



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2022

PRONOUNCED ON : 25.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.O.P. No.3148 of 2022

R.D.Santhanakrishnan

...Petitioner / Accused

versus

State Rep. by
The Inspector of Police,
CBCID Cyber Crime,
Chennai.
(Crime No.13 of 2021)

...Respondent / Complainant

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in Crime No.13 of 2021 on the file of the respondent police.

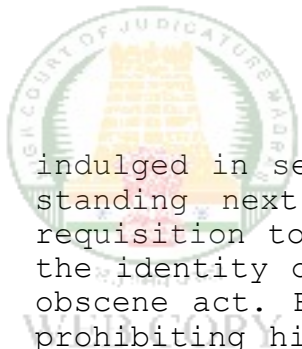
For Petitioner : Mr.K.M.Vijayan
Senior Advocate
for Mr.K.Raghunath

For Respondent : Mr.Hasan Mohammed Jinnah
State Public Prosecutor
assisted by
Mrs.G.V.Kasthuri
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 21.01.2022 for the offences punishable under Sections 228, 292(2) (a), 294(a), 354A, 370(2) of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Woman Act, 1998 and 67A of Information Technology Act, 2000 in Crime No.13 of 2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 20.12.2021, while at the time, one of the Judge of this Court discharging his duty in an open Court, there was a frame in the video fixed in the Court for video conferencing, through which, for entertaining the cases filed by the litigants, there was a male advocate in sitting position,



indulged in sexually erotic act with a woman in black dress, who was standing next to him. After seeing the same, this Court sent a requisition to The Bar Council of Tamilnadu and Puducherry to provide the identity of the person sighted in the video, who indulged in the obscene act. Further, it was requested to issue a prohibitory order, prohibiting him to practice as an advocate. Thereafter, it was found out that the petitioner herein is the person, who indulged in the said activity.

3. This Court, by order dated 21.12.2021, initiated contempt proceedings in *Suo Motu Criminal Contempt Petition No.1699 of 2021* and later, upon the order passed by this Court, in the said petition a criminal case has been registered against this petitioner in CBCID Cyber Crime Cell in Crime No.13 of 2021 under Sections 228, 292(2) (a), 294(a) of IPC and 67(A) of Information Technology Act, 2000. After registering the case, the respondent police recorded the statement under Section 161(3) Cr.P.C. from the witnesses, who are all necessary for proving the offence.

4. In the course of investigation, the identity of the woman was also established and afterwards, notice under Section 41-A Cr.P.C. was served and she was asked to appear before the Investigation Officer on 24.12.2021. Complying with the same, the said pitiable girl appeared before the Investigating Officer and in turn, the statement under Section 161(3) Cr.P.C. was recorded from her. After recording the statement under Section 161(3) Cr.P.C., the said girl was produced before the learned XI Metropolitan Magistrate, Saidapet, wherein the statement under Section 164(5) Cr.P.C. was also recorded.

5. Subsequently, after recording those statements, the Section of law was altered into Sections 228, 292(2)(a), 294(a), 354A IPC, Section 4 of Tamilnadu Prohibition of Harassment of Woman Act, 1998 and Section 67A of Information Technology Act, 2000. Subsequent to that, on 08.01.2022, the petitioner herein appeared before the Investigating Officer and stated that he was not aware that the camera of the laptop was on and that his junior had joined the virtual Court session. The petitioner further submitted in his confession that he misbehaved with his Office Assistant.

6. After recording the said confession statement, on account of Covid-19 pandemic also upon the order passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.1 of 2020* dated 23.03.2020, the petitioner was released on station bail. Later, after recording further statement from the victim and her mother Padmavathy, the Investigating Officer altered the Section of law by including Section 370(2) of IPC and then arrested the accused and later, he was produced before the learned Magistrate and sent to remand.



7. Mr.K.M.Vijayan, learned Senior Advocate, for Mr.K.Raghunath, appearing for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that after enlarging the petitioner on bail, in station itself, secured the accused and remanded to judicial custody, is violative of procedures established in various Courts. He would further submit that the alleged incident narrated in the First Information Report would disclose the fact that the same had not been done by the petitioner with an intention to defame this institution. In fact, while at the time, the petitioner was indulged in a sexual erotic act, he was not aware that the laptop, which was availed before him was connected with the High Court Website. He would further submit that the petitioner is a practising advocate appearing before this Court for the past 10 years. According to him, it is an unfortunate event in the virtual court, further, this incident was videographed by some unknown person and circulated through social media and thereby, he is the person responsible for everything. The petitioner is an innocent law abiding citizen and he is ready to abide any condition imposed by this Court. Hence, he prays for bail.

8. Mr.Hasan Mohammed Jinnah, learned State Public Prosecutor, for Mrs.G.V.Kasthuri, learned Additional Public Prosecutor, appearing for the respondent police raised objection stating that investigation is pending. He would further submit that due to the sexual erotic act committed by this petitioner, he has defamed the name of this institution. Hence, if this type of petitioner is released on bail, he may try to tamper the witness and hamper the investigation.

9. Considered the submissions made by the learned counsel appearing on either side. Here, it is a case, based upon the order passed by this Court in Suo Motu Criminal Contempt Petition No.1699 of 2021, the de facto complainant lodged a complaint before the police and upon which, the respondent police registered a case as against the petitioner for the offences punishable under Sections 228, 292(2)(a), 294(a), 354A of IPC and 67(A) of Information Technology Act, 2000. Afterwards, after altering the Section of law by adding Section 370(2) of IPC, the petitioner was rearrested and remanded to judicial custody. Now, it was contended on the side of the petitioner that rearresting the petitioner, for the second time in the same Crime Number, is unknown to law and therefore, the same itself sufficient reason for allowing this petition.

10. On considering the said submissions with the relevant records, it is true and also admitted on either side that, in the present case, after adding Section 370(2) of IPC as a major offence with original section of law, for which, the case has been registered, the respondent police arrested the petitioner. In this regard, in respect of rearrest of a person in the same Crime Number, our Hon'ble Apex Court in a case of PRADEEP RAM vs. STATE OF



JHARKHAND reported in (2019) 17 SCC 326, wherein it has observed that the Investigating Officer is having the power to rearrest the accused in a situation if a prima facie case is made out for the major offence.

11. Therefore, rearrest is not against the settled law also not a ground for allowing this petition. However, here, it is a case, the counter affidavit filed by the respondent police would disclose the fact that, as of now, the video clip, which is the material object for completing the investigation has been recovered. Further, it was stated that after registering the case, the persons, who are all necessary for completing the investigation were also examined and the statement under Section 161(3) Cr.P.C. was recorded. The victim, who is the person being exploited during the time of occurrence also appeared before the learned Magistrate and given the statement under Section 164(5) Cr.P.C.

12. In the said circumstances, the question of tampering the evidence cannot be arisen. Further, the witnesses, who are all necessary for completing the trial, are all working in this Court and therefore, tampering the witness, is also not possible. In otherwise, whether the petitioner is having any intention to commit this offence or not, is a matter for trial. As of now, the petitioner is in incarceration from 21.01.2022 and thereby, he is in judicial custody for more than a month, further the petitioner is prohibited to practice as an advocate.

13. Therefore, taking note of the above said aspects into consideration, particularly considering the period of incarceration, this Court is inclined to grant bail to the petitioner subject to certain conditions.

14. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions;

(a) 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 learned XI Metropolitan Magistrate, Saidapet, Chennai;

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner is directed to appear before the respondent police daily at 10.00 a.m. until further orders;

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



(e) on breach of any of the aforesaid conditions, the learned Judicial 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];

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

-sd/-

25/02/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE XI METROPOLITAN MAGISTRATE,
SAIDAPET, CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

3 THE INSPECTOR OF POLICE,
CBCID CYBER CRIME,
CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S.K.RAGHUNATH Advocate on payment of necessary
charges SR.No.2902

CRL OP.3148/2022

Date :25/02/2022

CSK 25/02/2022