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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 03.12.2021

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.19103 of 2021

1.C.Pushpadurai
2.Manivannan

... Petitioners/Accused
(Rank Not Known)

Vs

State rep.by
The Inspector of Police,
Jeeyapuram Police Station,
Trichy District.
(Crime NO.1139/2020)

... Respondent/Complainant

For Petitioners : M/s.T.J.Ebenezer Charles, Advocate.

For Respondent : M/s.R.Meenakshi Sundaram
Additional Public Prosecutor

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

PRAYER :-

For Anticipatory Bail in Crime No.1139 of 2020 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 174 Cr.P.C. @ 147, 148 and 302 IPC in Crime No.1139 of 2020 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the de-facto complainant is the Village Administrative Officer of Allur Village and he lodged a complaint stating that he got information that on 25.12.2020 at about 09.00 a.m., two unknown persons were roaming in that locality in a suspicious manner and when the villagers enquired them, they tried to run away and one person was chased by the villagers and other person, while he was running, he fell down and got up and in



the said occurrence, he sustained injuries and subsequently, the villagers surrounded that person and attacked him. At that time, the Village President rescued the said person and admitted him in the Government Hospital. However, he succumbed to the injuries. Hence, the present complaint.

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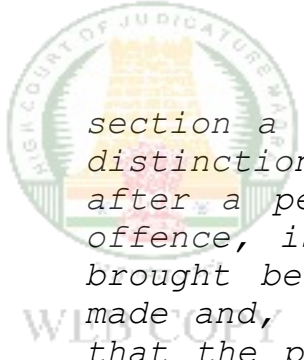
3.The learned counsel appearing for the petitioners would submit that the petitioners are innocents and they have no connection with the alleged occurrence and they have been falsely implicated in this case. Hence, he seeks anticipatory bail to the petitioners.

4.The learned Additional Public Prosecutor appearing for the respondent police would submit that during the course of investigation, they came to know that the deceased was Deebu and it is alleged that the deceased Deebu, not only damaged the pillars and also some of the two wheelers which were parked near the temple and also attacked the villagers and therefore, some of the villagers threw stones and sticks and caught hold of him and that thereafter, he was taken to hospital for treatment and subsequently, he succumbed to the injuries.

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

6.Before entering into further discussion, it is necessary to refer the judgment of the Constitution Bench of the Honourable Supreme Court in **Gurbaksh Singh Sibbia Etc vs State Of Punjab**, reported in **AIR 1980 SC 1632**, regarding the power of this Court to grant anticipatory bail for the offence of murder, which is as under:

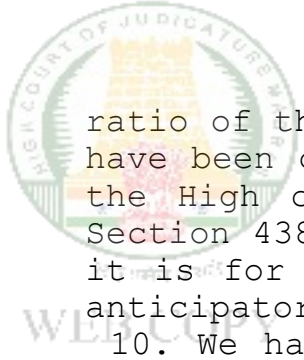
"According to the sixth proposition framed by the High Court, the discretion under [Section 438](#) cannot be exercised in regard to offences punishable with death or imprisonment for life unless, the court at the stage of granting anticipatory bail, is satisfied that such a charge appears to be false or groundless. Now, [Section 438](#) confers on the High Court and the Court of Session the power to grant anticipatory bail if the applicant has reason to believe that he may be arrested on an accusation of having committed "a non-bailable offence". We see no warrant for reading into this provision the conditions subject to which bail can be granted under [Section 437\(1\)](#) of the Code. That section, while conferring the power to grant bail in cases of non-bailable offences, provides by way of an exception that a person accused or suspected of the commission of a non-bailable offence "shall not be so released" if there appear to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. If it was intended that the exception contained in [Section 437\(1\)](#) should govern the grant of relief under [Section 438\(1\)](#), nothing would have been easier for the legislature than to introduce into the latter



section a similar provision. We have already pointed out the basic distinction between these two sections. [Section 437](#) applies only after a person, who is alleged to have committed a non-bailable offence, is arrested or detained without warrant or appears or is brought before a court. [Section 438](#) applies before the arrest is made and, in fact, one of the pre-conditions of its application is that the person, who applies for relief under it, must be able to show that he has reason to believe that "he may be arrested", which plainly means that he is not yet arrested. The nexus which this distinction bears with the grant or refusal of bail is that in cases falling under [Section 437](#), there is some concrete data on the basis of which it is possible to show that there appear to be reasonable grounds for believing that the applicant has been guilty of an offence punishable with death or imprisonment for life. In cases falling under [Section 438](#) that stage is still to arrive and, in the generality of cases thereunder, it would be premature and indeed difficult to predicate that there are or are not reasonable grounds for so believing. The foundation of the belief spoken of in [Section 437\(1\)](#), by reason of which the court cannot release the applicant on bail is, normally, the credibility of the allegations contained in the First Information Report. In the majority of cases falling under [Section 438](#), that data will be lacking for forming the requisite belief. If at all the conditions mentioned in [Section 437](#) are to be read into the provisions of [Section 438](#), the transplantation shall have to be done without amputation. That is to say, on the reasoning of the High Court, [Section 438\(1\)](#) shall have to be read as containing the clause that the applicant "shall not" be released on bail "if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life". In this process one shall have overlooked that whereas, the power under [Section 438\(1\)](#) can be exercised if the High Court or the Court of Session "thinks fit to do so, [Section 437\(1\)](#) does not confer the power to grant bail in the same wide terms. The expression "if it thinks fit", which occurs in [Section 438\(1\)](#) in relation to the power of the High Court or the Court of Session, is conspicuously absent in [Section 437\(1\)](#). We see no valid reason for re-writing [Section 438](#) with a view, not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it. Accordingly, we are unable to endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the punishment provided therefor is imprisonment for life."

Relying on the above judgment of the Honourable Apex Court, this Court, in **C.Saravanan @ Saravanaperumal Vs the State** reported in **1995 Cr1.LJ 1999**, held as follows:

"9. It is therefore seen that the scope of Section 438 of the Code had been fully expounded by the Supreme Court in the case of Gurbaksh Singh v. State of Punjab, (1980 Cri LJ 1125) and as per the



ratio of the said decision even if a non-bailable offence alleged to have been committed by a person happens to be an offence of murder, the High court or the Sessions Court exercising its powers under Section 438 of the Code has the power to grant anticipatory bail and it is for the court to decide as to whether in a given case, the anticipatory bail should be granted or not.

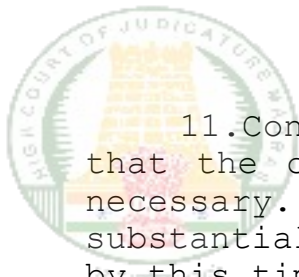
10. We have already seen that as per the prosecution version, the only allegation against the present petitioner is that he was found instigating in the scene of crime. The delay pointed out by learned counsel for the petitioner in preferring the complaint is a factor to be taken into account in considering the prima facie involvement of the petitioner in the crime. Also taking into account the political rivalry alleged, I am of the view that it is a proper case where anticipatory bail can be granted with suitable conditions".

7. Considering the above, it is very much clear that this Court has necessary powers and jurisdiction to grant anticipatory bail under Section 438 Cr.P.C., for the offences punishable with death or life imprisonment, but at the same time, the Court has to decide as to whether in a given case, the anticipatory bail should be granted or not.

8. At the outset, it is pertinent to mention that the prosecution has attributed neither any previous enmity nor motive between the parties. Moreover, the deceased as well as another person, who accompanied the deceased to the said Village were totally unknown persons to the villagers including the petitioners. According to the prosecution, in the postmortem certificate, final opinion was given to the effect that the deceased would appear to have died due to head injury sustained. But, as rightly contended by the learned Counsel for the petitioners, the prosecution is not sure as to whether the head injury was caused to the deceased due to the fall by himself or due to the attack made by the villagers.

9. It is also not the specific case of the prosecution that the petitioners and others had necessary intention to kill the deceased, nor necessary intention to cause such injuries that are likely to cause death. Even according to the prosecution, the deceased was attacked with stones and sticks. It is not their case that deadly weapons were used.

10. As rightly contended by the learned Counsel for the petitioners, it is not the case of the prosecution that the villagers even at the beginning had surrounded the deceased, tied him and attacked him. According to the prosecution, the deceased had attacked villagers with wooden log and also damaged the properties in the temple and also damaged the two wheelers. It is also not in dispute that one of the accused has already been arrested and a confession statement was taken from him. It is also not the case of the prosecution that they have to unearth a larger conspiracy or that the properties are yet to be recovered.



11. Considering the above, this Court is of the considered view that the custodial interrogation of the petitioners is not at all necessary. Since the incident was occurred on 25.12.2020, the substantial portion of the investigation might have been completed by this time.

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12. Considering the above facts and circumstances, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

13. Accordingly, the petitioners are ordered to be released on bail in the event of their arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.III, Trichy, on condition that the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five thousand only) each 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 petitioners 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;

(b) the petitioners shall report before the respondent police daily at 10.30a.m., until further orders.

(c) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioners 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 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;

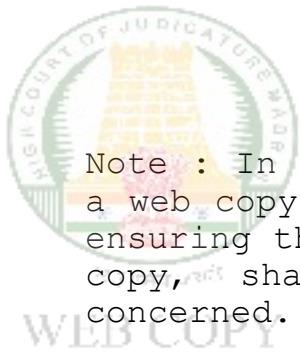
(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

Sd/-
03/12/2021

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Sub-Assistant Registrar (C.S.II)
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.III
TRICHY.
2. -DO- THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
3. THE INSPECTOR OF POLICE,
JEEYAPURAM POLICE STATION,
TRICHY DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S. SARVAGAN PRABHU.S Advocate SR.No.8828

ORDER
IN
CRL OP(MD) No.19103 of 2021
Date :03/12/2021

SP/CN/SAR II/09/12/2021/6P/6C