



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Seventeenth day of February Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL ORIGINAL PETITION No.22251 of 2021

AND CRL.M.P.No.12695 of 2021

1 T.PRAVEENRAJ [PETITIONERS / ACCUSED 1, 2 & 3]
2 T.DHANALAKSHMI
3 T.PRAVEENA RANI

Vs

THE INSPECTOR OF POLICE [RESPONDENT / DEFACTO COMPLAINANT]
ALL WOMEN POLICE STATION,
DHARMAPURI.
(FIR. NO.18 OF 2021)

P.SHOBHANA [PETITIONER / INTERVENER / DEFACTO COMPLAINANT]

[ORDERED AS PER ORDER OF THIS COURT DATED 17/02/2022 IN
CRL.MP.12695/2021 IN CRL.O.P.NO.22251/2021]

For Petitioners : M/S.S.SUMITHRA Advocate

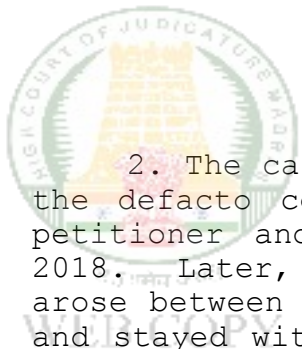
For Respondent : MR.S.SANTHOSH, Govt. Advocate (Crl. Side)

For Intervenor : MR.A.SAKTHIVEL Advocate

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

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offence under Section 4 of Dowry Prohibition Act and Sections 406 and 498A of IPC, in Crime No.18 of 2021, on the file of the respondent police, seek anticipatory bail. The defacto complainant has filed the intervening petition in Crl.M.P.No.12695 of 2021.



2. The case of the prosecution is that the petitioners herein and the defacto complainant are relatives and marriage between the 1st petitioner and the defacto complainant was solemnised in the year 2018. Later, in the month of January 2020, due to misunderstanding arose between them, the defacto complainant left the matrimonial home and stayed with her parents. Alleging that the petitioners demanded more dowry and also refused to return the sreedhana properties, the defacto complainant lodged a complaint before the respondent police. Hence, the Law Enforcing Agency registered a case against the petitioners.

3. The learned counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any such offence as alleged by the prosecution and they have been falsely implicated in this case. She would further submit that the marriage between 1st petitioner and the defacto complainant was solemnised on 25.05.2018 at Kotai Kalyana Kamakshi Samatha Malligarjuna Swamy Temple, Dharmapuri, as per Hindu Rites and Customs. After the marriage, the 1st petitioner took the defacto complainant to Jam Nagar at Gujarat, wherein the defacto complainant did not accept the petitioner as her husband. Ultimately, there was no physical relationship between the 1st petitioner and the defacto complainant. Later the defacto complainant filed HMOP No.44 of 2021, for the relief of Restitution of Conjugal Rights and the same was pending before the Family Court, Dharmapuri, In the said complaint, she took a different stand in respect to the entrustment of property, which was given by her parents. In otherwise, the averments found in the FIR did not show a prima facie case, as the petitioners herein demanded more dowry and misappropriated the property entrusted by the defacto complainant and also, they have not ill-treated the defacto complainant. Accordingly, she prayed for grant of anticipatory bail to the petitioners.

4. The learned counsel appearing for the intervenor/defacto complainant, reiterating the complaint made before the respondent police, strongly objected for grant of anticipatory bail to the petitioners.

5. The learned Government Advocate (Criminal Side) appearing for the respondent police raised objection stating that investigation is pending. However, he admits that the alleged occurrence narrated in the FIR, is due to the development of family dispute between the 1st petitioner and the defacto complainant. However, he opposed for grant of anticipatory bail to the petitioners.

6. Considered the submissions made by the learned Counsel appearing for the petitioners, the learned counsel appearing for the intervenor/defacto complainant and the learned Government Advocate (Crl. Side) appearing for the respondent police and perused the materials available on record.

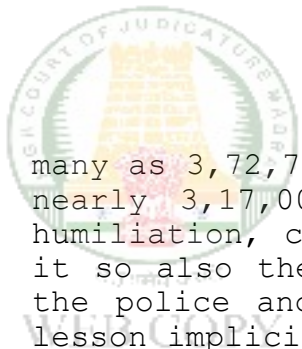


7. The respondent police has registered a case against these petitioners for the offence punishable under Section 4 of Dowry Prohibition Act and Sections 406 and 498A of IPC. Admittedly, the 1st petitioner is the husband of the defacto complainant and the petitioners 2 and 3 are the defacto complainant's mother-in-law and sister-in-law, respectively.

8. The averments narrated in the FIR reveals the fact that immediately after the marriage, in the year of 2018 itself, misunderstanding arose between the defacto complainant and the 1st petitioner. Later, the 1st petitioner has set up the matrimonial home at Jam Nagar, Gujarat, whereas petitioners 2 and 3 were residing in Tamilnadu. Furthermore, it was averred by the defacto complainant that she entrusted the sreedhana properties only to the 1st petitioner and not to the petitioners 2 and 3.

9. So, in all, the case projected by the prosecution discloses the fact that after developing difference of opinion, the defacto complainant left the family of the petitioners and during such time, the 1st petitioner refused to return the sreedhana properties. Therefore, being the reason that the entire occurrence is between the family of the defacto complainant and the 1st petitioner, it would be relevant to see the judgment of our Hon'ble Apex Court in Arnesk 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 ie. 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, curtains freedom and cast 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"

10. Now, by applying the principles set out in the above referred judgment to the case in hand, it would be necessary to decide this petition, with utmost care and caution. As already observed, in the FIR, the defacto complainant, did not raise any specific allegation as against petitioners 2 and 3. Therefore, this Court is inclined to grant anticipatory bail to petitioners 2 and 3 alone. On the other hand, the anticipatory bail petition in respect of the 1st petitioner is dismissed.

11. Accordingly, the petitioners 2 and 3 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 Judge, Additional Mahila Court, Dharmapuri, 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 2 & 3 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 2 and 3 shall report before the respondent police on every Monday, Wednesday and Friday at 10.00 a.m., until further orders.

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



(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 2 and 3 in accordance with law as if the conditions have been imposed and the petitioner 2 and 3 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/-

17/02/2022

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

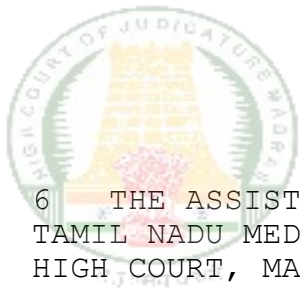
1 THE JUDGE,
ADDITIONAL MAHILA COURT,
DHARMAPURI DISTRICT.

2 MR.A.MANIMOZHI (MEDIATOR)
PRINCIPAL DISTRICT JUDGE, DHARMAPURI.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, DHARMAPURI
DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE OFFICER INCHARGE,
THE MEDIATION CENTRE,
DHARMAPURI DISTRICT.



6 THE ASSISTANT REGISTRAR,
TAMIL NADU MEDIATION AND CONCILIATION CENTRE,
HIGH COURT, MADRAS.

WEB COPY

CC to M/S.S.SUMITHRA Advocate on payment of necessary charges

CRL OP.22251/2021
and
CRL MP.12695/2021

Date :17/02/2022

JPA 24/02/2022