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Crl.M.P.No.12044 of 2022
in Crl.O.P.No.16033 of 2022

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G.K.ILANTHIRAIYAN, J.

This Criminal Miscellaneous Petition is listed today under the caption “for clarification”, to clarify the order passed by this Court in Crl.O.P.No.16033 of 2022 vide order dated 11.07.2022.

2. The petitioner, who apprehends arrest at the hands of the respondent police in Crime No.180 of 2022 for the offence punishable under Sections 448, 323, 506(2) and 353 of IPC r/w 4 of Women Harassment Act, filed an anticipatory bail in Crl.O.P.No.16033 of 2022. This Court by an order dated 11.07.2022, considering the facts and circumstances of the case, granted anticipatory bail on condition that the petitioner is directed to hand over the minor daughter viz., Diya Natshatra, aged about 6 years to her mother/ de-facto complainant. Aggrieved by the said order, the petitioner has filed this petition to clarify the order passed by this Court on 11.07.2022.



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3. Mr.A.R.L.Sundareson, learned Senior Counsel appearing for the petitioner submitted that the marriage between the petitioner and the de-facto complainant was solemnized on 02.03.2015. Out of their wedlock, one female child named Diya Nakshatra was born on 24.08.2016 and they went to Poland. Thereafter, the de-facto complainant returned to India along with her minor daughter to attend her father's funeral rites and stayed back at her maternal house. After that the petitioner was not permitted to see his minor daughter.

4. He would further submit that when the petitioner and her family members went to de-facto complainant's house to see the minor child, they found that the child was illegally detained by the de-facto complainant and was put to great cruelty by beating her, due to which she had also sustained injuries. Therefore, the petitioner filed a GWOP No.50 of 2020 and the divorce petition in HMOP No.149 of 2020. The petition in G.W.O.P.No.50 of 2020 was transferred to the file of the Family Court, Vellore and renumbered as FCOP No.88 of 2021. Even then the petitioner was unable to get the custody of the child who was ill treated and tormented by the de-facto complainant and had taken the child from the de-facto complainant. Due to which, the present First Information Report



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came to be filed as against the petitioner. Therefore, the petitioner was unable to comply with the conditions imposed by this Court and he seeks to modify the order passed by this Court.

5. Mr.G.G.Shankar, learned counsel for the de-facto complainant would submit that the de-facto complainant got married the petitioner on 02.03.2015 and gave birth to a female child. Now the petitioner is working as Software Auditor in Poland. The child is studying in first standard at Velammal Bodhi Campus School, Vellore. The de-facto complainant was forced to intolerable physical and mental harassment at the hands of the petitioner and his family members, she was driven out of the matrimonial home to her maternal home. On 03.07.2022, when the de-facto complainant went to market, the petitioner illegally trespassed into the de-facto complainant's house with four henchmen and kidnapped her daughter Diya Nakshatra in brutal manner. The entire occurrence covered in the CCTV footage and the footage is also produced before this Court. On the very same day, the de-facto complainant lodged a complainant in C.S.R.No.760 of 2022 and thereafter, on 04.07.2022, the First Information Report has registered in Crime No.180 of 2022 for the offence punishable under Sections 448, 323, 506(2) and



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353 of IPC r/w 4 of Women Harassment Act. She also filed a petition under Section 21 of Domestic Violence Act to hand over the child to her custody in C.M.P.No.7499 of 2022 in D.V.No.08 of 2021 and the learned Judicial Magistrate cum Additional Mahila Court, Vellore, by an order dated 15.07.2022, directed the petitioner to hand over the child to her mother till the disposal of the Domestic Violence complaint. In the meanwhile, the petitioner was granted anticipatory bail on condition that the petitioner shall hand over the child to the de-facto complainant.

6. Considering all the facts and circumstances, since the paramount interest is on the welfare of the minor child, this Court directed both the petitioner as well as the de-facto complainant to appear before this Court along with the minor child. This Court also enquired the minor child in the Chamber and she is scared even to speak and started crying. Initially, the minor child had seen her mother and thereafter, started to cry. Further the minor child stated that she wants to go with her father. It seems that the minor child feel scary about the circumstances and she could not able to express her feelings. The mother of the child/de-facto complainant deposed that till 03.07.2022, the minor child was in her custody and



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within one month she had been poisoned by the petitioner and therefore, she is very much scared about to go to Court and she sought for child's custody. On seeing the footage of the CCTV, it reveals that the petitioner along with other hench men forcefully entered into the house of the de-facto complainant and had taken the child to their custody. In fact considering those aspects, the learned Judicial Magistrate cum Additional Mahila Court, Vellore, directed the petitioner to hand over the child to the de-facto complainant by an order dated 15.07.2022 in C.M.P.No.7499 of 2022. Therefore, considering the said fact, this Court granted anticipatory bail on 11.07.2022 on condition that the petitioner is directed to hand over the minor daughter named Diya Nakshatra to her mother/de-facto complainant.

7. Therefore, this Court finds no merits to modify the condition imposed by this Court on 11.07.2022 and the miscellaneous petition stands dismissed, accordingly. Further, the petitioner is directed to hand over the custody of the child to the de-facto complainant forthwith, failing which, the anticipatory bail granted to the petitioner stands automatically cancelled and the respondent Police is directed to secure the petitioner and proceed further in accordance with law.



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8. In the mean time, the learned senior counsel appearing for the petitioner requested this Court to extend the time for execution of sureties in the anticipatory bail granted by this Court on 11.07.2022

9. Considering the said request, time is extended to provide sureties, till 16.08.2022. With the above observations, this Criminal Miscellaneous Petition stands dismissed.

05.08.2022

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