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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 15/11/2021

PRONOUNCED ON: 22/11/2021

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.15840 of 2021

Sarath Kumar,

... Petitioner/Sole Accused

Vs

State Rep by,
The Inspector of Police,
Koodal Pudur, Madurai.
in Crime No. 471 of 2021.

... Respondent/Complainant

For Petitioner : MR.Niranjana.S.Kumar, Advocate.

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No. 471 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/Sole accused, who was arrested and remanded to judicial custody on 19.09.2021 for the offences punishable under Sections 392, 397, 506(ii) I.P.C., and Section 25(1)(a) and 27(1) of Arms Act, 1959 in Crime NO.471 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that while the defacto complainant was doing his business at his shop, the accused came to his shop and asked money and since the defacto complainant has refused, the accused took out a sword and kept at his neck and had taken a sum of Rs.400/- from his pocket and threatened him with dire consequences. Hence, the present complaint.

3. The learned Counsel for the petitioner would submit that the petitioner is innocent and he has not committed any offence as



alleged by the prosecution and that he is in judicial custody from 19.09.2021. Hence, he seeks bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the State would submit that the petitioner is the sole accused in this case and he had four previous cases and hence, he strongly opposes for granting bail to the petitioner.

5. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

6. The learned Counsel appearing for the petitioner would submit that it is settled law that bail is the rule and jail is the exception and that the personal liberty of a person cannot be lightly dealt with and this Court, being the Constitutional Court, is duty bound to protect the same and relied on the judgment of the Honourable Supreme Court in **Ash Mohammed Vs. Shiv Raj Singh Alias Lalla Babu and another** reported in **(2012)9 Supreme Court Cases 446**, wherein the Honourable Apex Court in paragraph Nos.17 and 18, held as follows:

"17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasize, the sacrosanctity of liberty is paramount in a civilized society. However, in a democratic body polity which is wedded to Rule of Law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialized. The life of an individual living in a society governed by Rule of Law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why



Edmond Burke while discussing about liberty opined, "it is regulated freedom".

18. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organized society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquility and safety which every well-meaning person desires. Not for nothing J. Oerter stated:

"Personal liberty is the right to act without interference within the limits of the law."

7. No doubt, the liberty of an individual is precious and the same is to be zealously protected by the Courts. But at the same time, the same cannot be considered as absolute and the same has its own limitations and restrictions.

8. In ***Masroor Vs. State of U.P.***, reported in **(2009)14 SCC 286**, the Hon'ble Apex Court has held that the valuable right of liberty of an individual and the interest of the society in general has to be balanced and that liberty of a person accused of an offence would depend upon the exigencies of the case.

9. No doubt, in the case on granting of bail, the High Court has to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down by the Honourable Apex Court.

10. In ***Prasanta Kumar Sarkar Vs. Ashis Chatterjee*** reported in **(2010)14 SCC 496**, the Honourable Apex Court has listed out the factors which are to be borne in mind, while considering the application for bail, which are as follows:

- "(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;



(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail."

Bearing the above legal position in mind, let us consider the case on hand.

11. The case of the prosecution, as already pointed out, is that on 19.09.2021, the petitioner by keeping a long sword at the defacto complainant's neck, had robbed a sum of Rs.400/- from his pocket and threatened him with dire consequences.

12. The learned Counsel for the petitioner would submit that as per the order of the Director General of Police, a storming operation was conducted throughout the State and 3325 accused persons, who had previous cases were arrested and 1117 deadly weapons were allegedly seized and that in consequent to the said order, the petitioner, who is having 4 previous cases, was arrested on the basis of a false complaint and that the occurrence alleged by the prosecution is false and concocted one. He would further submit that the petitioner's wife Lakshmi, on 19.09.2021 itself has sent a complaint to the Special Cell of the Chief Minister's Office, the District Collector and the Police Commissioner, Madurai, the Inspectors of Police of Tallakulam and Koodal Pudur Police Station through registered post alleging that when her husband went to B.P.Kulam electrical shop for repairing their fan, he was taken by two Constables at 11.30a.m., to Tallakulam Police Station and thereafter Koodal Pudur Police Station and that she came to know from a police constable that they are going to foist one or two false cases against him. No doubt, the petitioner has also produced the copy of the letter sent by his wife along with the copy of the postal receipts and postal track consignments.

13. As rightly pointed out by the learned Additional Public Prosecutor appearing for the State, the complaint was lodged and the First Information Report came to be registered at 01.00p.m., for the incident allegedly occurred at 12.00hours and that the petitioner was arrested thereafter. As rightly pointed out by the learned Additional Public Prosecutor, the petitioner's wife has registered the said letters at Madurai RMS Booking counter on 19.09.2021 at 15.51 hours.

14. When the above matter was taken up on 09.11.2021, the learned Counsel for the petitioner would submit that the defacto complainant is very much ready and willing to come before this Court and file an affidavit stating that he has not lodged any complaint against the petitioner and he sought time till 15.11.2021.

15. When the matter was taken up on 15.11.2021, the learned Counsel appearing for the petitioner would submit that in the



meanwhile, the police officers had threatened the defacto complainant, not to come to the Court and also directed him not to be available in the town for some days.

16. But the learned Additional Public Prosecutor appearing for the State would submit that the defacto complainant was threatened by a group of members who are the associates of the petitioner/accused to withdraw the complaint in Cr.NO.471 of 2021 ten days before and that the defacto complainant and some others had given a statement regarding the threatening by the associates of the accused to the respondent police and the same was videographed in the cellphone. The respondent police has also filed a status report reiterating the above aspects. The respondent police, in the status report, has further stated that the petitioner is having seven previous cases and that he was already detained under the Act 14 of 1982, on 06.11.2021.

17. According to the prosecution, the defacto complainant, for the incident allegedly occurred at 12.00 noon on 19.09.2021 lodged the complaint immediately and the F.I.R., came to be registered at 01.00p.m., on the same day. The petitioner/accused was arrested immediately. A confession statement was given by the petitioner/accused and on the basis of the confession statement, a weapon allegedly used for the occurrence was recovered. Even according to the petitioner, he is having four previous cases, which includes a murder case and two cases under the TNPPDL Act. But according to the prosecution, he is having five cases, which includes attempt to murder case and also offences under Arms Act, apart from one case under Section 75 of TNCP Act and other under Section 109 Cr.P.C.. It is also not in dispute that the Commissioner of Police, Madurai, has passed a detention order under the Tamil Nadu Act 14 of 1982, detaining the petitioner as Goonda, vide order dated 06.11.2021.

18. Though the petitioner has alleged that a false case has been foisted against him, except the letter sent by the petitioner's wife, the petitioner has not produced any material or evidence to show that the alleged occurrence itself was false and that the above case was foisted against him purposely. He has also not shown any other circumstances or reasons or aspects to infer that the petitioner was implicated falsely in the above case.

19. On considering the case of the prosecution and the materials produced, this Court is of the clear view that they have shown a *prima facie* case. Considering the seriousness and gravity of the charges levelled against the petitioner and also the facts that the petitioner is having five previous cases for serious offences and that the petitioner has already been detained as Goonda as per the detention order of the Commissioner of Police, Madurai and also taking note of the fact that the investigation is not yet completed, this Court is not inclined to grant bail to the petitioner at this



20. In the result, this Criminal Original Petition is dismissed.

sd/-
22/11/2021

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

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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 OFFICER INCHARGE,
THE DISTRICT JAIL, THENI.
- 2 THE INSPECTOR OF POLICE
KODAL PUDUR, MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to MR.NIRANJAN.S.KUMAR, Advocate, Sr.No. 35605 (I)

ORDER
IN
CRL OP(MD) No.15840 of 2021
Date :22/11/2021

PKP/JC/SAR-2/26.11.2021/2P/5C