



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 16/03/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) . No.2887 of 2021

Sreenivasa Moorthi @ Josuva David ... Petitioner/Accused No.4

Vs

The State rep.by
The Inspector of Police,
All Women Police Station,
Colachel Post,
Kanyaumari District.
Crime No.13/2019

Now Transferred to

The Inspector of Police,
All Woman Police Station,
Nagercoil,
Kanyaumari District.

... Respondent/Complainant

For Petitioner : Mr.S.C.Herold Singh,
Advocate.

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

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

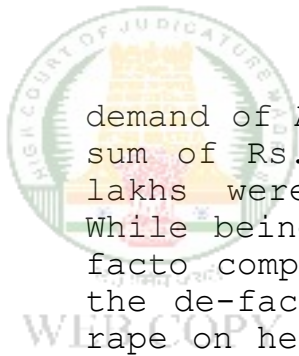
PRAYER :-

For Anticipatory Bail in crime No. 13/2019 on the file of the
respondent Police.

ORDER : The Court made the following order :-

This is the second anticipatory bail application. The
petitioner/A4, who apprehend arrest at the hands of the respondent
police for the offences punishable under Section 376 of IPC, seeks
anticipatory bail.

2.The case of the prosecution is that the de-facto complainant
is wife of A-1 and the petitioner is the husband of A-3. The first
accused got married the de-facto complainant on 27.11.2014. On



demand of A-1 and others along with the present petitioner herein, a sum of Rs.20 lakhs as dowry and household articles worth of Rs.2 lakhs were given by the de-facto complainant's family members. While being so, after their marriage no issues for A-1 and the de-facto complainant. Therefore, A-1 administering sedative drink to the de-facto complainant and allow the petitioner herein to commit rape on her. Thereafter, the de-facto complainant got pregnant and delivered two children. Hence, the complaint.

3.The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has nothing to do with the alleged occurrence.

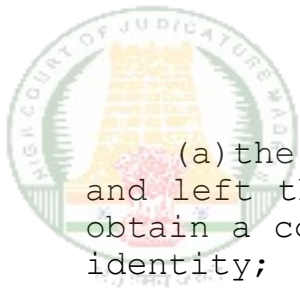
4.The learned Government Advocate (Crl. Side) appearing for the respondent police submitted that totally there are four accused, in which, the petitioner herein is arrayed as A4 and A1 was already arrested and remanded into judicial custody. He further submitted that as against A-4, there is very serious allegations that on administering sedative drink to the de-facto complainant by A-1, the petitioner herein was allowed to commit rape on the victim, thereby, she got pregnant and also delivered child. Therefore, the custodial interrogation of the petitioner is very much warranted in this case and hence, he opposed to grant anticipatory bail to the petitioner.

5.It is seen from the records that the petitioner has been arraigned as A-4 in this case. A-1 is the estranged husband of the de-facto complainant. A-2 and A-3 are in-laws of the de-facto complainant. A-4 is the husband of A-3. The petitioner and A-1 had given sedative drink to the de-facto complainant and taking advantage of the situation, the petitioner is said to have physical relationship with her forcefully. Further, it is seen that the dispute between the de-facto complainant and her husband/A-1 is from the year 2018 and from 29.03.2018, they were living separately. She had filed maintenance case in M.C.No.17 of 2018 on 15.10.2018 before the learned Judicial Magistrate, Kulithali, which is pending. This complaint was lodged on 04.04.2018. In the maintenance case or in any of the proceedings earlier, there is no such allegation made against the petitioner and this allegation has been presently made.

6.In view of the same, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7.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 learned Judicial Magistrate Court, **(*)Eraniel**, 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 to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate

<https://hcservices.courts.gov.in/hcservices/> 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;

WEB COPY (b) the petitioner shall report before the respondent police daily at 10.30 a.m, until further orders and during the investigation, the petitioner has to undergo DNA test or any other test and he shall not resist the same and he has to co-operate with the investigation.

(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/-
16/03/2021

(*) Further two week time is granted to the petitioner to comply with the conditions imposed by this Court from the date of receipt of a copy of this order as last chance

**(*) Corrected as per order dated.
17.04.2021 in CRL MP(MD).3096 of 2021
in CRL OP(MD).2887 of 2021
/ TRUE COPY /**

/ /2021
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

(*)To be substituted with the order dated 25/03/2021 already despatched

1.THE JUDICIAL MAGISTRATE, NAGERCOIL.

2.THE JUDICIAL MAGISTRATE, **ERANIEL**

3.DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.

4.THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
COLACHEL POST, KANYAUMARI DISTRICT.

5.THE INSPECTOR OF POLICE,
ALL WOMAN POLICE STATION,
NAGERCOIL,
KANYAUMARI DISTRICT.

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

+1 CC to Mr.S.C.HEROLD SINGH, Advocate (SR-3214[I] dated 19/04/2021

ORDER

IN

CRL OP(MD) No.2887 of 2021

Date :16/03/2021

SJI

TK/PN/SAR.3/23.03.2021/4P/7C

NA/24.04.2021/4P:8C