



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 08.04.2022 & 04.04.2022
Delivered on : 12.04.2022
PRESENT

WEB COPY

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP(MD) . Nos.5247 & 5548 of 2022

Crl.O.P. (MD)No.5247 of 2022:

1. G.Mariappan
2. M.Subbulakshmi ... Petitioners/ Accused 2&3

Vs

1.The State represented by
The Inspector of Police,
All Women Police Station,
Theni.
(Crime No.13 of 2022)

... Respondent/Complainant

2.Menaka ...Respondent/ Defacto Complainant

For Petitioners: Mr.F.Deepak, Advocate
for Mr.R.Narayanan,
Advocate.

For Respondents: Mr.R.Sivakumar,
Government Advocate(Crl.Side)for R1
Mr.R.Maheswaran, Advocate
for Mr.P.T.Ramesh Raja for R2
Advocate.

Crl.O.P. (MD)No.5548 of 2022:

Murugan ... Petitioner/Accused No.1

Vs

The State represented by
The Inspector of Police,
All Women Police Station,
Theni.
(Crime No.13 of 2022)

... Respondent/Complainant

Menaka ... Petitioner/Defacto Complainant

For Petitioner : Mr.B.Jameel Arasu,
Advocate.

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

For Intervenor : Mr.P.T.Ramesh Raja, Advocate.



PETITIONS FOR ANTICIPATORY BAIL Under Section 438 of Cr.P.C.

COMMON PRAYER :-

For Anticipatory Bail in Crime No.13 of 2022 on the file of the Respondent police.

COMMON ORDER: The Court made the following order :-

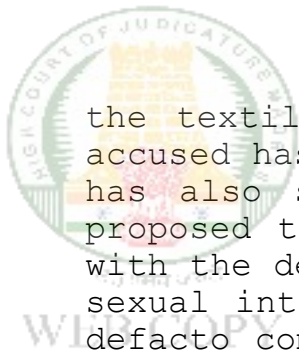
The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 417, 376, 506(1) and 109 IPC in Crime No.13 of 2022 on the file of the respondent police, seek anticipatory bail.

2.Admittedly, the petitioner in Crl.O.P.(MD)No.5548 of 2022 is the first accused and the petitioners in Crl.O.P.(MD)No.5247 of 2022 are the accused 2 and 3 and that the first accused is the son of the accused 2 and 3.

3.The case of the prosecution is that the first accused had love affair with the defacto complainant and had physical relationship, that thereafter he tied thali for name sake and that all the accused are now making arrangements for the marriage of the first accused with another girl.

4.The petitioners' case is that the second accused is running a textile shop in the name of Ganapathy Silks at Theni, that the first accused is also working in the said textile, that the defacto complainant is also working in tailoring section, that the first accused is having love affair with his college mate Prasanna and hence marriage was arranged by both the families and betrothal was performed on 06.03.2022, that thereafter the defacto complainant with the help of the manager of the textile shop had managed to take the first accused to the house of the manager and coerced the first accused to take photographs as if marriage was done between the first accused and the defacto complainant on 08.03.2022 and that thereby the defacto complainant has preferred the above complaint falsely implicating the petitioners.

5.The case of the defacto complainant is that she is a Master degree holder in English literature, that she was working as a soft skill trainer in a reputed college at Theni, that thereafter she started her new design studio and cosmetic shop within Ganapathy Silks building, that the first accused followed and proposed the defacto complainant, that the accused 2 and 3/parents of the first accused also met the defacto complainant and informed her that she is a suitable bride for their family and also they liked the defacto complainant very much and thus the first accused had gained the confidence of the defacto complainant, that with the confidence and also by force and compulsion, the first accused had physical relationship with the defacto complainant in a lonely place within

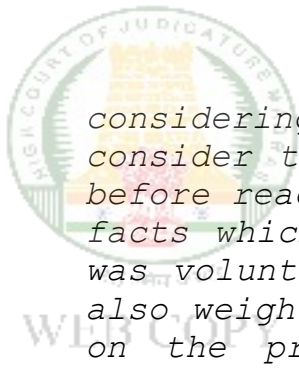


the textile shop, that after the physical relationship, the first accused has assured that he would marry her, that the first accused has also spoken to the defacto complainant's father and he also proposed to marry her, that the first accused assured his marriage with the defacto complainant and often took her to his house and had sexual intercourse, that the first accused used to get wild if the defacto complainant fails to co-operate with him and refuses to visit his house, that on 05.03.2022, the first accused informed the defacto complainant that his parents were insisting him to marry another girl Prasanna, that the first accused even at that time assured that in any event he would marry her, that on 07.03.2022, the first accused informed the defacto complainant that their marriage will be solemnized on the next day and accordingly on 08.03.2022, the first accused had tied thali and the marriage was solemnized between them, that the first accused informed that he would convince his parents and take the defacto complainant to the matrimonial home, that thereafter the first accused switched off his mobile and on 09.03.2022, he informed that he would marry another girl Prasanna as per the wish of his parents, that pre-marriage ceremony was conducted on 06.03.2022 itself and when the same was questioned by the defacto complainant, the first accused had threatened the defacto complainant that he is having other photos of the defacto complainant and he would spoil her image by morphing those photos and that he has also threatened the defacto complainant that he would eliminate her by setting fire.

6.Before entering into further, it is necessary to refer the judgment of the Hon'ble Supreme Court in **Uday vs. State of Karnataka** reported in (2003) 4 SCC 46.

7.No doubt, the above judgment was rendered by the Honourable Supreme Court in the Criminal Appeal, challenging the conviction of the appellant under section 376 IPC by the High Court, confirming the conviction passed by the trial Court and the Hon'ble Supreme Court has allowed the appeal and thereby setting aside the impugned judgment and order convicting and sentencing the appellant therein for the offence under Section 376 IPC and the relevant passage is 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."

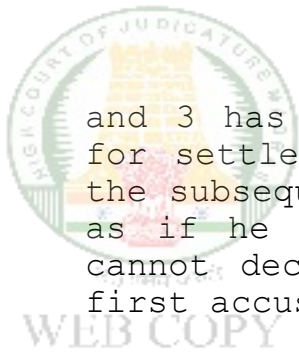
8.In the said judgment, the Hon'ble Apex Court has observed that when the accused knows that he is giving a false promise, at the very inception, that he has no intention to marry her at all, however, the victim believed his promise be true and in that belief, she had consented for sexual intercourse, then she gave her consent only on misconception of fact and in those circumstances, it will amount to rape.

9.In the case on hand, admittedly, the first accused is aged 32 years and the defacto complainant is aged 29 years. No doubt, the defacto complainant has completed her Master Degree in English literature and she has been running a cosmetic shop in the Ganapathy building campus, which was, owned by the second accused.

10.It is evident from the records that the petition in Crl.O.P. (MD)No.5247 of 2022 filed by the accused 2 and 3, which was earlier taken up for hearing on 21.03.2022 and on that day, the learned counsel for the petitioners/accused 2 and 3 submitted that they are ready to bring the first accused for mediation, if the matter is referred to mediation and that the learned counsel for the intervenor/defacto complainant submitted that there is a possibility for settlement and hence, the matter may be referred to mediation. Considering the submissions made by the learned counsel for the petitioners/accused 2 and 3 as well as the learned counsel for the intervenor/ defacto complainant, this Court referred the matter to mediation.

11.When the matter is pending before the mediation, the first accused has filed a petition in Crl.O.P.(MD)No.5548 of 2022 seeking anticipatory bail and when the matter was taken up earlier, the learned counsel for the petitioner/first accused submitted that the first accused is not willing for referring the matter to mediation and that they are ready to argue the matter on merits. After hearing the arguments of both sides in Crl.O.P.(MD)No.5548 of 2022, another petition in Crl.O.P.(MD)No.5247 of 2022, which was referred to mediation, was also returned back to this Court as the mediation ended in failure and after hearing both the sides, this Court has reserved all the petitions for orders.

12.The learned counsel for the defacto complainant/intervenor would submit that the learned counsel for the petitioners/accused 2



and 3 has voluntarily submitted that since there is a possibility for settlement, the matter has to be referred to mediation but in the subsequent hearing, the first accused has taken a specific stand as if he is not having any connection with his parents and they cannot decide about the course of the action to be taken by the first accused.

13.It is not in dispute that the first accused is managing the Ganapathy Silks show room at Theni and the defacto complainant is running a cosmetic shop in the said building.

14.The learned Government Advocate (Criminal Side) would submit that the defacto complainant, in her statement recorded under section 164 Cr.P.C., has specifically reiterated the contentions raised in her complaint.

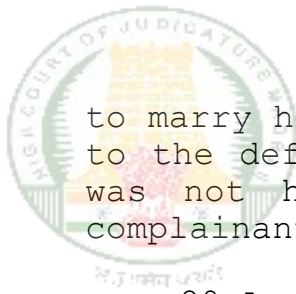
15.As rightly pointed out by the learned counsel for the defacto complainant/intervenor as well as the learned Government Advocate (Criminal Side), the defacto complainant has specifically alleged that the first accused and the defacto complainant were on love and that on the assurance given by the first accused and his confidence building conduct, she had physical relationship with him, that the marriage between the first accused and the defacto complainant was solemnized on 08.03.2022 and that thereafter the accused 1 to 3 are taking steps to conduct marriage of the first accused with another girl.

16.The learned counsel for the defacto complainant/intervenor would further submit that the accused 2 and 3 in their petition have stated that their son/first accused was having love affairs with his classmate Prasanna, that the said Prasanna is aged only 23 years and whereas, the first accused is aged 33 years and that therefore the said Prasanna was never a classmate of the first accused.

17.As rightly contended by the learned counsel for the intervenor/defacto complainant, the accused 1 to 3 have not specifically disputed the said factum.

18.It is pertinent to note that the first accused as well as the defacto complainant have been blaming the manager of the Ganapathy Silks Vinoth as if he was helping the other side.

19.The learned Government Advocate (Criminal Side) would submit that the said main witness Vinoth, manager of the said textile show room has given a statement under Section 164 Cr.P.C., wherein, he has specifically stated that the first accused had admitted the love affairs between himself and the defacto complainant, but he has stated that he never informed her that he would marry her. The said manager Vinoth in his statement has further stated that since the defacto complainant was insisting and compelling the first accused



to marry her, with no other option, the first accused had tied thali to the defacto complainant in his house and that the first accused was not having any intention or interest to marry the defacto complainant and thereafter he went to his house.

20.As rightly pointed out by the learned counsel for the intervenor/defacto complainant, the defacto complainant, in her complaint as well as in her statement recorded under Section 164 Cr.P.C., has specifically stated that the first accused had taken the defacto complainant to his house and his parents met her and informed her that she is a suitable bride for their family and that thereafter the first accused had visited the garden house of the defacto complainant and informed their relationship to her father.

21.Even according to the accused, the betrothal of the first accused with another girl Prasanna was already over. According to the defacto complainant, after the betrothal, the first accused had assured her that in any event he would marry her.

22.Admittedly, as rightly pointed out by the learned counsel for the petitioners/accused 2 and 3, the only allegation against the accused 2 and 3 is that they had helped the first accused and all of them are arranging for the marriage of the first accused with another girl.

23.Considering the stand taken by the first accused and his conduct, as rightly contended by the learned counsel for the intervenor/defacto complainant, the same would go to show *prima facie* that the first accused was not having any intention to marry the defacto complainant even from the beginning and by giving false promise to marry her, he had physical relationship with her on several occasions and that since the defacto complainant had compelled and cornered the first accused along with the manager, he had tied thali and escaped from the house of the manager.

24.Considering the above facts and circumstances and also the seriousness and gravity of the offence alleged against the first accused, this Court is not inclined to grant anticipatory bail to the first accused, but at the same time, considering the nature of the charges levelled against the accused 2 and 3, who are the parents of the first accused and also taking note of their age, this Court is inclined to grant anticipatory bail to the accused 2 and 3.

25.In the result, **Cr1.OP(MD)No.5548 of 2022** is dismissed.

26.The petition in **Cr1.OP(MD)No.5247 of 2022** is allowed and the petitioners are ordered to be released on bail in the event of their arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Additional Mahila Court, Theni, on condition that the petitioners



shall execute a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** each with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further conditions that:

[a]the petitioners 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 ensure their identity.

[b]the first petitioner shall report before the respondent police daily at 10.30 a.m., for a period of one month and thereafter, as and when required for interrogation and the second petitioner shall report before the respondent police as and when required for interrogation.

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

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

sd/-

12/04/2022

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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 ADDITIONAL MAHILA JUDGE,
THENI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, THENI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.NARAYANAN R Advocate SR.No.3316

+1. CC to Mr.B.JAMEEL ARASU, Advocate SR.No.3377

ORDER

IN

CRL OP (MD) . Nos.5247

& 5548 of 2022

Date :12/04/2022

SS/PN/SAR:I/13.04.2022 : 8P/7C