



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Sixteenth day of February Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL ORIGINAL PETITION No.3434 of 2022

1 SIDDARTH SIVA
2 RAJA NATARAJAN

[PETITIONERS / ACCUSED]

Vs

STATE REP BY
THE INSPECTOR OF POLICE
AWPS ASHOK NAGAR POLICE STATION,
CHENNAI
CRIME NO. 10/2021

[RESPONDENT]

For Petitioner : M/S.M.VELMURUGAN, Advocate for
M/S.M.GOVINDARAJU Advocate

For Respondent : M/S.S.SANTHOSH, Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest for the alleged offences under sections 406, 420 and 498(A) of I.P.C in Crime No.10 of 2021, on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that on 31.08.2021, the defacto complainant Saranya, wife of Siddarth Siva [A1], lodged a complaint before the respondent police alleging that her husband, in connivance with his father Ravi Natarajan [A2], under the pretext of purchasing land in her name induced her to obtain several lakhs of loan amount from bank to settle their own debts and assaulted as well as abused her in filthy language.



3. The learned counsel appearing for the petitioners would submit that the petitioners are innocent persons and they had not committed any offence as alleged by the prosecution. He further submitted that the 1st petitioner is the husband and 2nd petitioner is the Father-in-law of the defacto complainant. He would further submit that the instances narrated in the FIR are all happened during the time when the defacto complainant and the 1st petitioner were leading the matrimonial life. It is casual, during the time of leading family life, the husband gives some money to the wife and wife gives some money to the husband. In otherwise, it cannot be said that all the instances narrated by the defacto complainant is with an intention to deceive her. Purchasing property in the name of the husband by utilising the funds raised by family members is not an offence and accordingly, he pleads for anticipatory bail.

4. The learned Government Advocate (Criminal Side) appearing for the respondent police raised objection stating that the investigation is pending. However, as far as the offence is concerned, he fairly admits that everything had happened during the time when the defacto complainant and the 1st petitioner were leading the family life, as husband and wife.

5. The submissions made by the learned Counsel appearing on either sides are considered.

6. The respondent police has registered the case as against these petitioners for the offences under Sections 406, 420 and 498 (A) of I.P.C. The averments found in the FIR reveals the fact that on various occasions, the petitioners have received money from the defacto complainant. Further, the petitioners have credited amounts into the defacto complainant's account also. It is casual in the family life that husband deposits money into wife's account and wife deposits money into husband's account. In otherwise, whether the 1st petitioner, being the husband, is having the intention to cheat the defacto complainant/wife, has to be identified only during the time of trial. As of now, the 1st petitioner had filed a petition in HMOP No.3991 of 2021, before the VI Additional Family Court, Chennai, for the relief of restitution of conjugal rights.

7. In this occasion, since the alleged offence has happened between the family members of the 1st petitioner and the de-facto complainant, it is necessary to follow the decision of our Hon'ble Supreme Court in Arnesh Kumar Vs State of Bihar and another [Crl.A.No.1277 of 2014], wherein it has been held as follows:

"There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a



cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under the provision. In a quite number of cases, bed-ridden grand-fathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 46,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6% while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,707 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal. Arrest brings humiliation, curtails freedom and casts scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence; it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive"

8. By following the above said observation and taking into consideration all the aspects, now submitted by either side, in order to avoid punitive action against the family members, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

9. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned XVII Metropolitan Magistrate, Saidapet, Chennai on condition that each of the petitioners 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 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 Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

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

(c) the petitioners shall report before the respondent police daily at 10.00 a.m., for a period of 30 days and thereafter as and when required for interrogation;

(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 has 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/-
16/02/2022

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 XVII METROPOLITAN
MAGISTRATE, SAIDAPET, CHENNAI.

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



3 THE INSPECTOR OF POLICE
AWPS ASHOK NAGAR POLICE STATION,
CHENNAI

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M.GOVINDARAJU Advocate on payment of necessary charges
SR.NO.2441

CRL OP.3434/2022

Date :16/02/2022

RW 21/02/2022