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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 24.02.2022

Pronounced on : 03.03.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.614 of 2022

Sirajudeen : Petitioner/Accused

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Tallakulam, Madurai City.
Crime No.54/2021. : Respondent/Complainant

A.Reshma : Petitioner/Intervene/Defacto Complainant

For Petitioner : M/s.Devasenar J,
Advocate.
For Respondent : Mr.R.Sivakumar,
Government Advocate (Crl.Side)
For Intervenor : Mr.Niranjana S. Kumar., Advocate

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

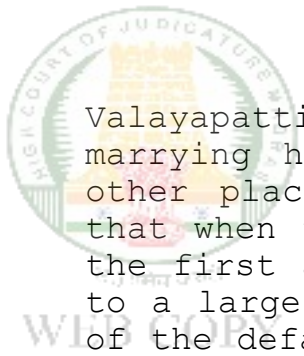
PRAYER :-

For Anticipatory Bail in Crime No.54/2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 417, 376 and 506(i) IPC, in Cr.No.54 of 2021, seeks anticipatory bail.

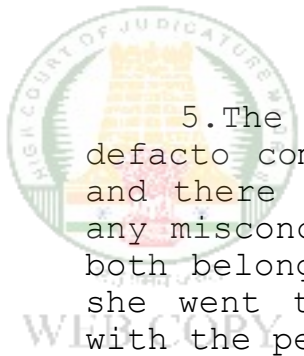
2.The case of the prosecution is that the defacto complainant and the first petitioner were studying M.C.A Course, at ... College, Madurai, that the first accused has proposed the defacto complainant and through his flimsy words convinced the petitioner for the love proposal, that the complainant gave many gifts, that the first accused had taken the complainant to the factory situated at



Valayapatti and had physical relationship by giving false promise of marrying her, that he had also taken the complainant to various other places and had sexual relationship on number of occasions, that when the defacto complainant did not get her periods on time, the first accused induced her to take pine apple and papaya fruits to a large extent and as planned by the first accused, the periods of the defacto complainant was successfully got completed, that the first accused had all along used the defacto complainant under the guise of love for his sexual desires and pleasures by giving false promise to marry her, that the first accused had obtained Rs.22 Lakhs from the complainant, that on 03.10.2021, the first accused had called her at about 07.00 pm once again at near Karuppasamy temple situated behind the house of the first accused and even in the temple premises, the first accused had induced the complainant to have physical relationship, that on 07.10.2021, the first accused had called the complainant over phone and informed that the love affair has come to the knowledge of his parents and that his grandfather and uncle are totally against their relationship and hence, he was not interested and decided to marry a girl suggested by his family and that thereafter, the first accused had switched off his mobile phone and he has also blocked the phone number of the defacto complainant.

3.The defacto complainant's further case is that the complainant along with her friend had visited the house of the first accused on 11.11.2021 and informed about their affairs to the family members and at that time, the first accused came to the spot and abused the defacto complainant and threatened her with dire consequences.

4.The petitioner's case is that the petitioner and the defacto complainant were class mates and she used to be a good friend of the petitioner and as such they used to go to the Restaurants and have food together, that the defacto complainant after completion of the course has proposed and informed her willingness to marry the petitioner, but the petitioner refused and advised her to be a good friend, that the petitioner used to help her financially, that payments were made by the petitioner to the defacto complainant's account through on-line, that the petitioner had refused to the proposal and explained that both are belonging to the different religion, that even thereafter, the defacto complainant had been sending lot of messages over e-mail and tortured the petitioner over phone, that the defacto complainant wanted to marry the petitioner forcibly, that since the petitioner had stopped helping her financially and he had intimated the same to her mother and her mother also admitted the faults of her daughter, has advised her at the police enquiry and that the complainant who was not ready to hear the words of her own mother had left the parental home and lodged the above complaint, falsely implicating the petitioner.



5.The learned counsel for the petitioner would submit that the defacto complainant is 25 years old and has completed M.C.A degree and there is no possibility that her consent was in consequence of any misconception of fact, that the complainant very well knew that both belong to different religion and that even as per FIR version, she went to the places voluntarily and had physical relationship with the petitioner.

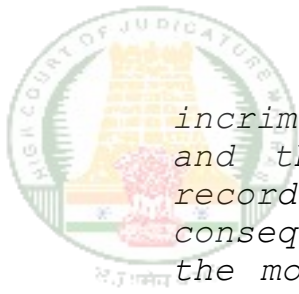
6.The learned counsel for the intervenor would submit that the first accused had voluntarily all along, had physical relationship with the defacto complainant on the false promise of marry her and finally after enjoying all benefits and pleasure life, refused to marry her, which is nothing but a clear case under Section 376 IPC and that therefore, the petitioner is not entitled to get the relief of anticipatory bail.

7.The learned counsel for the petitioner has relied on the judgement of Hon'ble Supreme Court in **Uday Vs. State of Karnataka** reported in **2003 4 SCC 46**, relevant passages are extracted hereunder :

"It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

8.It is also necessary to refer the judgement of this Court in **S.Kumaresan Vs. State** reported in **2017 2 MLJ Cri) 175**.

"36.Petitioner is 23 years old. The defacto complainant is two years older than him. She is well educated. The



incriminating materials such as picture of the petitioner and the defacto complainant in a compromising position recorded in a Cellphone. She was fully aware of the consequences of the act viz., sexual intercourse. She knows the moral quality of the act to which she was engaged. In the facts and circumstances, her consent for physical contact cannot be said to be given on misconception of fact. The allegation of criminal intimidation has been made in the backdrop of her demand to him to marry her. Before the Court below it was mainly contended by the prosecution that her medical examination was not over. Now, it was over."

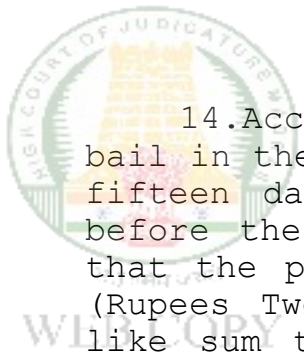
9. In the case on hand, as already pointed out, the petitioner and the defacto complainant are aged 24 years at the relevant point of time. Admittedly, the defacto complainant has completed her Master degree in Computer Application.

10. It is also not in dispute that the petitioner and the defacto complainant, who were class mates, were on love. Even according to the defacto complainant, both of them had visited several places and the petitioner had taken her to his factory situated at Valayapatti several times and in the factory premises used to tell words of desire and compelled her to have physical relationship, that since the petitioner was her lover and she was under the belief that he would marry her had consented for the physical relationship and that the petitioner used to take her in a Car very often and used to park the Car in remote places and had sexual relationship.

11. It is also not in dispute that both of them are belonging to different religion. As rightly contended by the learned counsel for the petitioner, the defacto complainant, being 25 years old, well educated woman, was fully aware of the consequences of the physical relationship and also moral quality of the act to which, she was engaged.

12. Considering the above facts and circumstances of the case, the contention of the learned counsel for the intervenor, that the complainant gave her consent on misconception of fact cannot be accepted. As rightly contended by the learned counsel for the petitioner, the prosecution has shown a prima facie case to infer that there existed consensual intercourse between them. But at the same time, the stand taken by the petitioner cannot also be appreciated.

13. Considering the above and also the fact that the petitioner is not having bad antecedents, this Court is inclined to grant anticipatory to the petitioner, but with certain conditions.



14. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Additional Mahila Judge, Madurai, on condition that 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 respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further conditions that:

(a) the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b) the petitioner shall report before the respondent police daily at 10.30 am for a period of one month and thereafter, as and when required for interrogation.

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

(d) the petitioner 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 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]***; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-
03/03/2022

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/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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