



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 28/03/2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.5159 of 2022

Mani @ Manikandan

... Petitioner/Sole Accused

Vs

The State Rep by,
The Inspector of Police,
Gandharvakottai Police Station,
Gandharvakottai,
Pudukkottai District.
(Crime No.698 of 2021).

... Respondent/Complainant

For Petitioner : Mr.K.C.Maniyarasu, Advocate.

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

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

PRAYER :-

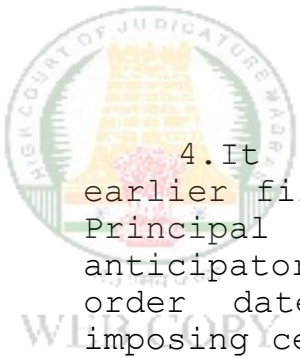
For Anticipatory Bail in Crime No.698 of 2021 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/Sole Accused, who apprehending arrest at the hands of the respondent police for the offences punishable under Sections 341, 324 and 506(ii) IPC in Crime No.698 of 2021, on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that on 18.11.2021 at about 02.45 p.m., the petitioner waylaid the de-facto complainant's two wheeler and attacked him with iron rod and caused injury on his head and caused criminal intimidation. Hence, the complaint.

3.The learned counsel for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would further submit that the case in counter in Crime No.697 of 2021 is pending against the de-facto complainant and party.



4.It is evident from the records that the petitioner has earlier filed an application in Crl.M.P.No.4889 of 2021 before the Principal District and Sessions Judge, Pudukkottai seeking anticipatory bail, that the learned Principal Sessions Judge vide order dated 23.12.2021 has granted interim anticipatory bail imposing certain conditions and wherein, the petitioner was directed to appear before the MM Court No.4, Saidapet daily at 10.30 a.m., and 05.00 p.m until further orders.

5.As already pointed out, the petitioner was charged with major offence under Section 506(ii) IPC along with other offences under Sections 341 and 324 of IPC. It is not the case of the respondent police that the presence of the petitioner in that area would create law and order problem or that there is possibility of tampering the evidence. The learned Principal Sessions Judge has imposed a condition directing the petitioner to travel all along from Pudukkottai to Chennai and to stay there and sign before the MM Court No.4, Saidapet, daily at 10.30 a.m. and 05.00 p.m until further orders. No doubt, the learned Principal Sessions Judge is having discretion to impose conditions. But such discretion is to be exercised judiciously and the learned Principal Sessions Judge can impose conditions, but that should be proportionate to the nature of the offences alleged and other attending circumstances.

6.It is settled law that the bail conditions should not be unreasonable and onerous. In the case on hand, the learned Principal Sessions Judge has imposed unreasonable and onerous conditions.

7.The learned counsel for the petitioner would submit that due to his ill health, he could not comply with the conditions imposed by the learned Principal Sessions Judge, that the learned Principal Sessions Judge has passed an order dated 02.02.2022 not extending the interim anticipatory bail and restored status quo ante by giving liberty to the respondent police to arrest the petitioner and also directed the concerned Magistrate to issue Non-Bailable Warrant as against the petitioner and also directed to secure the petitioner and report before the Principal District and Sessions Court, Pudukkottai on 15.02.2022.

8.It is necessary to refer the Judgment of the Hon'ble Supreme Court in ***M.C. Abraham and Others Vs. State of Maharashtra and Others*** reported in ***(2003) 2 SCC 649*** and the relevant paragraphs are extracted hereunder:-

"...14. Tested in the light of the principles aforesaid, the impugned orders dated 10th January, 2002 and 11th January, 2002 must be held to be orders passed by over-stepping the para-meters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation



and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the Court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection.

15. In the instant case the appellants had not been arrested. It appears that the result of the investigation showed that no amount had been defalcated. We are here not concerned with the correctness of the conclusion that the investigating officer may have reached. What is, however, significant is that the investigating officer did not consider it necessary, having regard to all the facts and circumstances of the case, to arrest the accused. In such a case there was no justification for the High Court to direct the State to arrest the appellants against whom the first information report was lodged, as it amounted to unjustified interference in the investigation of the case. The mere fact that the bail applications of some of the appellants had been rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the Court on mere apprehension that he may be

arrested. The Court may or may not grant anticipatory



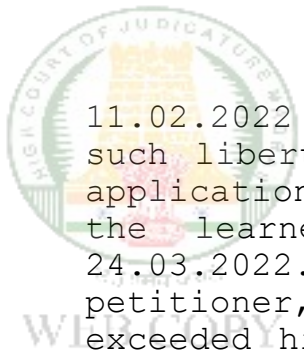
bail depending upon the facts and circumstances of the case and the material placed before the Court. There may, however, be cases where the application for grant of anticipatory bail may be rejected and ultimately, after investigation, the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This assumption, to our mind, is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed in the course of investigation and other relevant considerations."

9.The Hon'ble Supreme Court in ***Vishwanath Biradar Vs. Deepika and Others*** in Petition for Special Leave to Appeal (Crl.) No(s).4123 of 2021, dated 11.06.2021, while considering the directions issued by the High Court of Karnataka, to the Investigating Officer to take the accused into custody and produce him before the concerned Jurisdictional Court, has specifically, held that such direction to take the accused into custody is to beyond the jurisdiction of the High Court and whether an accused is liable to be arrested is based upon the decision of the Investigating Officer depending upon the material collected during the investigation which may be conducted in a particular crime and that it is for the Investigation Agency to whom the investigation has been entrusted to take a call as to when the petitioner is to be arrested.

10.Very recently, the Hon'ble Apex Court in ***S.Senthil Kumar Vs. State of Tamil Nadu*** reported in ***2022 Live Law (SC) 314*** has held that when the prayer for pre-arrest bail is declined, it is for the investigating agency to take further steps in the matter and whether the investigating agency requires custodial interrogation or not, is also to be primarily examined by that agency alone.

11.Considering the above, it is very much clear that the position of law is well settled that the Courts are having no power or jurisdiction to direct the police authorities to arrest a particular person and it is for the investigation agency to decide as to whether the particular person accused of a particular offence is to be arrested or not.

12.It is not in dispute that the petitioner has approached this Court by filing the anticipatory bail application in Crl.O.P.(MD) No.3009 of 2022 and the same was dismissed as withdrawn on



11.02.2022 with liberty to approach the concerned Court again. On such liberty, the petitioner has again filed the anticipatory bail application in Crl.M.P.No.758 of 2022 and the same was dismissed by the learned Principal District and Sessions Judge vide order dated 24.03.2022. As rightly contended by the learned counsel for the petitioner, the learned Principal District and Sessions Judge has exceeded his jurisdiction in directing the concerned Magistrate to issue a Non-Bailable Warrant and secure the petitioner, at the time of dismissing the anticipatory bail petition.

13.It is also necessary to refer the Judgment of the Hon'ble Supreme Court in ***Arneskumar Vs. State of Bihar and another*** reported in **2014 8 SCC 273**, wherein, the Hon'ble Supreme Court has issued directions to the investigating officer and also to the Judicial Magistrates to be followed at the time of arresting accused and at the time of remanding the accused to judicial custody and the relevant passages are extracted hereunder:-

"..8.1....The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2.Before a Magistrate authorises detention under Section 167, Cr.PC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3.The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or



making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. Another provision i.e. Section 41A Cr.PC aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), which is relevant in the context reads as follows:

"41A. Notice of appearance before police officer.-

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject



to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

The Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41, Cr.PC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;



11.4.The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5.The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

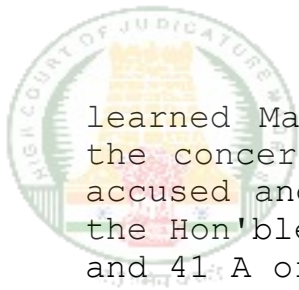
11.6.Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

11.7.Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

11.8.Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

14.In the case on hand, as already pointed out, the major offence with which, the petitioner was charged is under Section 506 (ii) IPC, which attracts the punishment of seven years and as such the guidelines issued by the Hon'ble Supreme Court in **Arneshkumar's case**, are squarely applicable. As already pointed out, in the case on hand, the respondent police has not arrested the petitioner, but on the other hand, he has only moved for anticipatory bail and the learned Principal District and Sessions Judge has granted interim anticipatory bail and thereafter, since the petitioner has not complied with the conditions imposed by the said Court, the interim anticipatory bail was not extended and status quo ante has been restored. No doubt, the learned Principal District and Sessions Judge has rightly observed that the respondent police is at liberty to arrest the petitioner. But immediately thereafter, he directed the concerned Magistrate to issue Non-Bailable Warrant as against the petitioner and also direction to secure the petitioner and a report has to be submitted before the Principal District and Sessions Court, Pudukkottai.

15.As rightly contended by the learned counsel for the petitioner, the learned Principal Sessions Judge has specifically directed the Magistrate to issue Non-Bailable Warrant and to secure the petitioner. In case, if the Non-Bailable Warrant issued by the



learned Magistrate is executed and the accused is produced before the concerned Magistrate, he has no other option but to remand the accused and that will definitely go against the dictum laid down by the Hon'ble Supreme Court in **Arneshkumar's case**. as well Sections 41 and 41-A of Cr.P.C.

WEB COPY

16.Considering the above, this Court has no hesitation to hold that the order passed by the Principal District and Sessions Judge in directing the Magistrate to issue Non-Bailable Warrant and to secure the petitioner is very much against the position of law settled by the Hon'ble Supreme Court and is illegal. This is not the only order passed by the learned Principal Sessions Judge, Pudukkottai.I have come across some more similar orders passed by the same Judge. Hence, the Registry is directed to call for an explanation from the learned Principal District and Sessions Judge, Pudukkottai in this regard.

17.In the present case, the learned Government Advocate (Crl. side) would submit that injured person has been discharged from the hospital. He would further submit that the petitioner is having 12 previous cases, in which, 10 cases were already disposed of and two cases for similar offences are pending against him.

18.Considering the above facts and circumstances and also the facts that the injured was already discharged from the hospital and that the case in counter in Crime No.697 of 2021 is pending against the de-facto complainant and party, this Court is inclined to grant anticipatory bail to the petitioner subject to the following conditions:-

19.Accordingly, the petitioner is ordered to be released on bail in the event of 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, Gandharvakottai, 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
<https://hcservicescourts.gov.in/hcservices/> 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]***; and;

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

sd/-
28/03/2022

/ TRUE COPY /

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

SJI

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 JUDICIAL MAGISTRATE,
GANDHARVAKOTTAI.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI.
- 3 THE INSPECTOR OF POLICE
GANDHARVAKOTTAI POLICE STATION,
GANDHARVAKOTTAI, PUDUKKOTTAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADRURAI.



COPY TO

1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
PUDUKKOTTAI.

2 THE SECTION OFFICER,
B SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.5159 of 2022
Date :28/03/2022

PKP/SVR/SAR-2/07.04.2022/11P/7C