



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 20/11/2020

PRESENT

The Hon`ble Mr.Justice S.M.SUBRAMANIAM

CRL OP(MD). No.13183 of 2020

Vasantha

... Petitioner/Accused
(Sole Accused)

Vs

1. The Superintendent of Police,
Commercial Crime Investigation Wing,
O/o. Director General of Police,
Chennai.

2. The Inspector of Police,
Commercial Crime Investigation Wing,
Pudukkottai District.
Crimr No.not known of 2020

... Respondents/Complainants

For Petitioner : M/s.S.Karthikeyan,
Advocate.

For Respondents : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

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

PRAYER:- For Anticipatory Bail in Crime No. of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 120(B), 408, 409, 420, 465, 468, 471 and 477(A) r/w.109 IPC seeks anticipatory bail.

2. The learned Government Advocate(Crl.Side) appearing for the respondents, at the first instance made a submission that no First Information Report has been registered against the petitioner as on today and therefore, the question of granting anticipatory bail does not arise.

3. The learned Counsel for the petitioner solicited the attention of this Court regarding the orders dated 10.06.2020 and



12.11.2019 in CrI.O.P(MD) No. 5864 of 2020 and 16011 of 2019 respectively. He made a submission that similar order may be passed to issue notice under Section 41(A) Cr.P.C to the petitioner in the event of registering any case against her, enabling her as to file anticipatory bail petition in advance before this Court.

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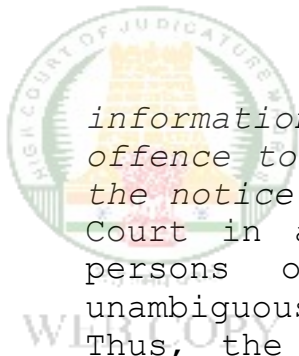
4. The idea of getting such an order is that in case, First Information Report is filed by the jurisdictional Police, then a breathing time should be given to the accused persons, for filing Anticipatory Bail Petition.

5. Section 438 of Cr.P.C is unambiguous. That apart, *"where any person has reason to believe that he may be arrested on accusation of having committed a non bailable offence, he may apply to the High Court or the Court of Sessions for a direction under this Section that in the event of such arrest he shall be released on bail"*. Thus, a case must be registered for the purpose of considering an Anticipatory Bail Petition, under Section 438 Cr.P.C. The ingredients stipulated in Section 438(1)(ii)(4)Cr.P.C must be taken into account, while granting anticipatory bail by the Courts. The ingredients enumerated under Section 438 Cr.P.C are factors to be considered for granting anticipatory bail or declining anticipatory bail.

6. Protection of personal liberty enunciated under the Constitution of India, is of paramount importance. However, every Fundamental Right under the Constitution is not an absolute one and subject to other Laws in force. Restrictions in exercise of Fundamental Rights by respecting the Fundamental Rights of other Citizen is to be considered, while granting relief based on the Principles of Personal Liberty. In other words, exercise of any right by any Citizen should not affect or be detrimental to the rights of all other fellow Citizen of our Great Nation. Thus, exercise of any right must be in consonance with the rights of all other Citizen and in the event of any violation, question of detention as well as initiation of action arises.

7. Our Country is marching towards vibrant democracy. Personal liberty is an important phenomena in a democratic Country. Thus, Courts are expected to be cautious, while dealing with the rights of the individuals in consonance with the rights and privileges of the Society at large. Common interest of the Society as a whole is a consideration to be deliberated.

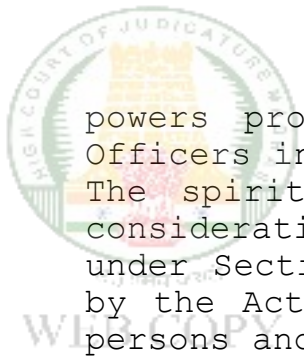
8. Keeping in mind these Constitutional Philosophy and Ethos, this Court is of the considered opinion that Section 41(A) Cr.P.C enumerates that *" the police officer shall in all cases where arrest of the person is not required under the provisions of Sub section 1 of Section 41 of Cr.P.C issue a notice directing the person against whom a reasonable complaint has been made or reliable*



information has been received that he has committed a cognizable offence to appear before him and such a place may be specified in the notice". Therefore, uniform orders cannot be passed by the High Court in all the cases. Notice has to be issued to the accused persons on registration of cases. Section 41(A) Cr.P.C is unambiguous, that **"Where the arrest of a person is not required"**. Thus, the ingredients stipulated in the said provision is very clear that, if arrest is not required, then only notice is to be issued by the Police Officer, in advance, calling a person to explain with regard to the allegations set out in the complaint and certainly, not otherwise.

9. In view of the above provisions, the Police Officer concerned is expected to issue notice only in such of those cases, where arrest is not required and certainly not in all other cases, where an arrest is imminent and warranted. Distinction in this regard is an important factor to be considered and any order passed by the High Court certainly has to be implemented in its letter and spirit. However any ambiguity in such an order should not lead to an erroneous implementation of the order or a confusion should not be created. At the outset, free, fair and impartial approach in accordance with law and by following the procedure is an important factor for any Police Officer, while dealing with the crime and criminal cases. This Court is of the considered opinion that the required amount of freedom is essential to exercise the powers by the Police Authorities to control the crime and maintain Law and Order, in the interest of the public at large.

10. The facts and circumstances in particular are to be considered for the purpose of issuing a notice, as required under Section 41(A) of Cr.P.C. In the event of issuing a direction even before registration of a case by the jurisdictional Police, there is a possibility of abuse of the orders of this Court by the litigants. If the Investigating Officer formed an opinion that an arrest is necessary and High Court passed an order that a notice is to be issued under Section 41(A) of Cr.P.C., certainly a conflict may arise in the mind of the Investigating Officer and in the event of issuing such notice, the accused may abscond during the interregnum period. Thus, all these possibilities and probabilities are to be considered by the Courts, while passing an order directing the Police Officials to issue Notice under Section 41(A) of Cr.P.C. Undoubtedly, the accused persons are acting prudently in order to escape from the clutches of Law. Thus, soon after the registration of a criminal case, the Investigating Officers concerned must take a decision whether an arrest is necessary or not. The Police Officers should ensure that the offenders have not escaped from the clutches of law. In this regard, the Law Enforcing Agency are to be cautious, while dealing with complex nature of criminal cases now in the ascending mode in the Society. It is needless to state that the procedures prescribed are to be followed scrupulously. However, the



powers provided under the Code must be exercised by the Police Officers in order to curb the crimes and to prosecute the offenders. The spirit of Section 41 of Cr.P.C., is also to be taken into consideration, while considering the petition for issuance of notice under Section 41(A) of Cr.P.C. Section 41(A) Cr.P.C., was inserted by the Act, 2009, in order to protect the Personal Liberty of the persons and to prevent, misuse or abuse of power of arrest conferred to the Investigating Officers, under Section 41 of Cr.P.C. Thus, Section 41(A) of Cr.P.C., is to be exercised only where arrest of person is not required and certainly not in every case.

11. Section 41 Cr.P.C deals with the powers of police without warrant. Thus, the said power is to be exercised in cases, wherever such arrest is required in accordance with law. In an Anticipatory Bail Petition, as per the submission of the petitioner, if a direction is issued to issue notice under Section 41(A) Cr.P.C. and if the Police Officials are of the opinion that the case on hand is a case of arrest of a person, then such orders would create conflicts between the case on hand and the action to be initiated by the Police Officials, under the provisions of the Code of Criminal Procedure. It will result in prevention of lawful exercise of powers by the Police with reference to the case, which is registered.

12. Thus, the Courts cannot stand in the way of the Police Officials to register a case in an appropriate manner, by following the procedures contemplated or the Court cannot either direct in advance in anticipatory bail petitions stating whether the Police should exercise power under Section 41 Cr.P.C or under Section 41(A) Cr.P.C. which must be based on the facts and circumstances of each case and therefore, the question of issuing direction to issue notice in any case would not arise.

13. Section 41(B) Cr.P.C contemplates the procedures for arrest and duties of Officer making arrest. Therefore, the entire Code of Criminal Procedure prescribes the procedures to be followed and the Police Officers are bound to follow the said procedures applying the facts and circumstances of each case by applying their mind, based on the circumstances as well as the other aspects of the matter. When this being the procedure to be followed, the submission of the learned Counsel for the petitioner that general order is to be passed directing the respondent Police to issue notice under Section 41(A) Cr.P.C before arrest, does not arise at all and seems to be inappropriate. The earlier orders passed by this Court are also unambiguous that the intention is to issue notice only where arrest of the person is not required and not otherwise. Therefore, the earlier orders cannot be cited for the purpose of passing similar orders and the reference cited cannot have any relevance in the present case as facts of those cases are also different.

14. It is needless to state that when no case is registered against the petitioner, question of issuing any direction would not arise.



arise at all. Once a case is registered then only the Courts are expected to pass appropriate orders and not in all circumstances. There may be some exceptional cases, but the same cannot be followed as a precedent or Rule. In the event of passing orders even before registration of cases, there is a possibility of confusion in the minds of the Police Officials and it may not be possible to initiate free and fair action by following the Code of Criminal Procedure. In other words, the order in advance passed shall not pressurize the Police Officer to act in a particular manner, which may certainly hamper free and fair dealing of criminal cases in accordance with the procedures. Therefore, the submission of the learned counsel for the petitioner deserves no merit consideration.

15.The learned Government Advocate(Crl.Side) appearing for the State, brought to the notice of this Court that no case is registered as against the petitioner.

16. The granting of relief even before registration of a criminal case is certainly not preferable. In the event of providing any such privilege or advantage in favour of the petitioner in an Anticipatory Bail Petition, there is a possibility of misuse and abuse of the said order by the accused person and the Investigating Officers are also restrained from exercising their lawful powers conferred under the Code of Criminal Procedure and other Laws in force.

17.Thus the Criminal Original Petition stands dismissed.

sd/-
20/11/2020

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

TO

1. THE SUPERINTENDENT OF POLICE,
COMMERCIAL CRIME INVESTIGATION WING,
O/O. DIRECTOR GENERAL OF POLICE,
CHENNAI.
2. THE INSPECTOR OF POLICE,
COMMERCIAL CRIME INVESTIGATION WING,
PUDUKKOTTAI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



COPY TO:

THE DIRECTOR GENERAL OF POLICE, MYLOPORE, CHENNAI.
(to be circulated to all the police stations across
the state of Tamil Nadu)

ORDER IN

CRL OP(MD) No.13183 of 2020

Date :20/11/2020

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