

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.O.P.No.1948 of 2021

Kavitha Karunamoorthy

... Petitioner

-Vs-

The State Rep. by
The Inspector of Police,
B1 Dharmapuri Police Station,
Dharmapuri-636 701.
(Crime No. 2154 of 2020)

... Respondent

Prayer: Criminal Original petition filed under Section 438 of Code of Criminal Procedure praying to enlarge the petitioner on bail in the event of arrest in Crime No.2154 of 2020 on the file of the Respondent.

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner is a sole accused. She apprehends arrest at the hands of the respondent police for the offence punishable under Sections 336, 304(ii), 201 I.P.C. r/w Section 5 of Medical Termination of Pregnancy Act, 1971 in Crime No.2154 of 2020 on the file of respondent police and now, she has filed this petition for anticipatory bail.

2. The case of the prosecution is that, the petitioner is a Doctor, a Gynaecologist, running a private nursing home at Dharmapuri. The deceased is the wife of defacto complainant and she was seven months pregnant. Earlier, she was admitted in another hospital, when she was diagnosed that the child died in the womb, and she has developed complications. Hence, she was shifted to petitioner's hospital and admitted therein. Thereafter, it is stated that since the baby was died in the womb, forcible abortion was done by the petitioner and after the abortion, she was taken to a private room, and she was conscious. Subsequently, she had developed further complications, immediately she was taken to the Government Medical College, Dharmapuri, wherein she was declared dead. Based on the complaint given by her husband, originally, a criminal case was registered under Sec.174 of CrI.P.C. and after investigation, it was altered into Sec. 336, 304(ii), 201 I.P.C. r/w Section 5 of Medical Termination of Pregnancy Act, 1971. Now, seeking anticipatory bail, the present petition has been filed.

3. The learned counsel appearing for the petitioner submitted that earlier, the deceased was admitted in another hospital, where she developed complications, as the baby was died in the womb, and she was shifted to the petitioner hospital. After explaining the complications to the husband and other relatives, abortion was done in the operation theatre and after that she was conscious and shifted to a general ward. Subsequently, she has developed pulmonary oedema, hence, she was immediately taken to Government Medical College Hospital, Dharmapuri, where she was declared dead. The available records would clearly shows that after the abortion, she was recovered well, and subsequently, she developed complications, for which, the petitioner cannot be fixed for the negligence. That apart, the real cause of death will be come into light only after investigation and on opinion of experts. Hence, at this stage, no custodial interrogation is required. He would submit that the petitioner is always ready and willing to co-operate with the investigation. Hence, he prays for grant of anticipatory bail.

4. The learned Additional Public Prosecutor appearing for the respondent opposing the petition stated that the petitioner has undertaken forcible operation, in which the deceased developed pulmonary oedema and subsequently, she died. He would submit that the petitioner has not done the abortion carefully, and due to the negligent act of the petitioner only, the deceased developed pulmonary oedema and died, hence, the crime was altered into Sec. 336, 304(ii), 201 I.P.C. r/w Section 5 of Medical Termination of Pregnancy Act, 1971. Hence, he opposed to grant anticipatory bail to the petitioner.

5. I have heard and considered the rival submissions made by the learned counsel appearing for petitioner as well as learned Additional Public Prosecutor and perused the records.

6. On perusal of records, it could be seen that originally, the deceased was admitted in a private hospital, where it was diagnosed that the baby died in the womb. Thereafter, she was shifted to the petitioner hospital, where the petitioner aborted the dead baby. As per the F.I.R., and statement of witnesses, after abortion, she was recovered well and she was shifted to a private room, where she has also taken food, only thereafter, she said to have developed pulmonary oedema, and the post-mortem report also says that the deceased died due to pulmonary oedema. On perusal of materials available on record, at this stage, it cannot be decided whether the deceased was died due to the negligence of the petitioner. Now, at this stage, the custodial interrogation is also not required and the petitioner undertakes that he will co-operate with the investigation.

7. Taking into consideration of the facts and circumstances, this Court is inclined to grant anticipatory bail to the petitioner, subject to the following conditions:

a) Accordingly, the petitioner is ordered to be released on bail, in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.1, Dharmapuri, on condition that the petitioner shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, 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, and on further condition that:

[b] 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;

[c] the petitioner shall appear before the respondent police daily as and when required for interrogation and also co-operate with the investigation;

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[e] the petitioner shall not abscond either during investigation or trial;

[f] 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];

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-
22/03/2021

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 JUDICIAL MAGISTRATE NO.I,
DHARMAPURI.

2 THE CHIEF JUDICIAL MAGISTRATE
DHARMAPURI [FOR INFORMATION].

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
B1-DHARMAPURI POLICE STATION,
DHARMAPURI 636 701.

5 THE DEPUTY SUPERINTENDENT OF POLICE,
DHARMAPURI.

+1CC to M/S R.KARTHIKEYAN Advocate on payment of necessary charges SR NO.3781

CRL OP.1948/2021

Date :22/03/2021

MK:26/03/2021

MK:29/03/2021

WEB COPY