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

Reserved on	Pronounced on
15.06.2021	18.06.2021

PRESENT

The Hon'ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD. Nos.6579 and 6650 of 2021

Crl.O.P. (MD)No.6579 of 2021:

Saribu @ Mohamed Sarif

... Petitioner/Accused No.1

Vs

The Inspector of Police,
Sayalkudi Police Station,
Ramanathapuram District.
Crime No.138/2021.

... Respondent/Complainant

Althaf Hussain

... Petitioner/
Defacto Complainant
in CRL MP (MD)No.3920/2021
in CRL OP (MD)No.6579/2021

For Petitioner : Mr.Venkateswaran.R, Advocate.
For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor
For Intervenor : Mr.R.karunanidhi, Advocate

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

For Bail in Cr.No.138/2021 on the file of the Respondent Police.

CRL OP (MD)No.6650 of 2021:

1. Mohamed Aasic @ Ashick
2. Mohamed Asath @ Asath
3. Samsammal



4. Havua Beevi @ Avvai
5. Saitha Bhanu
6. Rishwan Alias Riswan

... Petitioners/Accused No.2 to 7

WEB COPY

Vs

The State Rep. by
The Inspector of Police,
Sayalkudi Police Station,
Ramanathapuram District
Cr No. 138/2021..

... Respondent/Complainant

Althaf Hussain

... Petitioner/
Defacto Complainant
in CRL MP (MD) No.3729/2021
in CRL OP (MD) No.6650/2021

For Petitioner : Mr.Haroon Rasheed.D.S., Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

For Intervenor : Mr.J.Sulthan Basha
for M/s Ajmal Associates

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

PRAYER :-

For Anticipatory Bail in Crime No.138 Of 2021 on the file of the respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioner/A.1 in Crl.O.P.(MD)No.6579 of 2021, who was arrested and remanded to judicial custody on 04.04.2021 for the offences punishable under Sections 147, 148, 341, 294(b), 324 and 307 I.P.C., in Crime No.138 of 2021, on the file of the respondent police, seeks bail.

2. The petitioners in Crl.O.P.(MD)No.6650 of 2021/A.2 to A.7 apprehending arrest at the hands of the respondent police for the alleged offences punishable under sections 147, 148, 341, 294(b), 324 and 307 I.P.C., in Crime No.138 of 2021, on the file of the respondent police, seek anticipatory bail.

3. The case of the prosecution in this case is that there is previous enmity between the father of the defacto complainant viz., Mohamed Ethirsh and the first accused Mohamed Sarif in connection with the landed property. On 31.03.2021 at about 09.30 pm., when the defacto complainant's father and his relative Sarif Mohamed were returning in a two wheeler after completing the work, the defacto complainant was following them in his motor cycle. From a car



bearing Registration No.TN-22-BR-3637 standing in front of the house of the first accused Mohamed Sarif, the accused came out and waylaid the two wheeler of the defacto complainant's father. The accused Mohamed Asik told the accused Mohamed Sarif to kill the defacto complainant's father and gave an aruval to Mohamed Sarif. On receiving the aruval, Mohamed Sarif tried to attack the defacto complainant's father. Since he lowered his head, the attack fell on his head, resulting in head injury. Mohamed Asad shouted to kill them and Samsammal took an aruval and tried to attack the defacto complainant's father. When Sarif Mohammed tried to prevent that attack, he suffered injury on his cheeks. On hearing the noise, the defacto complainant and others rushed to the spot. Hawabeevi shouted that they would take the head of the family members of the defacto complainant and then they left the scene. Therefore, this case came to be registered.

4. The learned Counsel for the petitioner/A.1 in CrI.O.P.(MD) No.6579 of 2021 submitted that the petitioner is innocent and he has been falsely implicated in this case and he is suffering from various diseases and therefore, he was granted an interim bail by this Court on 06.05.2021. Now he surrendered before the jail authority on 09.06.2021. Since the petitioner/A.1 is suffering from various ailments and he is in custody from 04.04.2021, the learned Counsel for the petitioner/A.1 seeks bail to the petitioner.

5. The learned Counsel for the petitioners in CrI.O.P.(MD) No.6650 of 2021 submitted that the petitioners are innocents and they are falsely implicated in this case and the facts stated in the First Information Report are false and exaggerated one. The substantial part of the investigation is over and therefore, he seeks anticipatory bail to the petitioners.

6. In reply, the learned Counsel for the intervenor in CrI.M.P. (MD)No.3920 of 2021 in CrI.O.P.(MD)No.6579 of 2021 submitted that the first accused is a politically influential person and the properties of the family were already divided and being enjoyed separately. When the defacto complainant and their relatives tried to sell the property allotted to their share, the petitioners and others have prevented them from selling the property and involved in criminal activities including assaulting the family members of the defacto complainant. In this regard, a case was registered in Cr.No.88 of 2021. Some of the petitioners in this case were also accused in that case. The accused in Cr.No.88 of 2021 were granted anticipatory bail on the ground that the injured was discharged from the hospital.

7. The defacto complainant filed photographs of the injured to show the nature of the injuries sustained. These photographs show that the injuries are serious in nature. They have also filed documents relating to the title and the dispute with regard to the property.



8. It is further submitted that misusing the interim bail granted to the first accused, he attended a marriage. The photographs show that he is hale and healthy and do not suffer from any ailment. In fact, a petition has been filed for cancelling the anticipatory bail granted to the petitioners in Cr.No.88 of 2021. Therefore, the learned Counsel appearing for the intervenor strongly opposed for granting of bail to the petitioner/A.1 in Crl.O.P. (MD)No.6579 of 2021.

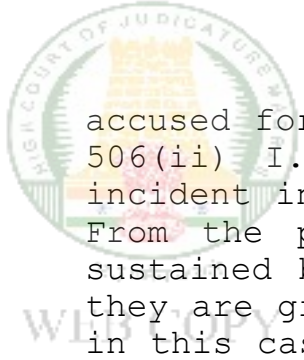
9. Similar argument was advanced on behalf of the intervenor in anticipatory bail petition by filing Crl.M.P.(MD)No.3729 of 2021. Apart from the above submissions, it is submitted that the accused filed similar anticipatory bail petition before the Vacation Sessions Court of Ramanathapuram and they also filed anticipatory bail petition before this Court. Other arguments are in tune with the arguments submitted by the learned Counsel appearing for the intervenor in Crl.M.P.(MD)No.3920 of 2021 in Crl.O.P.(MD)No.6579 of 2021.

10. In reply to these submissions, the learned Counsel appearing for the petitioner in Crl.O.P.(MD)No.6579 of 2021 submitted that the petitioner /A.1 is still not well. The injured had been discharged from the hospital and he is not in wheel chair as claimed by the defacto complainant. The first accused is holding a responsible position in a political party and in this case, he has been falsely implicated. In fact, some family members of the first accused suffered injuries. The defacto complainant party damaged the car of the accused. He has also filed certain photographs in support of his arguments.

11. The learned Additional Public Prosecutor appearing for the State opposes both petitions on the ground that there is a previous enmity between the defacto complainant and the accused in this case. There is a property dispute between them. As a result, both engaged in fighting with each other. The investigation in this case is not yet completed and therefore, the learned Additional Public Prosecutor prays for dismissal of the above petitions.

12. Heard the learned Counsel for the petitioners, the learned Additional Public Prosecutor appearing for the State and the learned Counsel for the intervenor and perused the materials placed on record.

13. It is seen from the records produced that there is a dispute between the family of the defacto complainant and the family of the accused with regard to selling a share allotted to the family of the defacto complainant to one Muniyasamy. On 26.02.2021, a fight ensued at the registration office. Subsequently, one Mohamed Shajahan and others were attacked by eight accused in connection with a dispute arose out of selling their share of the property to Muniyasamy on 08.03.2021. As a result, they suffered with injuries and a case in Cr.No.88 of 2021 came to be registered against eight



accused for the offences under Sections 147, 148, 294(b), 323, 324, 506(ii) I.P.C., and Section 4 of TNPHW Act. Subsequently, the incident in this case had happened on 31.03.2021 as narrated above. From the photographs produced, it is revealed that the injuries sustained by the victim were not simple injuries and it appears they are grievous injuries. Not only that, some of the petitioners in this case, viz., A.2-Mohamed Aasic @ Ashick, A.3-Mohamed Asath, A.4-Samsammal, A.7-Rishwan were also the accused in Cr.No.88 of 2021. The learned Counsel for the first accused submitted that the first accused is holding an important position in a political party and in fact, on 31.03.2021 - the alleged date of occurrence, he was in campaign for a political party. Prosecution case is that the first accused was very much present at the scene of occurrence and it was he, who attacked the victim with aruval. This aspect has to be considered only at the time of trial. Due to the property dispute, both parties are fighting with each other by using deadly weapons to attack the family members of the defacto complainant. It creates problem not only to the defacto complainant and his family members, but also to the members of the society at large because of the unrest created by this mad violence. Both occurrences had happened within a short span of time. The accused A.2, A.3, A.4 and A.7 had involved in both the incidents in Cr.No.88 of 2021 and in Cr.No.138 of 2021 and it shows that they have no respect for law and that they have taken the law into their own hands to settle their issues. Though the injured has been discharged from the hospital, considering the manner and impunity, with which the incident had occurred and the violence unleashed, this Court is not inclined to grant bail to the first accused and the anticipatory bail to other accused. Having got the interim bail on the ground of ill health, the first accused is not expected to freely roam and attend functions. It is clear from the photo that he is hale and healthy. Therefore, the alleged ill-health set up by him to seek interim bail is doubtful. Taking note of all these facts and circumstances, this Court is of the considered view that the petitioner/A.1 in Cr1.O.P. (MD)No.6579 of 2021 is not entitled for bail and the petitioners/A.2 to A.7 in Cr1.O.P.(MD)No.6650 of 2021 are not entitled for anticipatory bail. Accordingly, both the petitions are dismissed.

sd/-

18/06/2021

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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,
SAYALKUDI POLICE STATION,
RAMANATHAPURAM DISTRICT.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
3. THE OFFICER INCHARGE,
SUB-JAIL,
MUDUKULATHUR.

ORDER IN
CRL OP (MD) Nos. 6579 & 6650 of 2021
Date : 18/06/2021

SSL
TE/VR/SAR-III : 23/06/2021 : 6P/4C