



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Twenty Third day of September Two Thousand and Twenty

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PRESENT

The Hon'ble Mr. Justice B.PUGALENDHI

CRL OP(MD) No.10099 of 2020

1 K.S.VIJAYAKUMAR
2 K.SELVAM
3 S.ANANTHI
4 S.MANIKANDAN

... PETITIONERS/
ACCUSED RANK NOT KNOWN

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THENI DISTRICT.
CR.NO. NOT KNOWN OF 2020.

...RESPONDENT/COMPLAINANT

M.P.S.ANBUCHELVI

...PETITIONER/INTERVENER/
DEFACTO COMPLAINANT

For Petitioner : MR.VEERAKATHIRAVAN,
Senior counsel for
M/S.VEERA ASSOCIATES.

For Respondent : MR.A.ROBINSON,
Government Advocate (Criminal Side)

For Intervener : MR.T.K.GOPALAN
Advocate.

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

PRAYER:

For anticipatory bail in Cr.no.not known of 2020 on the file of the respondent police.

ORDER : The Court Made the following order :-

The petitioners moved this application for Anticipatory Bail in the event of their arrest in connection with Crime No. Not known/2020 on the file of the Inspector of Police, All Women Police Station, Theni District, for the offences under Sections 498A,



506(i), 294(b) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

2.The learned Government Advocate (Criminal Side), on instructions, submits that the Superintendent of Police, Theni, has received a complaint from one Anbuselvi, wife of the first petitioner, with certain allegations against the petitioners and the same is forwarded to the respondent Police for enquiry.

3.Mr.T.K.Gopalan, learned Senior Counsel, representing the learned counsel for the complainant, submits that the marriage between the first petitioner and the complainant was solemnized on 21.10.2010 and they are having two children and at the time of marriage, the parents of the complainant gave 365 sovereigns of gold ornaments apart from household articles and those articles have also been retained by the petitioners/accused and the complainant was driven out of the matrimonial home and the first petitioner/first accused had developed intimacy with one Rekha and also solemnized marriage with the said Rekha on 30.01.2020 when the first marriage between the first petitioner and the complainant is in existence and that apart, the petitioners have also retained the jewels of the complainant and refused to part with the same.

4.The learned Senior Counsel representing the learned counsel for the petitioners submits that the first petitioner is the husband of the complainant and other petitioners are her in-laws. The marriage between the first petitioner and the complainant was solemnized on 21.10.2010 at Poonalagar Mahal at Madurai and out of their wedlock, they are having two children. According to the learned Senior Counsel for the petitioners, the complainant developed intimacy with her classmate, one Vignesh and eloped with the said Vignesh in the month of March 2019 and therefore, the mother of the complainant lodged a complaint before the Theni Town Police Station, on 09.03.2019, for missing of certain jewels and the same was registered in Cr.No.199 of 2019 on 09.03.2019. Subsequently, on 14.03.2019, one Sekar, S/o.Pandi Thevar, father of the complainant, has also lodged a separate complaint before the Theni Town Police Station that his daughter Anbuselvi was found missing for nearly 10 days and requested the Police to trace his daughter Anbuselvi. The said complaint was also registered by the Theni Town Police Station in Cr.No.212 of 2019 on 14.03.2019 for woman missing. Pursuant to that complaint, the Police secured the complainant from a lodge at Madurai and also recorded her statement. In her statement, the complainant expressed that on her own accord, she left her matrimonial home and stayed at Tiruvannamalai and Chidambaram and while she was staying in a lodge at Madurai, she was rescued by the Police, before whom, she expressed that she is not willing to go either with her husband or with her parents and opted to go to a home. By recording the statement of Anbuselvi, the said case in Cr.No.212 of 2019 was closed as action dropped, by the

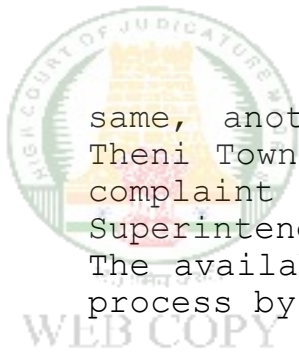
<https://hccsecretois.gov.in/cse/Pics/> Theni Town Police Station, on 18.03.2019.



5.The learned Senior Counsel for the petitioners further submitted that a divorce agreement was also entered entered between the first petitioner and the complainant in the presence of her father Sekar, S/o. Pandi Thevar and two others. Apart from that agreement, the first petitioner has also filed a petition for divorce under Section 13(1) (i) (i-a) and 13(1) (i-a) of the Hindu Marriage Act before the Sub Court, Theni, in H.M.O.P.No.151 of 2019, in the month of June 2019 and defending the same. While so, another complaint was lodged by the complainant as against her husband before the Theni Town Police Station and the same was treated as petition enquiry and on 05.07.2019, a summon was issued to the first petitioner, by the Sub Inspector of Police, Theni Town Police Station under Sections 160 and 91 Cr.P.C., calling upon him to appear for enquiry on 08.07.2019. Apart from that, another complaint was lodged by the complainant before the All Women Police Station, Theni in the year 2020 and the same was treated as petition enquiry in Ref.No.01/287471/SP-TNI/GDP/2020 709/GDP/SP-TNI/2020 and the first petitioner was also summoned by the Inspector of Police, All Women Police Station, Theni, for enquiry on 22.05.2020. Thereafter, the present complaint was lodged by the complainant before the Superintendent of Police and the same was forwarded to the Inspector of Police, All Women Police Station, Theni and the Inspector of Police, All Women Police Station, has treated the same as petition enquiry in C.No139/GDP/SP-TNI/2009 and issued summons to the first petitioner under Section 41(A) and 91 Cr.P.C.

6.Heard the learned Senior Counsel for the petitioners, learned Senior Counsel for the complainant and the learned Government Advocate (Criminal Side).

7.It appears that the materials placed on record show that the complainant Anbuselvi left the matrimonial home as early as in the month of March 2019 and on account of that, a complaint was lodged by the mother of the complainant on 09.03.2019 and another complaint was also lodged by the father of the complainant on 14.03.2019 before the Theni Town Police Station and the same were registered by the Theni Town Police Station in Cr.Nos.199 of 2019 and 212 of 2019 respectively. In the case in Cr.No.212 of 2019, the complainant was also rescued from a lodge at Madurai by the Police, Theni Town Police Station and when she was enquired by the Police, she expressed that she is not willing to go either with her husband or with her parents and accordingly, she was referred to a home and thereafter, the case in Cr.No.212 of 2019 was closed as action dropped. After that, on 16.05.2019, an agreement of divorce was also entered between the complainant and her husband (first petitioner) and in that agreement, both the complainant and the first petitioner had also signed and the same was attested by one Sekar, father of the complainant and two others. Subsequent to the agreement, a divorce petition was also filed by the husband/first petitioner before the Sub Court, Theni, in H.M.O.P.No.151 of 2019 in the month of June 2019 and the same is also pending. Pending the



same, another complaint was lodged by the complainant before the Theni Town Police Station in the month of July 2019 and the present complaint has also been filed by the complainant before the Superintendent of Police, Theni, in the month of September 2020. The available materials which would clearly show the clear abuse of process by the complainant.

8. The Hon'ble Apex Court, in the case of **Arnesh Kumar vs. State of Bihar and another, (Criminal Appeal No.1277 of 2014 (Special Leave Petition (Crl.) No.9127 of 2013))**, in order to ensure that police officers do not arrest accused unnecessarily, and Magistrate do not authorise detention casually and mechanically, had given certain directions, which read as follows:

11. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;



11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

9. Now, the present complaint has been forwarded by the Superintendent of Police, Theni, without knowing the prior incidents and the respondent Police has also issued summon as contemplated under Section 41A Cr.P.C.

10. In view of the decision of the Hon'ble Apex Court as cited supra and also considering the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioners subject to the following conditions.

11. Accordingly, the petitioners are ordered to be released on bail in the event of their arrest or on their appearance, within a period of fifteen days from the date on which the order copy was made ready, before the learned Judicial Magistrate, Theni, on condition that the petitioners 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 and on further conditions that:-

[a] the petitioners as well as the sureties shall submit a copy of their Aadhar card or any other identity cards issued by the Government, in proof of their address, along with the surety bonds.

[b] the petitioners shall report before the respondent police as and when required.

[c] the petitioners shall not tamper the evidence or witness either during investigation or trial.

[d] the petitioners shall co-operate for the investigation and the trial. The petitioners shall not abscond either during the trial and in event of the petitioners abscond, the



respondent police shall register a case as provided under Section 229-A IPC.

[e]in the event of breach of any of the aforesaid conditions, the learned Magistrate / trial Court is entitled to take appropriate action against the petitioners, as per the principles laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]**.

sd/-
23/09/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDICIAL MAGISTRATE,
THENI.

2 -DO- THROUGH: THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THENI DISTRICT.

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

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-6612[I] dated 24/09/2020)

+1 CC to M/s.T.K.GOPALAN, Advocate (SR-6594[I] dated 24/09/2020)

ORDER
IN
CRL OP(MD) No.10099 of 2020
Date :23/09/2020

OGY
SRS/ VR/ SAR-II/ 25.09.2020/ 6P/7C