,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Periamet, Chennai - 600 007.Respondent

PRAYER: Criminal Original Petition is filed under Section 438 of Criminal Procedure Code to enlarge the petitioner on bail in the event of his arrest in Crime No.260 of 2020 on the file of the respondent police.

For Petitioner : Mr.Venkatesh Mahadevan

For Respondent : Mr.A.Natarajan, Public Prosecutor
Assisted by
Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioner, who apprehends arrest at the hands of the respondent police for the offence punishable under Section 2 of the Prevention of Insults to National Honour Act, 1971, in Crime No.260 of 2020 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant is that petitioner had dishonored the Indian National Flag by delivering his speech on 03.08.2020, which was uploaded in YouTube. Hence, the complaint.

3. The learned Counsel for the petitioner would submit that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution. He would submit that the petitioner relying on the speech of Mahatma Gandhiji which has been published in "Collected Works of Mahatma Gandhi in Young India Vol.23 (6 April 1921 -21 July 1921)" dated 13.04.1921, had delivered such a speech. He would submit that the petitioner is a God fearing, and pious person and he has maintained an impeccable record as a respectable

and patriotic citizen and has earned a good name in the society. He would submit that the petitioner has utmost respect for the country and the national flag of the country. He would further submit that the petitioner is a former member of the Tamil Nadu Legislative Assembly having elected from the Mylapore Legislative Constituency for the period of 2006 to 2011. He would further submit that the petitioner has received several accolades from the general public as well as from the then Hon'ble Chief Minister of Tamil Nadu Late. Miss. J. Jayalalitha for his tireless work as a M.L.A. and he has also done yeoman services to his constituency including clearing the underground channels leading to the Mylapore Kabaleeswarar Temple Tank and the Chithirakulam Tank in Mylapore. Further, he is also a respected Artiste having acted in several films and drams. The learned counsel for the petitioner would further submit that the petitioner has also filed an affidavit of undertaking wherein, he has sworn that he never had an intention to cause insult to the Indian National Flag and that he has delivered the speech basing reliance on the speech of the Father of our Nation. The learned Counsel would further submit that the petitioner has also expressed his remorse for such incident and prays for grant of anticipatory bail to the petitioner.

4. Mr.A.Natarajan, Learned Public Prosecutor for the State of Tamil Nadu would submit that the petitioner delivered a speech insulting and dishonouring the Indian National Flag. The speech was uploaded in you tube, based on which a case has been registered. He would submit that the petitioner was issued a notice under Section 41A of Cr.PC by the respondent and the petitioner had in compliance of the summons appeared before the respondent and cooperated for the investigation. He would further submit that the petitioner has also filed an affidavit of undertaking expressing his remorse and the Government has also accepted the explanation and apology rendered by the petitioner.

5. Heard the learned Counsels on both sides.

6. For the sake of reference, the relevant portion of the affidavit of undertaking of the petitioner is extracted hereunder;

12. I submit, undertake and assure to this Hon'ble Court that for the rest of my lifetime also, I would never utter any word or act in any manner which would cause an insult to our Honourable Indian National Flag, since I value patriotism for our Mother Land and Honour to our Indian National Flag much more than anything material or even more than my parents or any of the near and dear ones to me.

13.I submit that I raised those questions in my speech to the Hon'ble Chief Minister of Tamil Nadu, only with the firm belief that Mahatma Gandhi, the Father of our Nation has in his own words documented the importance of the colours in the Indian National Flag that people of all religious faiths shall always stand united and the same is represented as colours in the Indian National Flag which are inseparable and that there shall be no separation amongst the people of this great Nation on the basis of their religious faiths.

14. I submit that I am definitely remorseful of having raised those questions to the Hon'ble Chief Minister of Tamil Nadu, since I feel that any statement that he makes would be from his perspective and he is the best judge of his own statements."

7. Taking into consideration the facts and submissions of the learned Counsel, this Court is inclined to grant anticipatory bail to the petitioner.

8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Metropolitan Magistrate, CB CID - CCB Cases, Egmore, Chennai, on condition that the petitioner shall execute a separate 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 the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent Police as and when required for 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 abscond, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-

16/09/2020

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 METROPOLITAN MAGISTRATE
COURT, CBCID-CCB CASES,
EGMORE, CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH,
NO.132, COMMISSIONER OFFICE BUILDING,
EVK SAMPATH ROAD, VEPERY,
PERIAMET, CHENNAI 600 007

CC to M/S.VENKATESH MAHADEVAN Advocate on payment of necessary charges

+1 CC TO THE PUBLIC PROSECUTOR SR.6310

CRL OP.12839/2020

Date :16/09/2020

RVR 06/10/2020

WEB COPY