



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 17/03/2022

PRESENT

WEB COPY

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.4312 of 2022

Ayyanar

... Petitioner/Sole Accused

Vs

The State Rep. By,
The Inspector of Police,
Chatrakudi Police Station,
Ramanathapuram District.
Cr.No.209 of 2021.

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvelu, Senior Counsel for
M/s.Prabhu K, Advocate.

For Respondent : Mr.P.Kottai Chamy,
Government Advocate (Crl.Side)

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

PRAYER :-

For Anticipatory Bail in Crime No.209 of 2021 on the file of
the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/sole accused apprehending arrest at the hands of
the respondent police for the alleged offence punishable under
Sections 11(1), 11(4) and 12 of Protection of Child from Sexual
Offences Act, 2012, in Crime No.209 of 2021 on the file of the
respondent police, seeks anticipatory bail.

2. The victim girl is aged about 16 years and studying 12th
standard. The case of the prosecution is that the petitioner is a
Bus Conductor in a Town Bus No.24, where the victim girl used to
travel to School. On 14.09.2021, the petitioner gave a passenger
ticket by writing his phone number on its backside and threatened
the victim girl to talk with him on phone.

3. It appears that the earlier applications moved by this
petitioner in Crl.O.P(MD).Nos.14135 of 2021 and 16121 of 2021 were
dismissed by this Court on 23.09.2021 and 25.10.2021 respectively.



This is the third application for anticipatory bail and the learned Senior Counsel appearing for the petitioner has projected the following grounds as change of circumstances:

(i) the case was registered on 14.09.2021 and the investigation is almost completed.

(ii) the petitioner had settled the disputes amicably with the defacto complainant and her family, and a compromise was arrived between them.

(iii) admittedly, the petitioner did not utter any word nor commit any act with sexual intention. Therefore, Section 11(1) of POSCO Act is not attracted.

(iv) the allegation in the First Information Report is that the petitioner asked the victim girl to contact his mobile number and even if the allegations assume to be true, that does not constitute any offence under Section 11(4) of the POCSO Act and there must be repeated acts for constituting the offence.

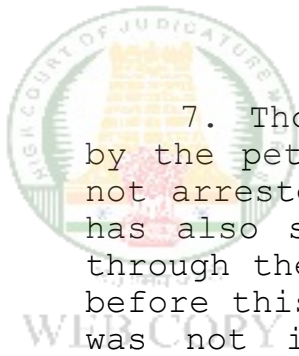
(v) the petitioner is an employee of the Transport Corporation. He will not abscond and he will be available for trial. If he is arrested, he may face further consequences.

(vi) the petitioner has not committed any offence as projected by the respondent Police. In fact, the defacto complainant misunderstood and lodged the complaint. Now after realising his mistake, he has come forward to solve the issues amicably. The learned Senior Counsel has advised his client to do some social service at Mahatma Gandhi Museum and the petitioner has also agreed for the same. By referring the same, a memo is also filed on behalf of the petitioners.

4. The learned Additional Government Pleader opposed for grant of bail that apart from this case, the petitioner is also involved in three other cases. Considering the nature of offence and the antecedents of the petitioner, the earlier applications were dismissed by this Court. The change of circumstances as stated by the learned counsel appearing for the petitioners are not the grounds to consider the present application.

5. This Court considered the rival submissions and perused the materials on record.

6. The petitioner is working as Conductor in the Tamil Nadu State Transport Corporation. On 14.09.2021, when the defacto complainant, who was studying 10th standard, travelled in the bus where the petitioner was working as Conductor, the petitioner hold the hands of the defacto complainant, gave a passenger ticket by writing his phone number on its backside and insisted her to call him in night. Afraid of this, she did not attend the school on the next day and after knowing the above fact, the parents advised her to lodge the complaint.



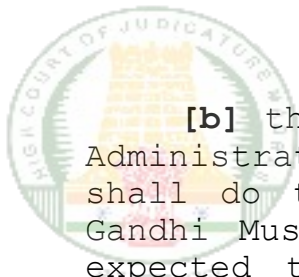
7. Though this Court dismissed the earlier applications filed by the petitioner on 23.09.2021 and 25.10.2021, the respondent has not arrested the petitioner so far. In the meantime, the petitioner has also settled the issues with the defacto complainant's family through the villagers and a compromise quash petition was also filed before this Court in Crl.O.P(MD).No.463 of 2022. However, this Court was not inclined to quash the First Information Report and a direction was given to the respondent Police to file a final report within a period of four weeks and the Sub-Court was directed to conclude the trial within a period of four months from the date of filing of the final report.

8. The petitioner is working as Conductor in the Transport Corporation and he is involved in four cases including this case. The petitioner appears to have realised his mistake and he has come forward to render social services in Mahatma Gandhi Museum. Mahatma Gandhi, with his non-violence, has changed the world. Even the British with their weapons surrendered before his non-violence. Mahatma himself is of the view that the real independence can be enjoyed only when our sisters can move freely even in night hours. Even after 75 years, we have not provided 100% education to our girl children. Most of the children are dis-continuing their studies, afraid of this activity. We are witnessing the misuse of girl students by teachers themselves. Several girl students not only discontinued the studies but also committed suicide on sexual harassment met by them in the Schools or on their way. One student has left with a suicide note that the safest place of a girl is the mother's womb and cemetery. Every citizen of this country has to feel ashamed of the comment made by that student.

9. In this case, the petitioner, admittedly, has not made any sexual harassment. He has also solved the issues amicably with the defacto complainant and on joint compromise memo, a quash petition was also filed. The petitioner has also realised his mistake and now, he is willing to serve social service in Mahatma Gandhi Museum at Madurai. Hence, this Court is inclined to allow this Criminal Original petition with stringent conditions.

10. Accordingly, this criminal original petition is allowed and 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 Mahalir Fast Track Court, 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 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 Aadhaar card or bank pass book to verify their identity.



[b] the petitioner shall stay at Madurai and report before the Administrator, Mahatma Gandhi Museum for a period of 15 days and shall do the services to the visitors and staffs of the Mahatma Gandhi Museum from 09.00 a.m to 6.00 p.m. The petitioner is also expected to read the books of Mahatma Gandhi available in the Museum.

[c] the petitioner shall not tamper with the 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 petitioner 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]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

17/03/2022

/ TRUE COPY /

/ /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.

TO

1. THE MAHALIR FAST TRACK JUDGE,
RAMANATHAPURAM.
2. THE INSPECTOR OF POLICE,
CHATRAKUDI POLICE STATION,
RAMANATHAPURAM DISTRICT.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO :

THE ADMINISTRATOR,
MAHATMA GANDHI MUSEUM, MADURAI.

+1 CC to M/s.K.PRABHU, Advocate (SR-2148[I] dated 17/03/2022)

ORDER IN

CRL OP(MD) No.4312 of 2022

Date :17/03/2022