

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fifth day of March Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice V. BHARATHIDASAN

CRIMINAL ORIGINAL PETITION No.4276 of 2021

SELVI

[PETITIONER / ACCUSED]

Vs

STATE BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
HARUR POLICE STATION,
DHARMAPURI DISTRICT.
CR.NO.1515 OF 2020.

For Petitioner : M/S. M.JAYACHANDRAN Advocate

For Respondent : M/S. S.KARTHIKEYAN, Additional Public Prosecutor

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

ORDER : The Court Made the following order :-

The petitioner, who apprehend arrest for the alleged offences under Section 302 of IPC, in Crime No.1515 of 2020, on the file of the respondent Police, seek anticipatory bail.

2.The petitioner is the sole accused in this case. It is alleged that the petitioner is the mother of the deceased children and she is suffering from severe stomach pain and her husband was not taking care of the children. Unable to take care of the children due to poverty the petitioner said to have decided to end her life by committing suicide and presumed that after her death there are no one one to take care of her children and they will become orphans, the petitioner decided to commit suicide by falling in a well and taking along the children with her. Unfortunately both the children were died and the petitioner survived and rescued by the villagers. Based on the complaint given by the Village Administrative officer present criminal case has been registered against the petitioner.

3.The learned counsel for the petitioner would submit that the the petitioner was suffering from severe stomach pain and neglected by her husband, she attempted to commit suicide, and feeling that her husband will not take care of the children after her death she does not want to leave her children as orphans, hence, she pushed them into

the well and she also fell down, she has no intention to kill the children, hence, he prays for anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor would submit the petitioner is a mother of two children and he was subject to harassment by her husband and she was living with her children, and suffering from serious stomach pain. Under those circumstances she have decided to commit suicide by taking her children along with her, jumped into the well, were two children drowned and the petitioner survives, hence the petitioner clearly committed offence of murder. The investigation also reveals that she has been neglected by the husband, along with the children, hence she attempted to commit suicide. Petitioner with an intention to kill the children, thrown them into the well, hence, the case was registered under Section 302 of I.P.C.

5. I have considered the rival submissions. From the perusal of records it is seen that the petitioner has been neglected by her husband and living separately along with two children, and she was also suffering from severe stomach pain. Unable to lead a normal life and unable to brought up the children, she has decided to commit suicide. Fearing about the future of the children, she intend to cause the death of her children. Even though the petitioner has intention to cause death of her children, there is no ill-will for causing the death.

6. In a similar circumstances a Division Bench of the Court, has held this kind of offences will not fall under the category of culpable homicide and not amounts to murder, and it is punishable only under Section 304 Part 1 of I.P.C.

7. The relevant portion of the Judgment passed by a Division Bench of this Court in [Suyanbukkani Vs State of Tamil Nadu] 1989 Law Weekly brings the offence to one punishable under Section 304 Part I of I.P.C. The relevant portion of the Judgment is extracted hereunder:

27. As pointed out earlier, ill-will and premeditation should be both present in a case of murder. The absence of one of them coupled with an important excusing circumstance would transform the offence into culpable homicide. In the present case, there is of course premeditation, but obviously no ill-will. The extreme course of family suicide, the mother along with her children, is clearly in our opinion an excusing circumstance equivalent to those enumerated in the Exceptions to Section 300 I.P.C and will be therefore in the nature of an Exception, when the mother escapes and children die, bringing the offence to one punishable under Section 304 part I, I.P.C.

6. Considering the facts of the case, this court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7. Accordingly, the petitioner is directed to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the Judicial Magistrate, Harur on condition that the petitioner shall

execute a 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 or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which this petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix his 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.

[b] the petitioner shall report before the respondent Police as and when required for interrogation.

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

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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].

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

With the above directions, this Criminal Original petition is ordered.

-sd/-

05/03/2021

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,
HARUR.

2 THE CHIEF JUDICIAL MAGISTRATE
DHARMAPOORI [FOR INFORMATION].

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

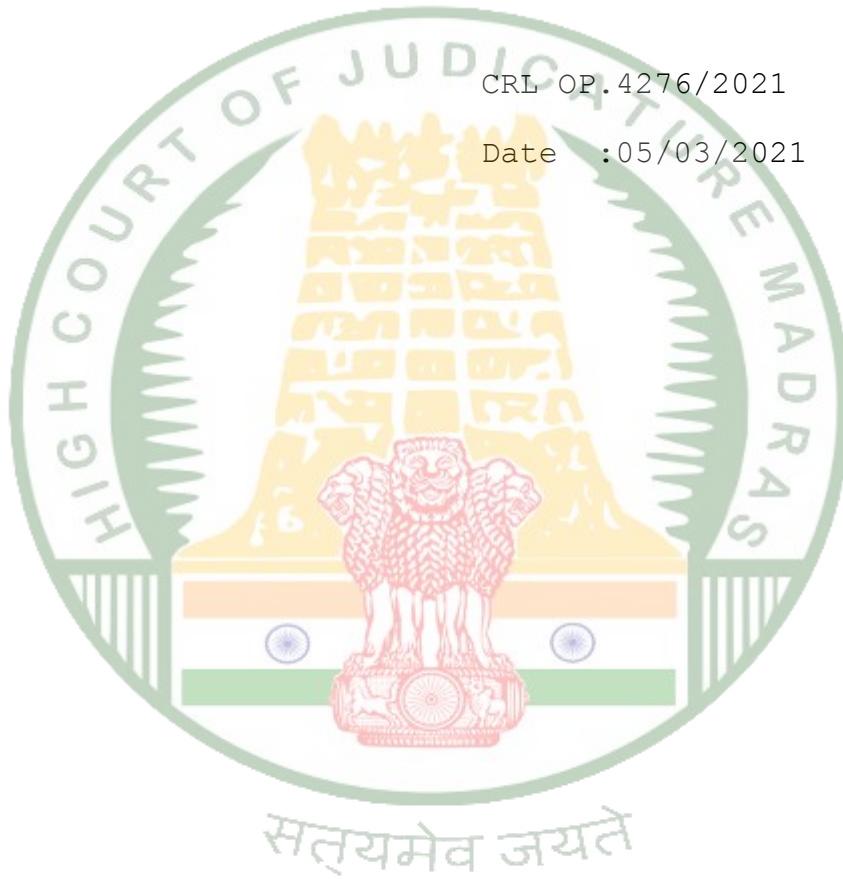
4 THE INSPECTOR OF POLICE,
HARUR POLICE STATION,
DHARMAPURI DISTRICT.

CC to M/S. M.JAYACHANDRAN Advocate on payment of necessary
charges

CRL OP.4276/2021

Date :05/03/2021

MN-07/04/2021



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