



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Date : 17/02/2021

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PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.1527 of 2021

Maheswaran

... Petitioner/Accused Rank Not Known

Vs

State rep.by  
The Inspector of Police,  
Malaiyur Police Station,  
Pudukkottai District.  
(Crime.No. 87 of 2016.)

... Respondent/Complainant

For Petitioner : Mr.G.Mathavan,  
Advocate.

For Respondent : 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.87 of 2016 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner apprehending arrest at the hands of the respondent police for the offences punishable under section 174 (iii) of Cr.P.C. @ 304(b), 498(A), 306, 34 and 109 of I.P.C., in P.R.C. No.25 of 2017, on the file of the Mahila Court, Pudukkottai, seeks anticipatory bail.

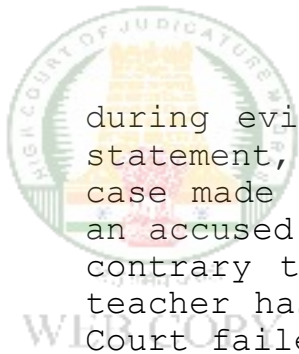
2.It is seen from the materials on record that the respondent filed Crl.M.P.No.46 of 2021 before the Mahila Court, Pudukkottai to add the petitioner as accused on 20.01.2021. It was allowed on the same by the Court below. Hence, the petitioner was arrayed as

<https://hcservices001.don.in/hcservices/> case.



3. The case of the prosecution is that father of the deceased Sathya had lodged a complaint stating that the marriage between his daughter and Parameshwaran brother of the petitioner was conducted on 05.02.2015. During marriage Rs.50,000/- cash 13 ½ sovereigns of gold ornaments, one passion pro two wheeler, cot, mattresses and other household articles were given as dowry. His daughter was living in a joint family with her in-laws. Within two months of their marriage his daughter had come home alone and when she was enquired she informed that her husband along with his family members had abused her and further demanded Rs.50,000/- as additional dowry. The defacto complainant also arranged the same and given to them. Six months thereafter another Rs.30,000/- was demanded and the same was also arranged and given. Two months thereafter another Rs. 10,000/- was demanded and it was also arranged and given to her in-laws. Thereafter also the defacto complainant's daughter was constantly harassed and demanded dowry. Each time the defacto complainant had paid the dowry, consoled her and thereafter sent her back to the matrimonial home. The defacto complainant's daughter became pregnant and she was not taken to hospital for giving proper treatment and it was defacto complainant who took her to hospital for treatment and left her in the matrimonial home. At the time of marriage Sathya had completed B.A degree and during marriage it was agreed by them that they would allow her to continue her m.A degree but she was not allowed to continue her studies. Four days prior to the occurrence the said Sathya had called her husband/A1 and asked him to take her for scan and at that time she was abused and not taken to hospital. Hence the parents of the Sathya had taken her to hospital and thereafter she was left in the matrimonial home. At that time A2/Murugaiah assured that he will take care of Sathya. On 21.06.2016 at about 3.15 hours his daughter committed suicide in the matrimonial home by hanging herself and the same was informed to the defacto complainant. Thereafter complaint was lodged.

4. The learned counsel for the petitioner would submit that the petitioner is the younger brother of Parameshwaran. Since the death had taken place 1 1/2 years within marriage, RDO enquiry was conducted under Section 174 of Cr.P.C. During enquiry he appeared and stated that he was employed as a teacher and working in Government School, Varapur Village, Pudukottai and he got married five months prior and he was living separately.. He further disclosed that his brother/A1 was having psychiatric problem for which he took treatment at Aathama Hospital and there was frequent quarrel between them his brother and Sathya. He had also stated that his sister-in-law was not permitted to continue her studies and due to the fight between them she used to go to her parents home frequently. Further there was no cordial relationship between the petitioner and his brother. The petitioner was away and he was informed about the death of said Sathya. During trial, petition



during evidence of PW.1. On perusal of the complaint, 164 Cr.P.C statement, RDO enquiry report, and confession finding *prima facie* case made out against the petitioner, the petitioner was arrayed as an accused and Non Bailable Warrant was issued against him, which is contrary to law and procedure. The petitioner being a Government teacher has been falsely implicated in this case. Further the trial Court failed to follow the procedures as contemplated in law, hence he sought for anticipatory bail.

5. The learned Government Advocate(Crl.Side) would submit that complaint was lodged by the defacto complainant and on his complaint case was registered. 174 Cr.P.C enquiry was conducted by Revenue Divisional Officer and had given a report dated 27.06.2016. As per the RDO enquiry the family members of the husband of the deceased was absconding. After enquiring the family members of the petitioners, deceased, neighbours, relatives he filed a report finding that the deceased might have committed suicide because of demand of dowry. Thereafter on completion of investigation , examination of witnesses final report filed listing LW.1 to LW.31 as witness and thereafter the case was committed to the court of sessions in S.C.No.145/17. Charge sheet was filed against the husband, father-in-law, mother-in-law of the deceased and they are arrayed as A1 to A3. During the course of trial PW.1 was examined and he had filed a petition under Section 319 of Cr.P.C , thereafter the trial court on perusal of the materials by order dated 20.01.2021 had arrayed the petitioner as accused and issued Non Bailable Warrant against him.

6. Considered the rival submissions, From the perusal of the materials it is seen that the petition under Section 319 of Cr.P.C was filed on 20.01.2021 and on the same day orders passed. The petitioner produced the copy of the final report and the RDO report. In the report statements of petitioner's parents, his other brother, defacto complainant his wife, son and cousins were examined and recorded During enquiry except the defacto complainant none of the witnesses stated anything about the petitioner. The defacto complainant gives a bald statement against the petitioner and no general in nature. No specific overt act has been attributed against the petitioner. Further the enquiry report is a detailed one. The trial Court without following the procedure contemplated under Section 319 of Cr.P.C while arraying a person as accused has passed the order on the same day reflecting the non application of mind, with predetermination. The Hon'ble Apex Court in the case of **Vikas -vs- State of Rajasthan** reported in **(2014) 3 Supreme Court Cases 321**, wherein it is held as :

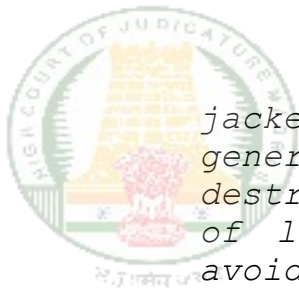
"11.The learned counsel appearing for the appellant, would submit that the Trial Court, to seek attendance of the appellant and the other accused persons had issued non-bailable warrants instead of bailable warrants which was not justified.





1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law. The issuance of non-bailable warrant involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, this demands that the courts have to be extremely careful before issuing non-bailable warrants.

15. In order to examine the reasoning of the Trial Court, the case is to be understood in its own facts and circumstances. In the instant case, the Trial Court after appreciating the evidence available had reasonable satisfaction from the evidence already collected during the trial that the appellant had committed an offence along with the other accused who had undergone the Trial and therefore issued a non-bailable warrant to seek the attendance of the appellant- herein under an application of Section 319 of the Cr.P.C. To appreciate the present case, it is pertinent to discuss the meaning of bailable offences and non-bailable offences and the circumstances in which a non-bailable warrant can be issued. In the legislative history for the purposes of bail, the term bailable and non-bailable are mostly used to formally distinguish one of the two classes of cases, viz. 'bailable' offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non bailable offences to such a person is left by the legislature in the court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a given case. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by system and sub-ordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application of Section 319 of the Cr.P.C. The power under Section 319 of the Cr.P.C being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-



jacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are re-iterated in the case of Inder Mohan Goswami (Supra) and in the case of State of U.P. vs. Poosu and Anr; 1976 3 SCC 1, wherein it is mentioned that Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 of the Cr.P.C. would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case.

16. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued.

17. In view of the above, we modify the orders passed by the Trial Court and confirmed by the High Court, and direct that summons be issued against the appellant for his appearance instead of non bailable warrants which were ordered to be issued against him.

18. The Criminal appeal is disposed of accordingly".

7. The trial court arraying the petitioner in a haste is not proper. Further issuing Non Bailable Warrant at the first instance is against the dictum of the Hon'ble Supreme Court of India. In view of the same, this Court is inclined to grant anticipatory bail to the petitioner.

8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the District Mahila Court, Pudukottai 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 respondent Police or to the Police Officer, who



intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a) the petitioner and 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;

(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 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]***; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-  
17/02/2021

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

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1 THE DISTRICT MAHILA JUDGE,  
PUDUKOTTAI.



2 THE INSPECTOR OF POLICE  
MALAIYUR POLICE STATION,  
PUDUKKOTTAI DISTRICT.

3 THE ADDITIONAL PUBLIC PROSECUTOR  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI

ORDER

IN

CRL OP(MD) No.1527 of 2021

Date :17/02/2021

NR/PN/SAR-IV(02.03.2021) 8P:4C