



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 04/03/2021

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PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.2881 of 2021

Shivashankar

... Petitioner/Accused No.1

Vs

The Inspector of Police,
Eral Police Station,
Tuticorin District.
(Crime No.547/2020).

... Respondent/Complainant

For Petitioner : Mr.Raamakrishnan.KA.,
Advocate.

For Respondent : Mr.M.V.Chandrasekaran,
Government Advocate (Crl.Side)

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

PRAYER :-

For Anticipatory Bail in crime No. 547/2020 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner, who is arrayed as A1, apprehending arrest at the hands of the respondent police for the offences punishable under Sections 294(b), 448, 342, 323, 363, 365, 380 and 506(ii) of IPC r/w 4 of TNWH Act, in Crime No.547 of 2020 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that on 21.12.2020, at about 01.00 a.m, the petitioner along with others were said to have trespassed into the defacto complainant's house and stolen the cash of Rs.27,000/- and 6 sovereigns of jewels and thereafter, the petitioner showing the knife kidnapped her two children. Hence, the present complaint.

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



4.The learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. He further submitted that the petitioner is none other than the son-in-law of the defacto complainant. He further submitted that the daughter of the defacto complainant viz., Kavitha and their children are living happily with the petitioner. In this regard, the daughter of the defacto complainant has filed an undertaking affidavit before this Court. Hence, he prayed for grant of anticipatory bail by this Court.

5.The learned Government Advocate (Crl. Side) appearing for the respondent police submitted that the petitioner and the defacto complainant's daughter and their two children are living happily.

6.The undertaking affidavit filed by the defacto complainant's daughter viz., Kavitha, in which, paragraph Nos.3, 4, 5, 6 and 7 are extracted hereunder:

3.I submit that my mother Saraswathi who is residing in my native place were later informed by me relatives about the second marriage of me with Sivashankar and my mother on hearing the same invited me and my husband after 7 months of our marriage as if she has accepted my second marriage with sivashankar and trusting the same myself and my children along with my above named husband went to my mother's house in August 2020 due to the pandemic situation and we were all at my mother's house at Eral and after our arrival to my native place at Eral my mother started showing her real face and she started harassing me to come away with the wedding relationship with my above husband. By the by since my father's beneficiary benefits has also reached us I accordingly demanded my mother to give my share as money and accordingly my mother in respect of my share in my father's beneficiary benefits which was around of Rs.4,00,000/- was deposited in my Account No.3513132030 of Kotak Mahindra Bank M.G.Road Bagalore on 20.12.2020 by way of RTGS.

4.I submit that thereafter on 20.12.2020 my above mother harassed me and my husband and my children demanding to get away from the wedding relationship if not she stated that she will not stop harassment towards me. Thereafter on 20.12.2020 i on my own wish and accord requested my above named husband to take me and children to Bangalore where we lived happily and also had out job. Hence, my above named husband with all happiness accepted and myself and my children went with him to Bangalore where we were brought up, and there was leased out bouse for Rs.3,00,000/- for which i utilised the above money which was utilised for lease and i transferred the above fund of



money to my husband account bearing A/c No.00000020031273360 of State Bank of India at battarahalli Branch, Bangalore and accordingly myself and my husband took lease of house and from that day onwards we are living happily in the above address.

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5.Subsequently we came to know that my above mother as soon as we left the home on 20.12.2020 from Eral she has lodged a false complaint against my husband in which the Eral police station has been registered a case in Crime No.547/2020 for the offence under Sections 294(b), 448, 342, 323, 363, 365, 380 and 506(ii) of IPC r/w 4 of TNWH Act as against my husband as we have taken away the jewellery from my mother's house and caused injury to her and has abducted me and my children which is not at all true and it is totally a false drama enacted by my mother.

6.In fact when i came to my mother's house i left my 10 sovereigns of gold and other house hold articles which were not taken by me and due to the harassment made by my mother and she in order to take away my jewelry has lodged this false case and lodged complaint against my husband only in order to break the wedding relationship of me and with the above my husband and absolutely there is not even small piece of truth in the case which is foisted against my husband.

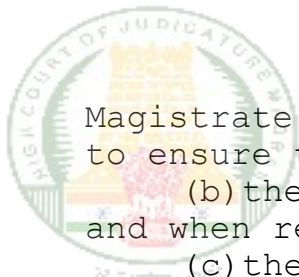
7.I hereby that myself and my children are living happily with my above husband in above said address without and disturbance.

7.Considering the facts and circumstances of the case and also considering the rival submissions on either side and on perusal of the materials available on records, it is seen that the petitioner and the defacto complainant's daughter and their two children are living happily. In this regard, the defacto complainant's daughter has also filed an undertaking affidavit. The undertaking affidavit filed by the the defacto complainant's daughter is placed on record. Considering the above circumstances, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

8.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of two weeks from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Srivaikundam, Tuticorin, 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 concerned and on further condition that:

(a)the petitioner and the sureties shall affix their left thumb impression in the surety bond and the

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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/-

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

vsg

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 JUDICIAL MAGISTRATE,
SRIVAIKUNDAM, TUTICORIN DISTRICT.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
TUTICORIN DISTRICT.
- 3 THE INSPECTOR OF POLICE
ERAL POLICE STATION, TUTICORIN DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.KA.RAAMAKRISHNAN, Advocate SR.No.1809

ORDER

IN

CRL OP(MD) No.2881 of 2021

Date : 04/03/2021

NR/PN/SAR-IV(12.03.2021) 4P:6C

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