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Crl.OP.No.16164 of 2022

RESERVED ON : 26.08.2022
PRONOUNCED ON : 02.09.2022

CRL.OP.No.16164 of 2022

G.K.ILANTHIRAIYAN, J.

The petitioner, who apprehends arrest at the hands of the first and second respondents / police for the alleged offences punishable under Sections 147, 166, 323, 341, 342, 348, 365 of IPC r/w Section 3(1)(XII) of The Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 of Tamilnadu Prohibition of Women Harassment Act, 1998 in Crime No.887 of 2011, seeks anticipatory bail.

2. The learned counsel for the petitioner would submit that the petitioner while he was working as Sub Inspector of Police, on the complaint lodged by the defacto complainant alleging that she and her family members were taken by their police personnels came in the motorcycle on 22.11.2011. Thereafter, eight police personnels came in a van and searched their house and took away cell phones, cash and also



Crl.OP.No.16164 of 2022

nine persons including the defacto complainant and thereafter, they were taken to deserted place and four police personnels committed rape on four woman including the defacto complainant. Insofar as the petitioner, even according to the defacto complainant, he brought them to deserted place and left them and went to police station. After investigation, now the respondents police filed final report and it is pending for taking cognizance. While pending investigation, the petitioner filed petition for direction before this Court in Crl.OP.No.3156 of 2017 for direction and by order dated 16.02.2017, this Court directed the petitioner to surrender and file bail petition and also ordered that the same may be considered on the same day. Accordingly, the petitioner surrendered before the court below and also filed petition for bail in Crl.MP.No.241 of 2022 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST(POA) Act, Villupuram. It was dismissed by order dated 16.05.2022 and also issued nonailable warrant for the reason that after filing petition, the petitioner was not present at the time of passing order. Aggrieved by the same, the petitioner preferred appeal before this Court in Crl.A.No.524 of 2022. It was dismissed as withdrawn with liberty to file petition for anticipatory bail. Though



CrI.OP.No.16164 of 2022

offence was registered under SC/ST Act, the petitioner filed petition for anticipatory bail for the reason that there is no *prima facie* case made out as against the petitioner to attract any of the offence under SC/ST Act. Even according to the final report, the petitioner was not charged for heinous offence of rape nor any *prima facie* exists as against the petitioner for the commission of offence under SC/ST Act.

2.1 He further submitted that the husband of the defacto complainant has involved in various cases of theft within the limits of Villupuram Police Station. Therefore, the present complaint was lodged as against the petitioner is nothing but clear abuse of process of law. He further submitted that none of the alleged occurrence had taken place as alleged and the expert opinion from the Institute of Forensic Medicine, Madras Medical College, Chennai, after perusal of all the relevant records also gave definite opinion that there is no evidence on any forcible sexual intercourse on the victims. Therefore, no circumstances warranted for the court below to issue non bailable warrant as against the petitioner. In fact, the petitioner appeared before the court below on three



Crl.OP.No.16164 of 2022

WEB COPY

occasions and on the date of order, he could not able to be present before the trial court due to his inability. Therefore, while dismissing the petition filed for bail in Crl.MP.No.241 of 2022, the court below issued nonailable warrant.

3. The learned counsel for the intervenor / defacto complainant submitted that the petitioner is the master brain behind the entire crime, since he only had taken the victims to the deserted place and committed rape on the victims. Though no charge as against the petitioner under Section 376 of IPC, the petitioner and other police personnels involved in the crime and as such, the custodial interrogation of the petitioner is very much required. Further, the crime is of the year 2011 and even till now, the victims are not able to get any justice. Even after transfer of investigation, the second respondent failed to take any steps to secure the petitioner. After completion of investigation, they filed simply absconding charge sheet. That apart, even in the year 2017, this Court directed the petitioner to surrender and file bail petition. The petitioner approached the court below only in the year 2022 after five



CrI.OP.No.16164 of 2022

years. There is no explanation from the petitioner for the enormous delay to file petition to surrender and seeking bail. Though departmental action has been taken as against the petitioner, again he has been reinstated and he is very much working as Inspector under the Tamil Nadu Police Service. All the police personnels committed very serious and heinous offence as against the victims and the custodial interrogation of the petitioner is very much required and prayed for dismissal of the petition.

4. Heard, Mr.S.Karthikeyan, the learned counsel for the petitioner, Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the respondents 1 & 2, and Mr.S.Sathia Chandran, the learned counsel for the intervenor / defacto complainant.

5. There are totally six accused, in which the petitioner is arrayed as A1. On 22.11.2011 for investigation purpose, the petitioner and other police personnels had taken the defacto complainant and others for investigation. However, they stopped in an unknown place and the petitioner went to the police station. While being so, four police



CrI.OP.No.16164 of 2022

personnels have committed rape on the victims. Therefore, on 26.11.2011, the defacto complainant lodged complainant. The first respondent registered the case in Cr.No.887 of 2011 for the offence under sections 147, 166, 323, 427, 363, 380, 376 of IPC r/w 3(1)(XII) of SC/ST (Prevention of Atrocities) Act, 1989.

6. A preliminary investigation was also done and the petitioner was suspended from service. Thereafter, departmental action has been initiated as against the petitioner. Thereafter, his suspension was revoked and reinstated into service. In respect of investigation, after changing the investigation officer, the present investigation officer has taken charge and proceeded with the investigation. After completion of investigation, the second respondent filed charge sheet before the Judicial Magistrate, Tirukoilur on 14.02.2017 and thereafter transferred to the Special Court for Exclusive Trial of Cases registered under SC/ST Act, Villupuram in the month of December 2017. The petitioner was shown as absconding accused in the charge sheet. Therefore, the petitioner approached this Court for direction under SC/ST Act in



Crl.OP.No.16164 of 2022

WEB COPY

Crl.OP.No.4137 of 2017 and by order dated 01.03.2017, this Court directed the petitioner to surrender before the trial court and file bail petition and also ordered that the same may be considered on the same day. However, the petitioner failed to appear before the trial court and he surrendered only in the year 2022 and filed bail petition in Crl.MP.No.241 of 2022. However, the petitioner was absent at the time of passing order and as such, the court below dismissed the petition and issued non bailable warrant. The petitioner after surrendering before the court, the trial court adjourned the matter for hearing on three occasions. Third time, the petitioner was absent and bail petition was dismissed.

7. On the dismissal of the bail petition, NBW was issued and it is pending before the trial court. Aggrieved by the same, the petitioner preferred appeal and it was dismissed as withdrawn with liberty to file anticipatory bail petition. In this regard, this Court called for report from the trial court on 26.07.2022 with regards to surrender petition, notes papers, bail petition and other orders of the court below. The court below submitted report dated 03.06.2022 before this Court.



Crl.OP.No.16164 of 2022

WEB COPY

8. On perusal of the same, revealed that after direction issued by this Court by order dated 01.03.2017, the petitioner surrendered only after five years i.e. On 21.02.2022. Immediately notice was ordered to the defacto complainant returnable by 11.03.2022. On 11.03.2022, the defacto complainant was not present and again adjourned to 16.03.2022. On 16.03.2022, the defacto complainant was present. Thereafter on 23.03.2022, the defacto complainant was examined and she stated that she is very much scared even seeing Srinivasan and objected granting bail. Another victim deposed that they have been taken by the petitioner along with other police personnels and left them in Tirukoilur Police Station along with other police personnels and committed rape on them. Other victims also corroborated the said evidence. Accordingly, the petitioner and other police personnels entered into their houses and taken them for enquiry since they have not disclosed about their identity. Thereafter, the police personnels have committed rape on them. The defacto complainant and other victims categorically deposed that the petitioner had only taken them in the deserted place.



Crl.OP.No.16164 of 2022

WEB COPY

9. The occurrence took place in the year 2011. Even till today, the petitioner is roaming around and also reinstated into service, since he is a police officer. The other higher officials did not take any steps to secure the petitioner though he committed very serious and heinous offence. Even after direction issued by this Court in the year 2017, the petitioner failed to surrender before the trial court. In the year 2022, he surrendered and after examination of defacto complainant and other victims, on the date of passing order, he was conveniently absent and as such the bail petition was dismissed and the court below rightly issued NBW as against the petitioner. That apart, there is *prima facie* case made out to register offence under SC/ST Act as against the petitioner and as such, the petitioner is not entitled for anticipatory bail.

10. Accordingly, this criminal original petition is dismissed. However, the petitioner is at liberty to surrender before the trial court and to file bail petition in the manner known to law. On filing of such petition, the concerned learned Special Judge is directed to consider the same on merits and pass orders on the same day. It is made clear that



Crl.OP.No.16164 of 2022

WEB COPY

mere direction issued by this Court to consider the petition on the same day does not amount to direction to consider the said petition favourably.

02.09.2022

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Crl.OP.No.16164 of 2022



WEB COPY



Crl.OP.No.16164 of 2022

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CRL.OP.No.16164 of 2022

02.09.2022