



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 26/08/2021
PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No. 12200 of 2021

1.Kannan
2.Bhavani

....Petitioner/Accused Nos.6 and 7

Vs

The State rep.by,
The Inspector of Police
D1-Thallakulam Police Station (L&O), Madurai.
Crime No.760 of 2021 ... Respondent/Complainant

For Petitioners : MR.S.MUNIYANDI, Advocate.
For Respondent : MR.E.ANTONY SAHAYA PRABAHAR,
Government Advocate (Crl.Side)

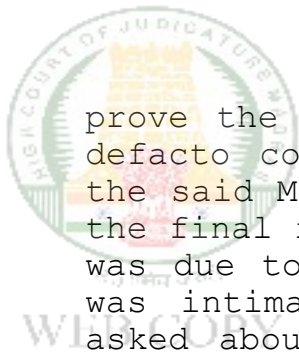
PETITIONS FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-For Bail in Crime No.760 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/A6 & A7, who were arrested on 01.07.2021 for the offences under Sections 420, 468 and 471 I.P.C and Sections 80, 81 of J.J.Act @ 370(4), 370(5), 371, 468, 471 and 120(b) I.P.C and Sections 80 and 81 of J.J.Act in Crime No.760 of 2021 on the file of the respondent police, seek bail.

2. The case of the prosecution is that the defacto complainant is a social worker. One Iswarya, W/o.Sonaiyan had two male and one female children. Due to poverty, she is unable to maintain her children. Hence, she decided to hand over her children to a children orphanage. The defacto complainant did all the help to the said Iswarya by getting NOC from the local jurisdictional police and entrusted the children in the month of March 2021 with one Ithayam Arakattalai situated at Reserve Line, Madurai, run by the accused Nos.1 and 2. On 20.06.2021 at about 7.00 p.m, the administrator of the trust called the relative of Iswarya and intimated that her younger son was having very fever and admitted in Government Rajaji Hospital, Madurai. On the next day, on 21.06.2021, the defacto complainant went to the trust and at that time, the Director, Sivakumar @ Siva and one person, by name, Matharsha intimated that the child was affected by Corona and admitted in the Government Hospital. No one was permitted to see the child. In order to



prove the same, the said Matharsha sent a reference letter to the defacto complainant's mobile phone. While so, at around 2.00 p.m, the said Matharsha intimated that the child died due to Corona and the final rituals were held at Thathaneri crematory. Since the death was due to COVID, no one was allowed to see the body and the same was intimated to the parents also. When the defacto complainant asked about the details from the said Sivakumar, he was informed that the child was handed over to someone. The defacto complainant suspected the activities of the trust and lodged the complaint and the case has been registered as child missing. During the investigation, it was found that not only Iswarya's child, but also another child was sold to the petitioners and some other third parties, by creating bogus documents. Thereafter, the case was altered and nine named accused were arrayed as accused.

3.The learned counsel for the petitioners would submit that the petitioners are husband and wife. Since they are not having any issues out of their wedlock, both of them decided to adopt a child. Therefore, they have made several applications to several hospitals, trusts and other orphanage homes. Similarly, they have approached Ithayam Arakattalai through the fourth accused and expressed their willingness to adopt a child legally. The said trust people have entrusted the child to the petitioners and on the request of the trust, the petitioners donated money to them. They never knew that the money donated was utilized for their knew purpose and they did not know that the child was sold to them. He would further submit that the petitioners are innocents and they have not committed any offence as alleged by the prosecution and therefore, sought for grant of bail.

4. The learned Government Advocate (Crl. Side) for the respondent police, on instructions, would submit that the investigation is yet to be completed.

5. Considering the facts and circumstances of the case, nature of allegation levelled against the petitioners, the fact that since the petitioners have no issues, they applied for adoption through various modes and that they have adopted the child through the fourth accused, by believing that the child has been transferred to them legally and also considering the period of incarceration, this Court is inclined to grant bail to the petitioners.

6. Accordingly, this Criminal Original Petition is ordered. The petitioners are directed to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Madurai and on further conditions that:

[a] 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 petitioners shall report before the respondent Police daily at 10.30 a.m until further orders.

[d] the petitioners shall not abscond either during investigation or trial.

[e] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[f] 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]**.

[g] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-
26/08/2021

/ 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

1 THE JUDICIAL MAGISTRATE NO.II, MADURAI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.

3 THE INSPECTOR OF POLICE
D1-THALLAKULAM POLICE STATION (L AND O), MADURAI.

4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

5 THE OFFICER INCHARGE, WOMEN PRISON, NILAKOTTAI.

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

ORDER
IN
CRL OP(MD) No.12200 of 2021
Date :26/08/2021

MK/JM/SAR.I/26.08.2021/4P/7C