

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.19037 of 2020

Madhumitha Samantha

... Petitioner

Vs.

The State rep. By
The Inspector of Police
All Women Police Station
Adyar
Chennai
(Crime No.7 of 2019)

... Respondent

Prayer: Criminal Original Petition filed under Section 438 of Criminal Procedure Code, praying to enlarge the petitioner on bail in the event of her arrest in Crime No.7 of 2019 pending on the file of the respondent police.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences under Sections 498(A), 406, 420, 384 and 506(i) of IPC, in Crime No.7 of 2019 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that one Sandipa Palit, Wife of the 1st accused by name Partha Pratim Kundu lodged a complaint before the respondent stating that she was married to the 1st accused on 25.05.1996 at Calcutta and from the date of marriage, domestic violence was done to the de-facto complainant and thereafter, they moved to California and there also, she was harassed. The de-facto complainant while living at California, all the joint funds were blocked by her husband by obtaining order on 2003 and in her absence, exparte order was also obtained and continuing threatening, complaining and blocking from having a lawyer and preventing from getting any maintenance and access to own joint money and taken her jewels with the assistance of the petitioner herein and hence the complaint.

3. The learned counsel for the petitioner would submit that one Sandipa Palit, Wife of the 1st accused by name Partha Pratime Kundu was married to the 1st accused on 25.05.1996 at Calcutta and thereafter, the de-facto complainant as well as her brother were living in Calcutta and California. He would further submit that the petitioner is resident of Calcutta and she is living separately with her husband and her family members. Thereafter, the petitioner had gone to Canada during August 2020 and returned from Canada on 30.11.2020. On her arrival at Delhi at 1.00 a.m i.e., today, on the request of the Deputy Commissioner of Police, Adyar, a Look Out Circular was issued and the immigration authorities, Delhi Airport detained the petitioner and thereafter brought the petitioner by air to Chennai today morning and she been shown arrest and her arrest has been intimated to her husband. He would further, that the petitioner is no way connected with the alleged offence. He would further submit that the alleged offence is said to have taken place at California and the marriage took place at Calcutta and cause of action arose in Chennai to entertain the complaint. Further, it is a case primarily arise out of matrimonial dispute. He would further submit that the Apex Court time and again given a direction in the case of matrimonial dispute that the police must be cautious in apprehending the family members of the husband. He would further submit that the petitioner is the sister of A1, who is the husband of the de-facto complainant and the petitioner is aged about 65 years. Further, he would submit that the arrest of the petitioner is illegal and is in violation of the dictums laid. Further, this Court in the case of **Inspector of Police, Zam Bazaar Police Station, vs. Nakkiran Gopal** reported in **2019 I CTC 497**, has given guideline while remanding a person.

4. The learned Additional Public Prosecutor would submit that in this case, on the strength of the Look Out circular, the petitioner had been detained by the Immigration Authorities, Delhi Airport. Thereafter, the same was informed to the Inspector of Police, All Women Police Station, Adyar who have brought her to Chennai by air and today, her arrest has been intimated to her husband. He would further submit that in view of the arrest effected, this anticipatory petition cannot be entertained before this Court.

5. Heard both sides.

6. Considering the rival submissions and on a perusal of the records, it is seen that in this case, the marriage between the de-facto complainant and the petitioner's brother/A1 had taken place on 25.05.1996 and they were living in Calcutta and California, the petitioner's brother had obtained exparte divorce order in 2003 at California, what happened to the matrimonial dispute is not known, however the complaint is of the year 2019. Further, the Look Out Circular has been issued on 03.02.2020. It is further stated that no 41-A notice was issued and nothing to show that the petitioner failed to comply 41-A notice. The Apex Court in the case of **Arnish Kumar vs. State of Bihar** reported in **2014 8 SCC 273** has issued guideline in dealing in cases of matrimonial offences, during the period of

pandemic, the respondent police acting in such alacrity causes concern.

7. Heard the petitioner approached this Court earlier, this Court might have given some positive direction, now the petitioner is arrested in this case. In view of the same, this Court reminds the remanding Magistrate to follow the guidelines issued by this Court in the case of **Inspector of Police, Zam Bazaar Police Station vs. Nakkiran Gopal** reported in **2019 I CTC 497**. The personal liberty of an individual is a primary concern which could be protected and safeguarded.

8. With the above direction, this Criminal Original Petition is dismissed.

-sd/-
01/12/2020

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 INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
ADYAR, CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S.R.C.PAUL KANAGARAJ Advocate on payment of
necessary charges SR.No 7873

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CRL OP.19037/2020
Date :01/12/2020

MN-07/12/2020