



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2022

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.6648 of 2022

Subbiah Shanmugam

.. Petitioner

Vs.

State rep. by
The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai District.
(Cr. No.1123/2020)

.. Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in connection with Crime No.1123 of 2020 on the file of Respondent police.

For Petitioner : Mr.R.C.Paul Kanagaraj

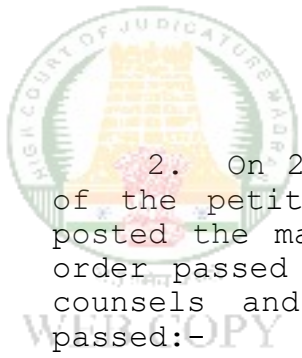
For Respondent : Mr.J.Ravindran
Additional Advocate General
Assisted by M/s.G.V.Kasthuri
(Additional Public Prosecutor)

For Intervenor : Mr.A.Kumaraguru
(Victim)

For Intervenor : M/s.P.S.Mercy Gnanammal
(de-facto complainant)

ORDER

The petitioner, who was arrested and remanded to Judicial Custody on 19.03.2022 for the alleged offences punishable under Section 4 of the Tamil Nadu Women Harassment Act and Sections 271 and 427 of IPC later altered into Sections 271, 427 and 447 of IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damaged and loss) Act, 1992 r/w. Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 in Crime No.1123 of 2020 on the file of the respondent police, is before this Court for bail.



2. On 21.03.2022, this Court being satisfied that the detention of the petitioner prima facie erroneous, granted interim bail and posted the matter today for further hearing. In continuation of the order passed by this Court on 21.03.2022, on hearing the respective counsels and perusal of the Case Diary the following order is passed:-

3. Heard the learned counsel for the petitioner, the Additional Advocate General, the learned counsel for the intervenor and the learned counsel for the victim.

4. On 21.03.2022, this Court granted interim bail to the petitioner, who was arrested on 19.03.2022, based on a complaint registered on 25.07.2020, after deep slumber for 1 ½ years by the respondent police. The delay and arrest of the petitioner/accused on a public holiday made this Court to grant interim bail and post the matter today for further hearings today (24.03.2022), to learn from the Investigating Officer, what prompted him to arrest Government Servant on a public holiday based on a complaint given 1½ years ago.

5. Today, the learned Additional Public Prosecutor has filed counter detailing out the facts of the case and how the investigation in this case was abruptly stopped by previous Investigation Officer and the representation received from Mr.Balaji Vijayaraghavan addressed to the Deputy Commissioner of Police, St.Thomas Mount, Chennai dated 12.02.2022 and the proceedings of the Assistant Commissioner of Police, Madipakkam dated 05.03.2022, directing the present Investigating Officer to take up the investigation and report the progress within a week.

6. Accordingly, the present Investigating Officer has recorded the statement of the witnesses under Section 161(3) Cr.P.C on 05.03.2022 and 06.03.2022. He has submitted the alteration report before the Additional Mahila Court, Alandur, by adding Section 447 of IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damaged and loss) along with Section 271, 427 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 also in the counter it is stated that the de-facto complainant Mr.Balaji Vijayaraghavan forwarded another representation to the Joint Commissioner of Police on 19.03.2022 reporting that, alleged compromise entered between the victim and the petitioner/accused person was out of coercion and it is not a voluntary compromise and therefore, further investigation is necessary.

7. Thus, from the counter filed by the Investigating Officer, this Court understands that after the representation from the said Mr.Balaji Vijayaraghavan on 12.02.2022, there was change in Investigating Officer and further statement of witnesses were recorded in two days i.e. 05.03.2022 and 06.03.2022. The said Mr. Balaji Vijayaraghavan, de facto complainant not being satisfied with



the progress in the Investigation had made another representation on 19.03.2022. So on that day, the petitioner/accused herein was arrested and remanded to judicial custody.

8. The learned Additional Public Prosecutor submitted that there is no illegality in arresting a suspect on a public holiday. Being satisfied from the evidence and on reasonable belief that the petitioner has to be arrested. The Investigating Officer arrested the petitioner and remanded.

9. Strangely, in this case Mr.Balaji Vijayaraghavan, a resident of Coimbatore, is not a person injured in the alleged criminal act of the petitioner/accused. He claims to be sister's son of one Mrs.Chandrasampath, who is the actual victim. Today apart from the petitioner/accused, the de-facto complainant Mr.Balaji Vijayaraghavan as well as the victim Mrs.Chandrasampath are before this Court represented through their counsels and had put forth their respective case. While the victim Mrs.Chandrasampath, represented by her counsel states that, after the alleged incident which took place on the night of 10.07.2020 and 11.07.2020, she and the petitioner have come to an understanding and compromised the dispute.They both living peacefully in the same compound and she never intended to pursue the matter further. However, her relative Mr.Balaji Vijayaraghavan who assisted her earlier, still wants to pursue the matter without her consent, as if her consent to compromise was obtained by force and threat.

10. From the statement of the said Chandrasampath, it is obviously clear that Mr.Balaji Vijayaraghavan is operated by some unknown hand.

11. Though the learned Additional Advocate General strained all his nerves to convince this Court that there was no mala fide in the action of the Respondent in arresting the petitioner on Saturday and it was the arrest in view of evidence available. The facts on record indicates otherwise.

12. As submitted by the learned Counsel for the petitioner, this holiday arrest has happened because the petitioner visit to the Central Prison on 14.02.2022 was mistook by the Government that he went to the prison to meet ABVP workers who were arrested and confined in jail for organising dharna before the Chief Minister's residence. The petitioner, who was working as Surgeon in Royapettah Government Hospital was placed under suspension on 16.02.2022. The said suspension is under challenge before the High Court Service Law envisages suspension in case of 48 hours detention to invoke this provision, a case already been compromised between the victim and the petitioner, been taken out from dust.



13. On perusal of the CD file, this Court unable to accept the reason sated by the learned Additional Public Prosecutor for the arrest on 19.03.2022. Though, Investigating Officer had alleged to have recorded the further statements of the witnesses on 05.03.2022 and 06.03.2022. The arrest is made only after receiving further representation by the de facto complainant Mr. Balaji Vijayaraghavan to the Joint Commissioner of Police on 19.03.2022. The de facto complainant Mr. Balaji Vijayaraghavan is a resident of Coimbatore, he cannot carry the cross of the victim contrary to her desire, when she has categorically taken a stand that she is not interested in pursuing the matter any further. It is stated that even at the time of remand, she personally went before Magistrate and said she is not interested in pursuing the case. Even today she is present engaged a counsel and reiterate her interest to compromise. While so, the external forces are interested in keeping the case alive when the parties to dispute had already reconciled and buried their misunderstanding.

14. Be that as it may, in any case, the allegations made against the petitioner are mostly non-cognizable offence. Therefore detaining the petitioner in pending investigation of the case for the offences alleged is unwarranted in this case and therefore, Interim Bail granted by this Court vide Order dated 21.03.2022, is made absolute 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 Additional Mahila Court at Alandur.

(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 report before the Investigation Officer as and when required;

(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.

WEB COPY

-sd/-
24/03/2022

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 ADDITIONAL MAHILA COURT,
ALANDUR.

2 THE INSPECTOR OF POLICE
S-8, ADAMBAKKAM POLICE STATION,
CHENNAI DISTRICT.

3 THE DEPUTY COMMISSIONER OF POLICE,
ST.THOMAS MOUNT, CHENNAI.

4 THE ASSISTANT COMMISSIONER OF POLICE,
MADIPAKKAM, CHENNAI.

5 THE OFFICER INCHARGE,
SUB JAIL, CHENGALPET.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S.R.C.PAUL KANAGARAJ Advocate on payment of necessary charges SR.No.4458

CRL OP.6648/2022

Date :24/03/2022

CSK 25/03/2022