



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 15/03/2022

PRONOUNCED ON: 23/03/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.4040 of 2022

Mohamed Raisudeen,

... Petitioner/Sole Accused

Vs

THE STATE REP BY,
The Inspector of Police,
Thirupullani Police Station,
Ramanathapuram District.
Cr.No. 44 of 2022.

... Respondent/Complainant

Riyashkan,

...Petitioner/Intervener
/Defacto Complainant
in CRL MP(MD)No. 3382 OF 2022

For Petitioner : MR.S.M.A.Jinnah,Advocate.

For Respondent : Mr.R.Sivakumar,
Government Advocate (Crl.Side)

For Intervenor : Mr.M.Thirunavukkarasu,Advocate
IN CRL MP(MD)No. 3382 OF 2022

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

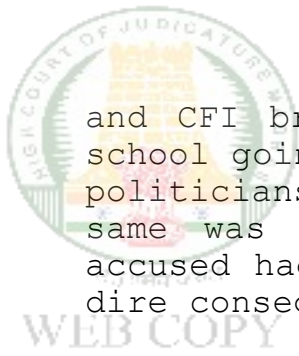
PRAYER :-

For Anticipatory Bail in Crime No. 44 of 2022 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/sole accused who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 294(b), 505(2) and 506(ii)I.P.C., in Cr.No.44 of 2022, seeks anticipatory bail.

2. The case of the prosecution is that on 13.02.2022, the
<https://hcservices.courts.gov.in/hcservices/> said to be uploaded a post in Face Book that NWF, WIM



and CFI branches of SDPI were all doing prostitution by engaging school going girls below 17 years to the rich persons, officials and politicians and that thereby they have been earning a lot. When the same was questioned by the defacto complainant and others, the accused had abused them in filthy language and also threatened with dire consequences.

3. The petitioner's case is that when the petitioner was in his house at about 4.57 p.m., on 13.02.2022, the respondent police came and informed that a complaint was lodged against him and directed him to appear before them on the next day, that thereafter, the respondent police kept a police official in front of the petitioner's house till the next day morning, that due to the previous enmity and motive, the defacto complainant has lodged the above complaint only to harass him, that he is innocent and he has not committed any offence as alleged by the prosecution.

4. The learned Counsel for the intervenor would submit that the petitioner/accused is having two previous cases in Crime No.45 of 2022, dated 13.02.2022 for offences under Section 505(2) I.P.C., and Crime No.316 of 2021, dated 23.12.2021 for offences under Sections 294(b), 505(2) and 509 I.P.C., which are also of similar nature as that of the present F.I.R.

5. This Court, while considering the bail application in CrI.O.P.(MD)Nos. 17209 and 17587 of 2021, vide order dated 25.11.2021, has observed as follows:

"10. An old adage says that one man's right ends, where the other man's nose begins. Justice Oliver Wendell Holmes Jr., in a more poetic way said "Your Liberty to swing your fist ends just where my nose begins". No doubt, the freedom of speech and expression is an internationally recognized right. Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) contemplates that right of freedom of speech can be regulated in order to honour the rights of others and in the interest of public order, public health or morals. Similarly Article 10(2) of European Convention on Human Rights provides reasonable duties and restrictions during the exercise of one's fundamental right to free speech.

11. The Constitution of India under Article 19(1)(a) provides the right to freedom of speech and expression. However, under Article 19(2), the Constitution of India also provides for the reasonable restrictions against the freedom of speech in the interests of the sovereignty and



friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

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12. As already pointed out, along with other exemptions notified under Article 19(2) of the Constitution of India, public order has been an exception that has been given a liberal interpretation in various judgments given by Constitutional Benches. This exception brings into its ambit all the activities that can possibly cause public disorder irrespective of any actual disruption whether caused by such activity or not. The public order has been further read to mean public peace, safety and tranquility. Freedom of speech is not regarded as absolute, when the same conflicts with other rights and protections.

6. In the case on hand, the petitioner has allegedly posted a Face Book post by stating that the members of NWF, WIM and CFI were involved in prostitution by engaging the girls below the age of 17 years. As rightly contended by the learned Government Advocate (Crl.Side), the contents of the post exhibit vulgarity and also derogatory in nature.

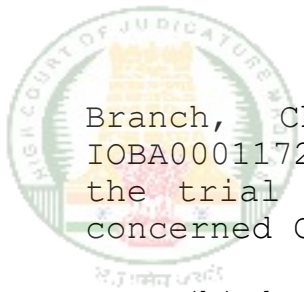
7. When the matter was taken up on 09.03.2022, the learned Counsel for the petitioner has filed an affidavit sworn by the petitioner wherein the petitioner/accused has given an undertaking that he will not post any untrue or rumor or alarming news with intent to create or promote enmity in future.

8. On considering the entire facts and circumstances and also taking note of the undertaking affidavit given by the petitioner, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

9. Accordingly, the petitioner is ordered to be released on bail in the event of his arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.I, Ramanathapuram, 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 condition that:

(a) the petitioner shall deposit a sum of **Rs.10,000/- (Rupees Ten Thousand only) to the credit of Government of Tamil Nadu, Chief Minister Public Relief Fund (CMPRF) in IOB, Secretariat**

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Branch, Chennai-9 (Account No.11720 10000 00070, IFSC Code: IOBA0001172), without prejudice to his rights and contentions before the trial Court and produce the receipt/acknowledgment before the concerned Court while executing sureties.

(b) 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;

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

(d) the petitioner is directed not to make or send any untrue or rumor or indecent messages through any medium and in case of violation of the said direction, the respondent police is directed to take necessary steps for cancellation of anticipatory bail immediately.

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

(f) the petitioner shall not abscond either during investigation or trial;

(g) 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 petitioners 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;

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

sd/-
23/03/2022

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

SSL

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.

<https://hcservices.ecourts.gov.in/hcservices/>



- TO
- 1 THE JUDICIAL MAGISTRATE NO.I,
RAMANATHAPURAM.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM.
- 3 THE INSPECTOR OF POLICE
THIRUPULLANI POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADRURAI.

COPY TO

THE OFFICER INCHARGE,
THE CHIEF MINISTER PUBLIC RELIEF FUND,
GOVERNMENT OF TAMIL NADU
SECRETARIAT BRANCH,
CHENNAI -9.

ORDER
IN
CRL OP(MD) No.4040 of 2022
Date :23/03/2022

PKP/SVR/SAR-4/29.03.2022/5P/6C