



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
RESERVED ON : 03/12/2021
PRONOUNCED ON: 08/12/2021
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.17492 of 2021

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Muthuraman

... Petitioner/Sole Accused

Vs

The State represented by
The Inspector of Police,
Pudukottai Town Police Station,
Pudukottai.
Cr.No. 1285 of 2021.

... Respondent/Complainant

For Petitioner : Mr.PL.S.SOLAI ALAGAN
Advocate.

For Respondent : Mr.SS.MADHAVAN
Government Advocate(Crl.Side)

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

PRAYER :- For Anticipatory Bail in Crime No.1285 of 2021 on the file of the Respondent Police.

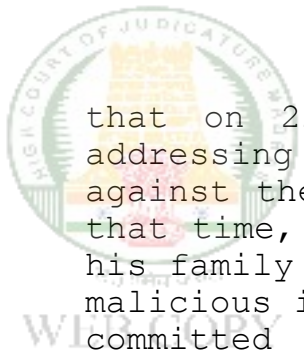
ORDER : The Court made the following order :-

The petitioner/sole accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 294(b), 153(A) & 505(1)(A) I.P.C., in Cr.No.1285 of 2021, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner is the in-charge of the Naam Thamizhar Political Party in Ponnamaravathy Assembly Constituency. On 22.10.2021 at about 06.00p.m., when the petitioner was addressing a protest conducted by Naam Thamizhar Political Party against the attack of Tamil Fishermen by the Srilankan, he uttered words defaming the present Chief Minister and his family members. Hence, the present complaint.

3. The learned Counsel for the petitioner would submit that there existed Assembly Election dispute between the petitioner and the defacto complainant and at his instance, a false case was foisted against him in order to put him behind the bar to wreak vengeance, that the offences under Sections 505(1)(a) and 153(A) I.P.C., are not made out, that the petitioner is not having any previous case for any other offences and that therefore, he may be granted anticipatory bail.

4. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the petitioner is in-charge of the Naam Thamizhar Political Party in Ponnamaravathy Assembly Constituency,



that on 22.10.2021 at about 06.00p.m., when the petitioner was addressing a protest conducted by Naam Thamizhar Political Party against the attack of Tamil Fishermen by the Srilankan Navy and at that time, he uttered words defaming the present Chief Minister and his family by alleging that he was not born to one father and with a malicious intention of insulting him and to provoke public peace and committed offences against public peace and harmony and also intended to create enmity between different classes.

5. The respondent has filed the contents of the petitioner's speech at the protest and whereunder he has referred about the words already spoken by his elder brother Sattai Durai Murugan. As rightly pointed out by the learned Government Advocate (Crl.Side), this Court in CRL OP(MD). Nos.17209 and 17587 of 2021 has granted bail to the said Sattai Durai Murugan by imposing conditions and while considering the bail application of Sattai Durai Murugan, this Court has observed as follows:

"10. An old adage says that one man's right ends, where the other man's nose begins. Justice Oliver Wendell Holmes Jr., in a more poetic way said "Your Liberty to swing your fist ends just where my nose begins". No doubt, the freedom of speech and expression is an internationally recognized right. Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) contemplates that right of freedom of speech can be regulated in order to honour the rights of others and in the interest of public order, public health or morals. Similarly Article 10(2) of European Convention on Human Rights provides reasonable duties and restrictions during the exercise of one's fundamental right to free speech.

11. The Constitution of India under Article 19(1)(a) provides the right to freedom of speech and expression. However, under Article 19(2), the Constitution of India also provides for the reasonable restrictions against the freedom of speech in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

12. As already pointed out, along with other exemptions notified under Article 19(2) of the Constitution of India, public order has been an exception that has been given a liberal interpretation in various judgments given by Constitutional Benches. This exception brings into its ambit all the activities that can possibly cause public disorder irrespective of any actual disruption whether caused by such activity or not. The public order has been



further read to mean public peace, safety and tranquility. Freedom of speech is not regarded as absolute, when the same conflicts with other rights and protections.

13. Hate speech is defined in the Black Law's Dictionary as "Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence". Hate speech constitutes a criminal charge under Section 153(A) I.P.C., which is the offence of promoting communal disharmony or feelings of hatred between the different religious, racial, language or regional groups or castes or communities. Section 505 I.P.C., criminalises the act of delivering speeches that incite violence. Hate speech has affected freedom of speech and expression widely in recent times and give rise to social unrest and public disturbance. Social networkings have become the most ordinary tool for spreading hate speech."

6. In the present case, the petitioner has allegedly used vulgar and derogative words as against the present Chief Minister. As already pointed out in the F.I.R., it has been stated that the petitioner has spoken that the Chief Minister was not born to one father. As rightly contended by the learned Government Advocate (Crl.Side), considering the speech allegedly made by the petitioner the same is per se, derogatory and defamatory.

7. When the above petition is pending for enquiry, the learned Counsel for the petitioner has filed an affidavit of undertaking given by the petitioner and whereunder the petitioner has stated as follows:

"4. I humbly submit that I hereby undertake that without prejudice to defence, I will not speak any defaming or obscene words against any political leader in filthy language, hereafter particularly the Hon'ble Chief Minister.

5. I humbly submit that I hereby undertake that hereafter I will not speak any public gathering or public meeting or defaming any political party by filthy language and I will not speak personally against any political party or anything which will create any law and order problem between two communities (or) Groups."

8. As rightly contended by the learned Counsel for the petitioner, in the affidavit filed before this Court, the petitioner has specifically undertaken that he will not speak any public meeting or defaming any political party by



filthy language and I will not speak personally against any political party or anything which will create any law and order problem between two communities (or) Groups and that he will not speak any defaming or obscene words against any political leader in future.

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9. The learned Government Advocate (Crl.Side) would fairly admit that the petitioner is not having any previous cases for similar offence or for any serious offences.

10. Considering the entire facts and circumstances and also taking note of the specific undertaken given by the petitioner that he will not speak any derogatory or personal remarks against any person, and also the fact that the petitioner is not having any previous cases for similar offence or for any serious offences, as stated by the learned Government Advocate (Crl.Side), this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

11. Accordingly, the petitioner is ordered to be released on bail in the event of his 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 No.1, Pudukkottai, Pudukkottai District, on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five 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:

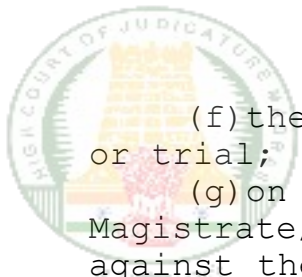
(a) the petitioner shall deposit a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only) to the credit of Government of Tamil Nadu, Chief Minister Public Relief Fund (CMPRF) in IOB, Secretariat Branch, Chennai-9** (Account No.11720 10000 00070, IFSC Code: IOBA0001172), without prejudice to his rights and contentions before the trial Court and produce the receipt/acknowledgment before the concerned Court while executing sureties.

(b) 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;

(c) the petitioner shall report before the respondent police daily at 10.30a.m., for period of one month and thereafter as and when required for interrogation.

(d) the petitioner is directed not to make any derogative speech or remarks directly or through any medium and in case of violation of the said direction, the respondent police is directed to take necessary steps for cancellation of anticipatory bail immediately.

(e) the petitioner shall not tamper with evidence or witness either during investigation or trial;



(f) the petitioner shall not abscond either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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;

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

08/12/2021

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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 JUDICIAL MAGISTRATE NO.I
PUDUKOTTAI, PUDUKOTTAI DISTRICT.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
PUDUKOTTAI DISTRICT.
- 3 THE INSPECTOR OF POLICE,
PUDUKOTTAI TOWN POLICE STATION, PUDUKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE OFFICER INCHARGE,
GOVERNMENT OF TAMIL NADU,
CHIEF MINISTER PUBLIC RELIEF FUND,
SECRETARIAT BRANCH, CHENNAI-9

+1. CC to M/S.SOLAI ALAGAN PL.S. Advocate SR.No.8980

**ORDER
IN**

CRL OP(MD) No.17492 of 2021
Date : 08/12/2021