

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.06.2021

PRONOUNCED ON : 16.06.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CRL.O.P.No.9824 of 2021 &

CrI.M.P.No.6145 of 2021

M.Manikandan

... Petitioner

Vs.

State Represented by

...Respondent

The Inspector of Police,
W-19, All Women Police Station,
Adyar, Chennai - 600 020.

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, to enlarge the petitioners/accused on bail in the event of their arrest by the respondent police in Crime No.374 of 2021 pending investigation on the file of the respondent police.

For Petitioners : Mr.R.John Sathyan

For Respondent : Mr.R.Muniyapparaj,
Government Advocate (CrI. Side)

For Intervenor : Mr.V.Raghavachari
for M/s.K.R.S. Law Firm

ORDER

The petitioner apprehends arrest by the respondent police for the offences punishable under sections 417, 376, 313, 323 & 506(i) of IPC r/w section 67A of the Information Technology Act, in crime No.05 of 2021 and seeks anticipatory bail.

2. The case of the prosecution is as follows:

(a) The defacto complainant is a Malaysian citizen and was working in the Malaysian Tourism Development Organisation, when she was introduced to the petitioner (A1) by one Bharani (A2) in May 2017.

(b) The petitioner was the Minister for Information Technology, Government of Tamil Nadu and an M.L.A of Ramanathapuram Assembly Constituency during May 2017.

(c) The petitioner was interested in making investments in Malaysia through the defacto complainant who was introduced to him by A2/Bharani.

(d) The defacto complainant visited the official residence of the petitioner on 03.05.2017 on the invitation of the petitioner. On that day, he obtained the mobile number of the defacto complainant and thereafter made calls frequently to the defacto complainant.

(e) The petitioner fell in love with the defacto complainant and told her that she is beautiful and expressed his desire to marry her. He also informed her that his existing marital life was not smooth and he was not leading a happy life with his existing wife and told the defacto complainant that after getting divorce from his existing wife, he will marry her.

(f) The petitioner used to stay with the defacto complainant, whenever he was in Chennai and his car bearing registration No.TN65-AL-4777 was also given to her along with a driver for her personal use.

(g) The petitioner and the defacto complainant have travelled together to several places like Rameshwaram, Pondicherry and Tirunelveli and they have also stayed together in the Tamil Nadu house at New Delhi.

(h) In the year 2019, the petitioner who was a Member of Legislative Assembly took the defacto complainant to the Tamil Nadu State Assembly as a visitor to witness the assembly proceedings.

(i) The petitioner and the defacto complainant were living as husband and wife, even though they were not legally married. Whenever the defacto complainant requested the petitioner to get married legally, he informed her that he will marry her once he gets divorce from his existing wife.

(j) The relationship between the petitioner and the defacto complainant were well known to the petitioner's servants namely Selvi, Govindammal and Chinna and his assistants one Pandi and Gowrinathan.

(k) The defacto complainant got impregnated through the petitioner thrice and only under the coercion of the petitioner, she was forced to terminate her pregnancy involuntarily through Dr.Arun, the friend of the petitioner at M/s.Life Med Hospital, Gopalapuram, Chennai.

(l) The petitioner continued to have physical relationship with the defacto complainant in a forceful and brutal manner, even after termination of three pregnancies.

(m) The petitioner compelled the defacto complainant to use Copper-T and as a result of the same, her health got spoilt. Despite fixing the Copper-T, the petitioner continued to have sexual intercourse with the defacto complainant forcibly.

(n) The petitioner attacked the defacto complainant causing injuries to her eye, for which she took treatment at M.N.Eye Hospital, Sastri Nagar, Chennai.

(o) The defacto complainant was forced to go to Malaysia in the month of August 2020 due to her health condition and immediately after her return to Chennai in December 2020, the petitioner met the defacto complainant who convinced her again and they started to live as husband and wife once again.

(p) Even in the month of March 2021, the petitioner promised to marry the defacto complainant, but gave lame excuses and evaded from the promise stating that due to lockdown, he was not in a position to come to Chennai from his native place.

(q) On 15th April 2021, the petitioner went to his native place and from there, he started threatening the defacto complainant to go back to Malaysia without creating any problem or else threatened dire consequences.

(r) The petitioner also threatened the defacto complainant that he will upload the defacto complainant's nude photographs in the social media and one such photograph was sent to the defacto complainant's telegram account.

(s) The defacto complainant requested the petitioner to delete those photographs which was refused by the petitioner and he abused in filthy language demanding the defacto complainant to go back to Malaysia.

(t) The petitioner has been sending abusive messages ever since 15th April 2021 to the defacto complainant portraying her as a prostitute and also stating that he will foist a false case against her by using his political powers.

(u) The petitioner has also caused life-threat to the defacto complainant through Bharani, the second Accused.

3. However it is the case of the petitioner who is the first accused that he is an innocent person and he has not committed any offence as alleged by the prosecution. He would state as follows:

(a) There is no iota of truth in the allegations levelled against him and the entire complaint and the accompanying documents have been concocted over a period of time and the complaint was lodged after several attempts for compromise as the extortionist demands were not accepted by the petitioner.

(b) A plain reading of the complaint and the supportive documents would go to show that the offences alleged against the petitioner cannot be sustained, since they do not constitute the ingredients that make out the offences alleged. Further, the time of the complaint, especially after the change of Government clearly shows that the defacto complainant is not aggrieved but has lodged a

false complaint only with an ulterior motive to extort money.

(c) It is an admitted fact that the defacto complainant knew that the petitioner is a married person and even as per the complaint, she compromised herself on the assurance given by the petitioner to marry her again.

(d) The defacto complainant is an actress and an adult aged 27 years at that time and is a consenting party to the sexual intercourse. Hence, offence under sections 417 and 376 of the Indian Penal Code cannot be sustained.

(e) The allegations made against the petitioner do not constitute the ingredients of the offence under section 313 of the Indian Penal Code as the defacto complainant voluntarily caused abortion and there is no material whatsoever to show that it was done on the inducement of the petitioner. Further it is pertinent to see that there is no material to show that the petitioner was the cause of the pregnancy.

(f) The alleged injuries attracting the offence under section 323 of the Indian Penal Code cannot be used against the petitioner as it is not backed by medical records. Further, documents produced by the defacto complainant would show that the defacto complainant was fabricating documents against the petitioner.

(g) Insofar as 506(i) IPC is concerned, threat must be imminent and real. Whereas in the case on hand, it is the defacto complainant who has been threatening the petitioner to extort money with a team and there is no material let in by the defacto complainant to prima facie make out a case under section 506(i) IPC.

(h) The offence under section 67A of the Information Technology Act is added only to aid the allegation that the naked photograph of the defacto complainant was sent to her and the petitioner allegedly threatened the defacto complainant that he would upload the same in the social media to tarnish her image.

(i) The petitioner stoutly denies the allegation and would state that the photograph was not taken by him and an unbiased and uninfluenced investigation would reveal, by whom and what reason the photograph was taken. The above allegation is only to sensationalise the issue.

(j) The defacto complainant is an extortionist and operates a gang to set up honey traps for vulnerable persons in the society. The defacto complainant had threatened several persons with similar allegations and the enquiry of the neighbours in the apartment where she is staying will reveal the truth.

(k) The petitioner is a General surgeon and a Fellow of the Indian Association of Gastrointestinal Endo-Surgeons and was with the Government Service for 12 years serving at Chennai and Madurai before he was given an opportunity to contest elections for the State

Assembly. He won the elections and was made a Minister for Information Technology and was taken off from Ministership during reshuffle of the cabinet. The petitioner's wife is a Gynaecologist serving at Madurai and he is blessed with two daughters and a son. As a Government Doctor, he had an unblemished track record and even as a Minister, he had a clean stint.

(l) The petitioner was from Ramanathapuram and he was popular amongst his constituency voters who come regularly to Chennai to meet him to get their grievance redressed.

(m) The defacto complainant got acquainted with the petitioner in a casual manner through the second accused/ Bharani and after sometime, kept calling the petitioner to speak about investment in Malaysia. But the petitioner turned down the proposal stating that he did not have the resource to invest in Malaysia. However, the defacto complainant tried to keep the contact and kept calling the petitioner under some guise or the other.

(n) At a given point of time, the defacto complainant asked for financial help from the petitioner through Bharani (A2) stating that her parents are not keeping good health and she did not get chance in movies. Thereafter, the petitioner gave Rs.5,00,000/- through Bharani as loan and asked Bharani to secure the loan. The petitioner was given to understand that the defacto complainant had given a cheque to Bharani when he sought for repayment of the loan amount and that was when the entire episode of blackmailing the petitioner began.

4. An intervenor petition has also been filed by the defacto complainant in Crl.M.P.No.6145 of 2021 opposing the grant of anticipatory bail to the petitioner and seeking permission of this Court to intervene in this anticipatory bail petition filed by the first accused and the same is allowed by this Court and the defacto complainant is permitted to intervene.

5. The intervenor has reiterated the contents of the FIR and vehemently opposes the grant of anticipatory bail to the petitioner (A1) as according to her, if released on anticipatory bail, he would hamper with the investigation and tamper with the evidence. She would also state that all the witnesses are the staffs and servants of the petitioner (A1) and therefore, if released on anticipatory bail, he would hamper the investigation by tampering with the evidence/witnesses. In the intervenor petition, the defacto complainant has also alleged that she reliably understands that a similar FIR is pending against the petitioner (A1) in Madurai and that there are several women whose lives have been ruined by the petitioner (A1). According to her, once he is arrested, other victims will come out openly and lodge complaints against the petitioner (A1). The intervenor/defacto complainant has also alleged that the petitioner, due to his political influence, financial and muscular strength will be in a position to tamper with the evidence/witnesses, if he is allowed to be released on anticipatory bail.

6. Mr.R.John Sathyan, learned counsel for the petitioner drew the attention of this Court to Section 376 of IPC and would submit that admittedly even according to the prosecution, it is a consensual sex between the petitioner and the defacto complainant and therefore, the ingredients required for attraction of section 376 IPC has not been satisfied.

7. Learned counsel for the petitioner then drew the attention of this Court to section 313 of IPC which deals with punishment for causing miscarriage without woman's consent and he would submit that the said section is also not attracted against the petitioner, since the defacto complainant as seen from the FIR, has voluntarily accepted the abortion and there is no material whatsoever to show that it was done on the inducement of the petitioner.

8. Learned counsel for the petitioner then drew the attention of this Court to Section 323 of IPC which is the punishment section for voluntarily causing hurt and would submit that the said section is also not attracted against the petitioner as the alleged injuries sustained by the defacto complainant are not backed by any medical record.

9. Learned counsel for the petitioner then drew the attention of this Court to Section 506(i) of IPC and would submit that for attracting the said section, there must be a threat which is imminent and real. According to him, in the case on hand, it is the defacto complainant who has been threatening the petitioner to extort money with her team and there is no material let in by the defacto complainant to make out a case under section 506(i) IPC.

10. The learned counsel would further submit that section 417 IPC is also not attracted against the petitioner as even according to the prosecution, the fact that the petitioner was already married is well known to the defacto complainant and hence, the question of cheating will not arise.

11. Learned counsel for the petitioner then drew the attention of this Court to section 67A of Information Technology Act and would submit that the said section has been deliberately added only to aid the allegation of the defacto complainant that her naked photograph was sent to her and that the petitioner allegedly threatened the defacto complainant that he will upload the same in the social media to tarnish her image. According to him, an unbiased and uninfluenced investigation would reveal, by whom and for what reason, the photograph was taken. According to him, only to sensationalise the issue, the police have registered the FIR under section 67A of Information Technology Act.

12. Learned counsel for the petitioner would then submit that there is no necessity to arrest the petitioner as he is ready and willing to cooperate with the investigation and he would also submit that the petitioner being a responsible person in the society, there is no necessity to arrest him. According to him, a false case has been foisted by the defacto complainant against the petitioner only

to extort money from him. According to him, the question of hampering the investigation and tampering with the evidence/witnesses by the petitioner does not arise as he is no longer in the ruling party. Further he would submit that only to extort money from the petitioner, the defacto complainant has lodged a false complaint immediately after the new Government has taken charge in May 2021 as even according to the defacto complainant, the alleged offences were committed by the petitioner long before.

13. Learned counsel for the petitioner relied upon the following authorities in support of his submissions:

(a) **Dr.Dhruvaram Murlidhar Sonar vs. State of Maharashtra** reported in **2019 AIR SC 327**. Learned counsel for the petitioner would submit that being a consensual sex and it is not the case of passive submission in the face of any psychological pressure exerted and there being a tacit consent and the tacit consent having been given by her was not the result of misconception created in her mind, rape under Section 375 IPC is not attracted.

(b) **Pramod Suryabhan Pawar vs. State of Maharashtra** reported in **2019 AIR (SC) 4010**. Learned counsel for the petitioner relying upon this decision, would submit that the allegations of the defacto complainant cannot be relied upon as it is she who lured the petitioner into the trap forcing him to jeopardise the petitioner's marriage. Further, the petitioner is an adult, who has acted in a movie and was aware of the consequences of such an alleged relationship and it can never be said that the consent given by the defacto complainant is a passive one and given on misconception of fact.

(c) The learned counsel for the petitioner also relied upon a Judgement dated 28.09.2020 of the Hon'ble Supreme Court in Crl.A.No.635 of 2020/SLP (Crl.) No.393 of 2020 wherein the aforesaid decisions were followed.

14. Learned Government Advocate (Crl. Side) appearing for the respondent would submit that the investigation against the petitioner is progressing and is in a preliminary stage. He then drew the attention of this Court to the counter filed by the respondent police and would submit that the investigation team went to the scene of occurrence, prepared observation Mahazar, drew rough sketch in the presence of witnesses as well as seized case property under cover of Form 95 and also examined some of the witnesses and recorded their statements. He would also submit that the witnesses so far examined corroborated the complaint given by the defacto complainant. He would also submit that the investigation team has collected the medical and other documents and the defacto complainant's scan reports, fixed and removal of Copper-T report, records of Apple Tree Hotel, Tirunelveli, M.N.Eye Hospital reports from the concerned authorities. According to him, the investigation team has also found that the petitioner (A1) has called the defacto complainant to her mobile number from his number 9840947777 on 06.11.2020.

15. Learned Government Advocate (Crl. Side) would further submit that the investigation officer has found that based on oral testimony of witnesses and evidence, the petitioner and the defacto complainant were having live-in relationship between May 2017 and April 2021.

16. Learned Government Advocate (Crl. Side) would further submit that the investigation officer has also collected evidences to confirm that the defacto complainant took a scan at Liberty Scan Centre, TTK Road, Chennai and was treated at Med Life Hospital, Gopalapuram as an out-patient for bleeding and in the process her pregnancy without embryo was terminated.

17. Learned Government Advocate (Crl. Side) also drew the attention of this Court to Section 164 Cr.P.C. statements given on 08.06.2021 by the defacto complainant as well as by Manikanda Kumaran who was the home guard at the official residence of the petitioner between 30.04.2017 and 17.03.2021 and would submit that the statements given by them corroborates the contents of the FIR. He would also submit that there are several witnesses mentioned in the FIR as well as in the section 164 Cr.P.C. statements who are all servants and staffs of the petitioner who will have to be interrogated and if the petitioner is granted anticipatory bail, he will be in a position to hamper the investigation by tampering with the evidence and influencing the witnesses who are his own staffs/servants. He would further submit that the gravity of the offences being serious in nature and the petitioner being an influential person, the custody of the petitioner is required for proper and effective investigation.

18. Mr.V.Raghavachari, learned counsel representing M/s.K.R.S.Law Firm learned counsel for the intervenor/defacto complainant would reiterate the submissions made by the learned Government Advocate (Crl. Side). He would submit that having sexual intercourse by promising to marry the defacto complainant will not amount to giving consent. He also drew the attention of this Court to Explanation-2 of Section 376 IPC and would submit that the consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act. In support of his submissions, Mr.V.Raghavachari, learned counsel for the Intervenor/defacto complainant drew the attention of this Court to the following authorities:

(a) **Anurag Soni vs. State of Chhattisgarh** reported in **(2019) 13 SCC 1** and would submit that since the consent for sex was obtained by the petitioner (A1) on the promise that he would marry the defacto complainant, it would not amount to consent as it would amount to misconception of fact under section 90 of IPC as per the aforesaid decision.

(b) **P.Chidambaram vs. Directorate of Enforcement** reported in **(2019) 9 SCC 24**. Relying on the said decision, Mr.V.Raghavachari would point out that pre-arrest bail is granted to strike a balance

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between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused. According to him, the petitioner (A1) being a politician and a highly influential person would effortlessly tamper with the evidences which is the basis for the FIR, if he is allowed to remain outside during the course of investigation. Further if anticipatory bail is granted, there is all possibility for the petitioner (A1) to escape from the clutches of law and use his political influence to tamper with the evidences and threaten the witnesses who were his own staffs/servants.

(c) **State of Kerala vs. Mahesh** reported in **2021 SCC Online SC 308**. Relying on the said decision, Mr. Raghavachari, learned counsel would submit that though the power to grant anticipatory bail is discretionary, it has to be exercised judiciously. According to him, the petitioner has not satisfied the conditions for grant of anticipatory bail as laid down in the aforesaid decision.

Discussion:

19. It is well settled through a plethora of decisions of the Hon'ble Supreme Court which includes the decisions in the case of (a) **Prasanta Kumar Sarkar vs. Ashis Chatterjee & Another** reported in (2010) 14 SCC 496, (b) **Ash Mohammad vs. Shiv Raj Singh @ Lalla Babu & Another** reported in (2012) 9 SCC 446, (c) **Ranjith Singh vs. State of Madhya Pradesh** reported in (2013) 16 SCC 797, (d) **Neeru Yadav vs. State of U.P & Another** reported in (2014) 16 SCC 508, (e) **Virupakshappa Gouda and Another vs. State of Karnataka and another** reported in (2017) 5 SCC 406, (f) **State of Orissa vs. Mahimananda Mishra** reported in (2018) 10 SCC 516 and (g) **Mahipal vs. Rajesh Kumar alias Polia and another** reported in (2020) 2 SCC 118 that some of the factors to be borne in mind while considering the application for anticipatory bail/ regular bail are as follows:

(a) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(b) Nature and gravity of the accusation;

(c) Severity of the punishment in the event of conviction;

(d) Danger of accused absconding or fleeing if released on bail;

(e) Character, behaviour, means, position and standing of the accused.

(f) Criminal antecedents;

(g) Likelihood of the offence being repeated;

(h) Reasonable apprehension of the witnesses being tampered with; and

(i) Danger of justice being thwarted by grant of bail.

The above list is not exhaustive, but is only illustrative. It is settled law that no straight jacket formula can be followed while deciding an anticipatory bail / regular bail application. The grant or rejection of a bail application depends on the circumstances of each case, but however, the above parameters mentioned supra are some of the guidelines which the Court will have to consider before granting anticipatory bail / bail.

20. According to the petitioner, being a consensual sex even according to the prosecution, section 376 IPC does not get attracted. However there is a caveat to the said proposition as seen from explanation 2 to Section 376 IPC which reads as follows:

"Explanation 2 - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act."

21. Section 90 of IPC deals with "Consent known to be given under fear or misconception". Section 90 of IPC reads as follows:

"Consent known to be given under fear or misconception- A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception."

Therefore as seen from Section 90 IPC, if the consent was given under a misconception of fact, it is not a free consent.

22. In the case on hand, the case of the defacto complainant is that she has been having live-in relationship with the petitioner (A1) from May 2017 to April 2021 on the promise made by the petitioner that he would marry her after divorcing his existing wife. According to her, she has been having physical relationship with the petitioner regularly. It is also her case the she was impregnated by the petitioner (A1) thrice and she had to undergo abortion at the instance of the petitioner (A1) on all the three occasions with the assistance of the petitioner who had asked her to go to a Doctor by name Dr. Arun at M/s. Med Life Hospital, Gopalapuram who is a friend of the petitioner. On one of the occasions, she was also asked to take "Mifepristone" tablet for the purpose of terminating her pregnancy. The defacto complainant as seen from the FIR, has consented to have sexual intercourse with the petitioner on the promise made by him to marry her after divorcing his existing wife. She has also stated that the petitioner informed her that he is not having cordial marital relationship with his existing wife and he will be having a better life once he marries the defacto complainant.

23. The Hon'ble Supreme Court in the case of **Anurag Soni vs. State of Chhattisgarh** reported in **(2019) 13 SCC 1** held that if from <https://hcservices.ecourts.gov.in/hcservices/>

the inception of their relationship, the accused had given a promise to marry the prosecutrix but did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per section 90 of IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under section 375 of IPC and can be convicted for the offence under section 376 IPC. The relevant finding of the Hon'ble Supreme Court in the aforesaid decision is extracted hereunder:

" 14. Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that from the very beginning the Accused never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had a physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the Accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 of the Indian Penal Code and such a consent shall not excuse the Accused from the charge of rape and offence Under Section 375 of the Indian Penal Code.

24. On a prima facie satisfaction, the prosecution has registered the FIR for the offences under section 376 IPC along with other offences. Whether free consent was given by the defacto complainant for sexual intercourse or not is a matter for investigation and trial. On a prima facie consideration, we cannot rule out the perpetration of fraud by the petitioner by falsely promising the defacto complainant that he will marry her in order to quench his lust for sex. The nude photograph of the defacto complainant found in her whatsapp messages alleged to have been sent by the petitioner from his mobile number also creates suspicion about the involvement of the petitioner in the sexual offence. Based on the aforesaid suspicion, the police have registered the FIR against the petitioner under section 376 IPC which will have to be investigated.

25. This Court on a prima facie consideration, does not find any infirmity with the registration of FIR under section 376 IPC. The punishment for the offence under section 375 IPC as prescribed under section 376 IPC is rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine. Indeed the offence committed under section 375 IPC is a grave offence. Therefore, after giving due consideration to the aforementioned factors, this Court rejects the contention of the learned counsel for the petitioner that by total non-application of mind, the respondent police have registered the FIR against the petitioner for the alleged offence under section 376 IPC.

26. With regard to the registration of FIR under section 313 IPC is concerned, the following analysis is given by this Court. Section 313 of IPC reads as follows:

" 313. Causing miscarriage without woman's consent.- whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 313 of IPC is also a grave offence. The case of the prosecution is that the defacto complainant was made to abort her three pregnancies only on the demand made by the petitioner to do so. It is also the case of the prosecution that the termination of the defacto complainant's pregnancies were done through a Doctor friend of the petitioner by name Dr.Arun at M/s.Med Life Hospital, Gopalapuram. It is the categorical case of the prosecution as found in the FIR that the defacto complainant was forced to terminate her three pregnancies only on the demand made by the petitioner (A1) even though she wanted to beget a child. Whether miscarriage was caused by the defacto complainant under her own volition or on the coercion of the petitioner (A1) will have to be investigated by the police and decided only after completion of investigation or after trial. The investigation is in the preliminary stage and some more witnesses and documents are to be unearthed by the police to find out the truth. On a prima facie consideration, this Court cannot come to the conclusion that section 313 of the Indian Penal Code is not attracted.

27. It is settled law that though discretion is vested with the High Court to grant anticipatory bail, the same will have to be exercised judiciously. The Hon'ble Supreme Court in the case of **State of Kerala vs. Mahesh** reported in **2021 SCC Online SC 308** has enumerated some factors that the Court will have to keep in mind while granting bail. The said factors are only illustrative and not an exhaustive one. Some of the factors listed out by the Hon'ble Supreme Court in the aforesaid decision are as follows:

"(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire

reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

28. In the case on hand, the petitioner has been charged with an heinous crime. He was an Ex.M.L.A and an Ex.Minister. He held office as Minister till August 2019 which is not long ago. The witnesses to the offence alleged to have been committed by the petitioner are his staff members, servants and his friends. Therefore, after giving due consideration to the gravity of the offences which are serious in nature and in view of the nature of the witnesses who may have to be interrogated, there is reasonable apprehension that there is a possibility that the petitioner may tamper with the evidence/witnesses as the investigation is in a preliminary stage and some more witnesses and materials will have to be unearthed by the investigating team to find out the truth. There is also a possibility that the petitioner may flee from justice using his influence and money power, if anticipatory bail is granted at this stage. This Court is of the considered view that the petitioner has failed to satisfy the triple tests required for the purpose of getting anticipatory bail as laid down by the decision of the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Balchand** reported in **(1977) 4 SCC 308** wherein the Hon'ble Supreme Court held that only in cases where (a) there is no chance for the accused to flee from justice or in other words, he is a flight risk, (b) the accused will not tamper with the evidence and (c) the accused will not influence the witnesses, anticipatory bail can be granted by the constitutional Courts.

29. The Judgments relied upon by the learned counsel for the petitioner namely (a) **Dr.Dhruvaram Murlidhar Sonar vs. State of Maharashtra** reported in **2019 AIR SC 327**, (b) **Pramod Suryabhan Pawar vs. State of Maharashtra** reported in **2019 AIR (SC) 4010** and (c) A Judgement dated 28.09.2020 of the Hon'ble Supreme Court in Crl.A.No.635 of 2020/SLP (Crl.) No.393 of 2020 are not relevant for this case. Those judgments have been rendered after completion of investigation or trial and those cases were dealing with the grant of bail where (a) Charge sheets were filed against the accused after investigation, (b) section 482 Cr.P.C., petitions were heard by the High Court exercising its inherent powers. But the case on hand is one dealing with Anticipatory bail petition, where the parameters for consideration are totally different from cases where charge sheets have already been filed and the witnesses and the documents/materials which resulted in the framing of charges against the accused are very much available.

30. The complaint was given on 28.05.2021 and FIR was registered on 29.05.2021. In the case on hand, the investigation is in a preliminary stage. Thereafter, the respondent police have swung into action and they have shown progress in the investigation by starting to examine some of the witnesses mentioned in the FIR and further witnesses will have to be examined and materials will have to be unearthed from those witnesses for the purpose of eliciting the truth. Therefore, this Court is of the considered view that the Judgments relied upon by the learned counsel for the petitioner have no relevance for the instant case.

31. The facts of the cases cited by the learned counsel for the petitioner are also different from the facts of the case on hand. In those cases, the defacto complainant and the accused belong to different castes and one of them belongs to Scheduled caste and right from inception of their relationship, they were not confident that they will be able to get married due to their respective castes. But in the case on hand, there was no such stumbling block for the defacto complainant and the petitioner to get married as they never had such a thought as seen from the FIR. Hence, the decisions relied upon by the learned counsel for the petitioner has no relevance whatsoever to the case on hand.

32. With regard to the charges made under sections 417, 323 and 506(i) IPC are concerned, they are minor offences when compared to sections 376 and 313 IPC. This Court may have been inclined to grant anticipatory bail, if the petitioner (A1) was charged under sections 417, 323 & 506(i) IPC alone. But in the case on hand, this Court is of the prima facie view that the statements made by the defacto complainant as well as by the witnesses so far examined by the respondent police will not lead to a conclusion that sections 417, 313, 376, 323 and 506(i) of IPC are not attracted.

33. The complaint was given by the defacto complainant against the petitioner (A1) only on 28.05.2021 and the FIR was registered as Crime No.05/2021 by the respondent police on 29.05.2021. The prosecution has also stated as seen from their counter that the witnesses so far examined who have either given statements under section 161 Cr.P.C or before the Magistrate under section 164 Cr.P.C. have corroborated the complaint given by the defacto complainant. As seen from the complaint, FIR as well as section 164 Cr.P.C. statement of the defacto complainant given on 08.06.2021, there are several witnesses who will be in a position to give evidence with regard to the alleged offences committed by the petitioner (A1). The witnesses includes Manikanda kumaran, home guard who was doing duty at the petitioner's official residence, the petitioner's office assistants viz., Pandi and Murali, cooks namely Govindammal and Selvi, Dr.Arun, the petitioner's friend who assisted the defacto complainant in terminating her pregnancies, Gynaecologist viz., Dr.Jeyanthi, Mahesh, the Government driver provided by the petitioner to the defacto complainant for her personal use, Rajkumar, the personal driver of the petitioner, Samy, the Personal Assistant of the petitioner and Mr.Hari, another Personal Assistant of the petitioner. The witnesses mentioned in the FIR as well as in the section 164 Cr.P.C. statement

of the defacto complainant were all servants/staffs of the petitioner (A1), who according to the defacto complainant were witnesses to the intimacy of the petitioner towards her.

34. The petitioner (A1) is an Ex.M.L.A. and a former Minister till August 2019 which is not long ago. Whatsapp messages alleged to have been sent by him to the defacto complainant discloses his wide influence. Whether the said messages are genuine or not, only after investigation or after trial by the Court of law, the truth can be unearthed.

35. The consideration which should weigh with the Court while dealing with the request for anticipatory bail need not be the same as for an application to release on bail after arrest. The reason for the above observation is that in grave offences, if the accused is equipped with an order of anticipatory bail even before interrogation, it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the alleged commission of the offences and public interest may also suffer as a consequence. If granted anticipatory bail at this preliminary stage that too for offence of grave nature involving a woman, the investigation may get delayed as there is every possibility that the petitioner with his influence and affluence may scuttle the investigation.

36. In the case on hand, the prosecution has vehemently opposed the grant of anticipatory bail to the petitioner. In view of the fact that the major offences alleged to have been committed by the petitioner (A1) are grave in nature and there is also prima facie satisfaction about the registration of FIR under the said sections, the custodial interrogation is required as only then elicitation from the petitioner is easier than when he is well settled with a favourable anticipatory bail order and there is every possibility, he may escape from the rigours of investigation by using his influence.

37. The alleged offences under sections 376 and 313 IPC are serious in nature and when the accused wields a wide influence, the custodial and effective interrogation of the accused is of tremendous advantage in disinterring information and materials which would have been concealed. Liberty of the individual is desirable, but also desirable is the need to detect, investigate and prosecute those guilty of any offence in the interest of the public at large. In an alleged offence of rape that too when the investigation is in a preliminary stage, the Courts should act with circumspection while deciding an application for anticipatory bail. There will also be public outcry if the petitioner is released on anticipatory bail when the investigation is in the beginning stage.

38. Article 21 of the Constitution of India is an essential right given to every citizen so that their right to life and personal liberty is not threatened. When a person is accused of a crime, it is important according to the legal procedure to keep that person in custody. However, until the accused is proven guilty, he is entitled to his right to personal liberty and no one can deny him this

freedom. This is why granting bail is a necessary procedure of law. But it is also important that the accused gets punished for the crimes that he has committed. Thus, bail cannot be granted only on the basis of protecting the fundamental rights of the citizens. The investigation has to be strict and unbiased to decide whether the accused can be released on bail. A balance between these two has to be restored so that the principles of Liberty, Equality, and Justice enshrined in the Constitution can be abided. The case on hand is one of the cases where due to the gravity of the offences and the personality involved, granting anticipatory bail at this stage when the investigation is in a preliminary stage will not arise. For the reasons stated above, balance is tilted against the petitioner for the grant of anticipatory bail.

39. In the case on hand, where FIR has been registered against the petitioner under sections 376, 313, 323, 417 & 506(i) IPC read with Section 67A of the Information Technology Act and the petitioner being an influential person who was earlier holding the post of Minister and was also an M.L.A., it is not desirable at this preliminary stage of investigation to grant anticipatory bail to him that too, when there are several other witnesses who may have to be interrogated and materials unearthed for the purpose of eliciting the truth. Further, the petitioner till date has also not come forward to co-operate with the investigation by giving his version to the police and that is also one of the major factors which has influenced the mind of the Court to reject the petitioner's request for anticipatory bail at this preliminary stage of investigation.

40. For the foregoing reasons, there is no merit in this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, CrI.M.P.No.6145 of 2021 for Intervening is allowed.

41. However, it is made clear that the investigating team shall proceed with the investigation uninfluenced by any of the observations made by this Court in this Order.

-sd/-
16/06/2021

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 SPECIAL COURT FOR OFFENCE AGAINST WOMEN AT
MAGISTRIAL LEVEL, EGMORE, ALLIKULAM
COMPLEX, CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

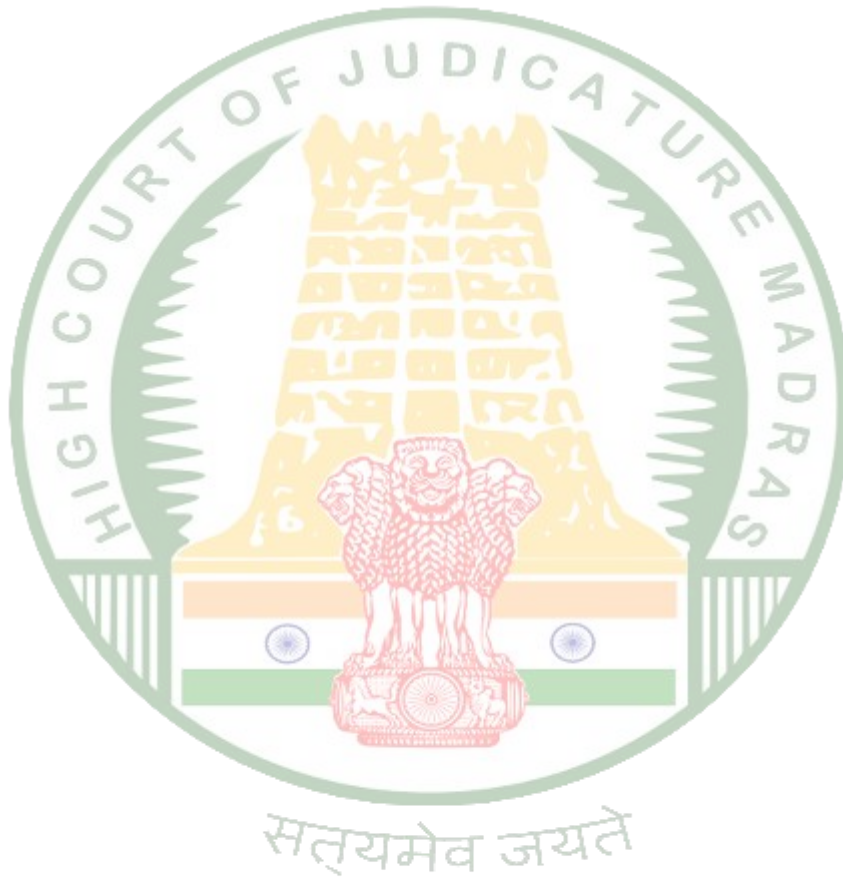
3 THE INSPECTOR OF POLICE
W-19 ALL WOMEN POLICE STATION, ADYAR,
CHENNAI-600 020.

CC to M/S.R.JOHN SATHYAN Advocate on payment of necessary
charges

CRL OP.9824/2021

Date :16/06/2021

TA-16/06/2021



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