

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.11.2020

CORAM :

THE HON'BLE Mr. JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.18344 of 2020

S.S.Syed Ibrahim Sha

... Petitioner

Vs.

State by

The Inspector of Police

N-1, Royapuram Police Station

Chennai

(Cr.No.4099 of 2020)

.... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail, pending investigation in Crime No.4099 of 2020, on the file of the respondent police.

For Petitioner : Mr.K.Kannan

For Respondent : Mr.C.Raghavan
Government Advocate

For Defacto Complainant/

Intervenor : Mr.C.Vivekanandan

O R D E R

(The cases have been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 19.10.2020 for the offences punishable under Sections 341, 294(b), 506(ii), 307 IPC read with Section 25(9) of Arms Act, in Crime No.4099 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner is the single accused in this case. The defacto complainant/Mohamed Ansarudeen is none other than the petitioner's wife's elder sister's son. The relationship between the petitioner and his wife was not cordial for the past six months for the reasons that the petitioner's wife and his elder sister while they were residing as neighbours in the Salma Classic Place, Royapuram, Chennai - 600013 on the influence of her sister the petitioner's wife failed to take care of the petitioner and his family members and she had not even prepares food for the family. Hence, the petitioner had to shift his residence from the said flat to Casagrande Apartments, NRT Road, Royapuram, Chennai. On 18.10.2020 at about 7 a.m., the respondent police received information from the Government Stanley Medical College and Hospital, Chennai, that the defacto complainant Mohammed Ansarudeen had

sustained bullet injury on his left hand and he was taking treatment as an inpatient. When the respondent police enquired the defacto complainant Mohammed Ansarudeen, he informed that on 17.10.2020 at about 10.00 p.m., the petitioner who is his junior-father, shouted at them that the Cordiality in his family is spoiled because os his mother and asked them not to encourage and entertain his wife. Further, he used abusive words and scolded the defacto complainant and his family members and warned them that he would do away his wife and defacto complainant with his licensed gun/revolver. Fearing danger to the life of his junior mother, the defacto complainant along with his friend Mani had gone to the house of the petitioner and the defacto complainant had asked his friend Mani to stay down and he alone went up to the fourth floor of the petitioner's flat wherein, his aunt/the petitioner's wife, opened the door and informed him that the petitioner was in a fit of rage and is holding his licensed gun and asked him to leave. At that time, the petitioner who was hiding behind the bathroom, door, had opened fire in his gun pointer the floor and thereafter, he attempted to fire on the defacto complainant who immediately ducked down and saved himself, otherwise, it would have pierced his chest. However, the bullet had pierced his left hand causing injury. Due to which, the petitioner sustained grievous injuries and got admitted in the hospital and the case came to be registered.

3. The contention of the learned Counsel for the petitioner is that the petitioner is a hard working person who owns a sweat shop by his hard work and with dedication made a good strides in his business. He would further submit that the petitioner was suffering from diabetics and heart ailments. In fact, earlier the petitioner was residing along with the defacto complainant as neighbors. Since, the petitioner's wife and the defacto complainants mother are sisters, the petitioner's wife was in the habit of visiting her elder sister's house and chit chat with her sister without preparing food and taking care of the petitioner and his family members. Hence, the petitioner shifted his residence to a new apartment namely Casagrande. Despite the same, on 17.10.2020. when the petitioner after completing his hard work, had come back to his house, the petitioner's wife had gone to her elder sister's house and returned home at about 9 p.m. By the time, the petitioner being a diabetic and heart patient, had some health discomfort. Thereby, when his wife entered his house, he questioned the same and thereafter, he called the defacto complainant's house over phone and informed them not to encourage his wife to visit their house. From the other end, abusive and threatening words were uttered which infuriated the petitioner to shout back and he disconnected the phone. Thereafter, the defacto complainant along with five of his friend had come to his house to attack the petitioner and knocked the door of the petitioner's house. The petitioner fearing for his life, hidden behind the bath room door with his licensed revolver to save himself. At that time, the defacto complainant attempted to break open the bathroom door. With fear, the petitioner opened the door, at that time, he was assaulted by the defacto complainant and his friends. In the melee, the licensed revolver which was with the petitioner, accidentally triggered due to which, the petitioner as well as the

defacto complainant sustained injuries. The petitioner got admitted in the Apollo Hospital, Chennai, for the injuries. He would further submit that in fact, the defacto complainant and his friends are the aggressors who had come and attacked the petitioner who is a diabetic and heart patient. Taking advantage of the accidental firing of the licensed gun, a false complaint has been given as if, the petitioner had threatened and caused injury on the defacto complainant and his family members. He would further submit that the defacto complainant was initially taking treatment in the Government Stanley Medical College and Hospital latter in a private hospital and thereafter he was discharged. The petitioner is in confinement for more than 40 days from 19.10.2020 and that the petitioner's licensed gun alleged to have been used in this case, already seized by the respondent police. Hence, he prays for grant of bail.

4. Mr.Vivekananthan, the learned counsel for the intervenor would submit that the petitioner had phoned and threatened the defacto complainant that the entire family would be wiped out using his licensed gun. Further, he also used abusive words against them. The defacto complainant who had feared for the safety of his aunt's life, had gone to the petitioner's house along with his friend to rescue her. In fact he had asked his friend to stay in the ground floor and that the defacto complainant alone had gone to the 4th floor of the flat. At that time, the petitioner who was hiding behind the bathroom door with opened fire on the defacto complainant. Immediately, the defacto complainant ducked down to save his life or otherwise, he would have lost his life. However, the defacto complainant sustained injury on his left hand and he got admitted in the Government Stanley Hospital and taken treatment as inpatient from 18.10.2020 to 29.10.2020 and thereafter, for further treatment, he was admitted in a private hospital namely Kumaran Hospital till 03.11.2020. He would further submit that the petitioner is having a licensed gun which is a threat to the family members of the defacto complainant. Further, the defacto complainant had incurred around Rs.3 lakhs towards his treatment for the injuries he had sustained.

5. At his juncture, the learned Counsel for the petitioner would submit that the petitioner without prejudice to his defence, is willing to pay a sum of Rs.1,00,0000/- to the defacto complainant on humanitarian consideration.

6. The learned Government Advocate would submit that there was a family dispute between petitioner and his wife. The petitioner's wife used to visit her elder sister regularly. While so, on 17.10.2020 she had gone to meet her elder sister and came back home late at 9 p.m. Infuriated by the visit of his wife, the petitioner shouted at his wife and thereafter rang up to the defacto complainant's house and also shouted at them. Further, he had abused them and threatened them to do away with his licensed gun and that the threat was so eminent. Thereby, the defacto complainant feared for safety of his aunt and had gone to rescue her. At that time, the petitioner had fired on the defacto complainant who luckily survived and sustained injury on his left hand. Thereafter, he was admitted in the Government Stanley Hospital and took treatment for 10 days and thereafter, for further

treatment, he got admitted in a Private Hospital namely Kumaran Hospital, Chennai. He would further submit that the petitioner's licensed gun has been seized and the investigation is yet to be completed.

7. Considering the rival submissions and on perusal of materials, it is seen that there was a family dispute and a brooding discord between the petitioner and his wife. The petitioner's wife used to visit her sister's house often and failed to take care of the petitioner and his family members which led to such incident on the fateful day. When the petitioner who is a diabetic and heart patient, had come to his house after completion of his work, found his wife coming back from her sister's place at about 9 p.m. due to which, a fight arose between them and that the petitioner had called the defacto complainant and shouted at them over phone. Therefore, the defacto complainant had come to the petitioner's house at that time, the occurrence took place inside the petitioner's house. It is also seen that the petitioner's explanation is that the licensed gun was used to save himself and it had accidentally fired due to which, the petitioner also sustained injuries and the petitioner is a diabetic patient cannot be brushed aside.

8. Further, taking into consideration that the petitioner without prejudice to his defence, has come forward pay a sum of Rs.1,00,000/- to the defacto complainant for the expenses incurred by him for his treatment and the licensed gun/revolver which is alleged to have been used in this case, already seized by the respondent police and also considering the period of incarceration undergone by the petitioner from 19.10.2020, this Court is inclined to grant bail to the petitioner subject to the following conditions;

9. Accordingly, the petitioner is directed to deposit a sum of Rs.1,00,000/- (Rupees One Lakh Only) to the credit of the defacto complainant's Account No.6247173026, Indian Bank, Harbour Branch. On such deposit and production of proof, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a likesum to the satisfaction of the learned XVI Metropolitan Magistrate, George Town, Chennai, and on further conditions that;

(a) the petitioner on his release from prison, shall stay at Ramanathapuram and report before the Keezhakarai Police Station everyday at 10.30 a.m. for a period of two weeks. Thereafter, report before the respondent police daily at 10.30 am. for a period of two weeks and thereafter, as and when required for interrogation.

[b] The said deposit amount of Rs.1,00,000/- is only on a humanization consideration which will not be construed as admission of the guilt of the petitioner and in no way affect the rights of the petitioner.

(c) 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;

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

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

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

(g) on breach of any of the aforesaid conditions, the learned Judicial 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];

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

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

-sd/-

27/11/2020

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 XVI METROPOLITAN MAGISTRATE,
GEORGE TOWN, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE,
CHENNAI (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
N1 ROYAPURAM POLICE STATION,
CHENNAI.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI

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

6 THE OFFICER INCHARGE,
KEEZHAKARAI POLICE STATION,
RAMANATHAPURAM.

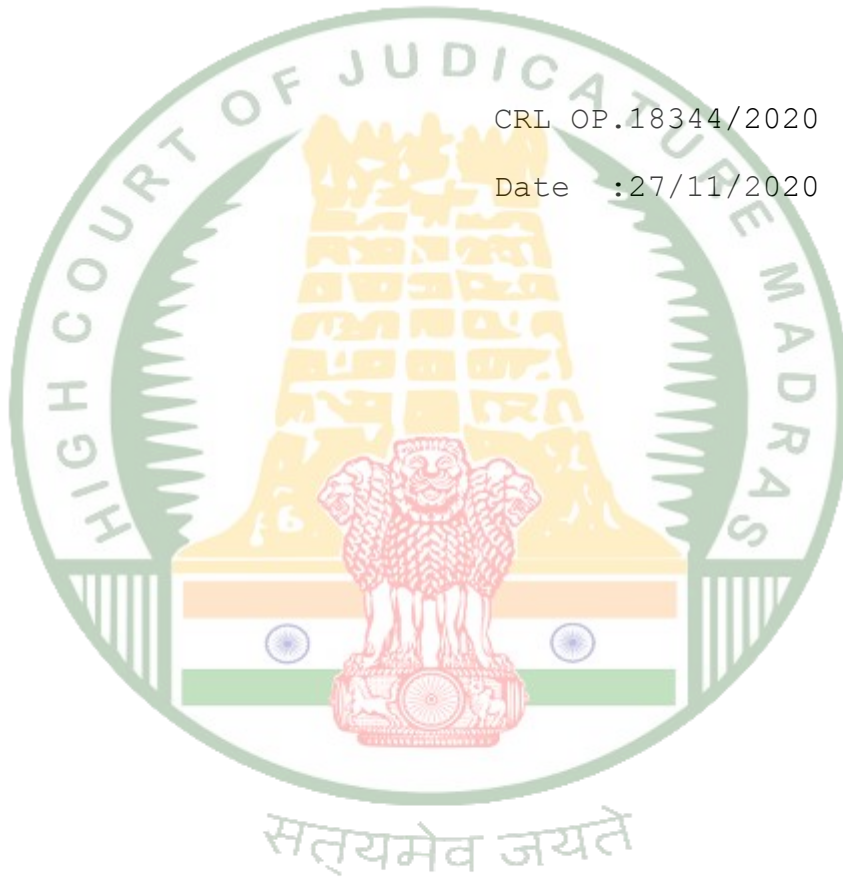
CC to M/S.K.KANNAN Advocate on payment of necessary charges
Sr.7797

CC to M/S.R.VIVEKANANTHAN Advocate on payment of necessary charges
Sr.7808

CRL OP.18344/2020

Date :27/11/2020

RVR 30/11/2020



WEB COPY