



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 10/03/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) . No.2670 of 2021

R.Manikandan

... Petitioner/Sole Accused

Vs

State rep.by
The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.
Crime No. 353/2008.

... Respondent/Complainant

For Petitioner : Mr.S.Vasanth Yugesh,
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.353 of 2008 on the file of the Respondent police.

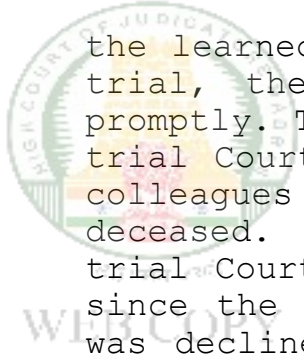
ORDER : The Court made the following order :-

The petitioner, who is the sole accused, apprehending arrest at the hands of the respondent Police for the offence punishable under Section 302 of IPC, in Crime No.353 of 2008 on the file of the respondent Police, seeks anticipatory bail.

2.The case of the prosecution is that the deceased is the elder brother of the petitioner. Due to family dispute, the petitioner said to have committed murder of the deceased. Hence, the present complaint.

3.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent Police.

4.The learned counsel appearing for the petitioner submitted that the investigation has been completed and charge sheet has been filed and the same has been taken on file in S.C.No.314 of 2011 by



the learned Principal District cum Sessions Judge, Madurai. During trial, the petitioner had appeared before the trial Court very promptly. Thereafter, the petitioner was unable to appear before the trial Court, since he had apprehended counter attack on him by the colleagues of the deceased as well as the family members of the deceased. Thereafter, the petitioner had absconded and hence, the trial Court has issued a NBW against the petitioner on 12.06.2012. since the case is kept pending from the year 2011, the petitioner was declined as a proclaimed offender. Since the petitioner is a single accused, the case was later moved to the long pendency case as per the order of the lower Court in Cr.M.P.No.233 of 2017. Thereafter, the petitioner has moved this anticipatory bail. He further submitted that now the petitioner is suffering from epididymo orchitis, symptoms of TB and urinary dilution. He has also relied upon the judgment of the Himachal Pradesh at Shimla High Court reported in **Manu/HP/0976/2020** in the case of **Mahender Kumar Vs. State of Himachal Pradesh**.

5.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the person, who was declared as an absconder or proclaimed offender, there is no question of granting anticipatory bail. He further submitted that this Court in the case of **Lavesh Vs. State of (NCT of Delhi)** reported in **(2012) 8 SCC 730**, had held that the absconding accused are not entitled for anticipatory bail. He has also relied upon the Order of the Honourable Apex Court in the case of **State of Madhya Pradesh Vs. Pradeep Sharma**, reported in **(2014) 2 SCC 171**, in which, Paragraph No.12 is extracted hereunder:

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of [Section 82](#) of the Code he is not entitled to the relief of anticipatory bail." It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of [Section 82](#) of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahmabhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology



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Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk rabri. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under Section 82 of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under Section 82 of the Code to answer the complaint on 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating "facts and circumstances of the case", granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under Sections 302 and 120B read with Section 34 of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail. "

6. In view of the same, it is clearly stated that it is settled position of law that where the accused has been declared as an absconder and when he has not cooperated with the investigation, he should not be granted anticipatory bail. Hence, this Court is not inclined to grant anticipatory bail to the petitioner.

7. Accordingly, this Criminal Original Petition stands dismissed.

sd/-

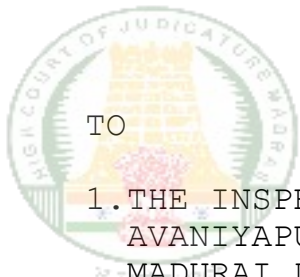
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : 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 INSPECTOR OF POLICE,
AVANIYAPURAM POLICE STATION,
MADURAI DISTRICT.

2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to Mr.S.VASANTHA YUGESH, Advocate SR.No.1985

ORDER

IN

CRL OP(MD) No.2670 of 2021

Date :10/03/2021

vsg

AE/SMA/25.03.2021/4P/4C