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Crl.O.P.(MD)No.5430 of 2022:

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

RESERVED ON : 30/03/2022

PRONOUNCED ON : 08/04/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . Nos.5430 and 5513 of 2022

Crl.O.P. (MD)No.5430 of 2022:

1. Asan Basha @ Ashan Batcha,

2. Habipulla,

... Petitioners/Accused Nos. 2 & 3

Vs

THE STATE REP BY,
The Inspector of Police,
Tallakulam Police Station,
Madurai City.
(In Crime No.223/2022).

... Respondent/Complainant

Crl.O.P. (MD)No.5513 of 2022:

1. Al Malik Baizal,

2. Thoufeek,

3. Syed Naina,

4. Yasar Arabath @ Yasar,

5. Abbas,

6. Seenii @ Seenii Umar Kathar,

7. Althaf Usaine @ Aldaf Usain, ... Petitioners/Accused Nos. 1 to 7

Vs

THE STATE REP BY,
The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District.
(In Crime No.73/2022).

... Respondent/Complainant



For Petitioners

in both petitions : Mr.G.Prabhu Rajadurai
for Mr.S.M.A.Jinnah,

For Respondent

in both petitions : Mr.Veerakathiravan
Additional Advocate General
assisted by
Mr.R.Sivakumar,
Government Advocate (Crl.Side)

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

PRAYER :-

For Anticipatory Bail in Crime No. 73 of 2022 on the file of the respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners in Crl.O.P.(MD)No.5430 of 2022/ Accused Nos.2 and 3, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 153(A), 505(1)(b), 505(1)(c), 505(2), 506(1) and 109 I.P.C., in Crime No.223 of 2022, on the file of the respondent police, seek anticipatory bail.

2. The petitioners in Crl.O.P.(MD)No.5513 of 2022/ Accused Nos.1 to 7, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 143, 153 A(1)(a), 504, 505(1)(b), 505(1)(c) I.P.C., in Crime No.73 of 2022, on the file of the respondent police, seek anticipatory bail.

3. Recently, a three Judges Bench of Karnataka High Court headed by the Hon'ble Chief Justice has pronounced a judgment backing a ban on Hijabs in Educational Institutions. The meetings, now in dispute were convened to protest against the judgment passed by the Karnataka High Court.

4. When the matter was taken up on 30.03.2022 one Mr.B.Ramaswamy, claiming to be a Counsel practising in Supreme Court, by getting S.R.No., to the intervening petition, has sought permission of this Court to advance his arguments and thereby attempt to give religious colour to the present cases. When this Court has questioned his *locus standi*, he would submit that he has preferred a complaint before the jurisdictional police. This Court, informing him to work out his remedy in a manner known to law, refused the permission. At the outset, this Court is constrained to say that in the present cases, we are not concerned with any religion or religious beliefs and this Court is viewing the disputes/incidents as an open and dangerous attack on the strongest pillar of the Constitution, the Judiciary.



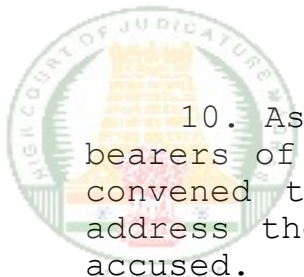
5. The first meeting was convened on 17.03.2022 at 15.30hours at Goripalayam Mosque Street, Madurai Town and the second meeting was convened on 18.03.2022 at about 17.30hours near Mariamman temple at south street, Thiruvadanai. In the first meeting, the first accused in Cr.No.223 of 2022 is shown as State Level main speaker and the accused 2 and 3 are the office bearers of the Tamilnadu Thowhith Jamath, who have convened and arranged the meeting. In the second meeting, the second accused is a State Level speaker and the other accused are the office bearers of the said Organisation, who convened and arranged the meeting.

6. It is not in dispute that in the first meeting, the main speaker who is the first accused has already been arrested and is in judicial custody and that the other two accused connected with the first meeting and all the seven accused connected with the second meeting are now apprehending arrest. The video clipping and the audio version of the said speech allegedly delivered by the first accused in the first meeting were widely circulated in social media and I have also received the same from a whatsapp group. After hearing the speech, I was speechless for some minutes. Even during the days of T.B. Macaulay or at the time of framing of Indian Constitution or subsequently, nobody could have thought of such incidents would occur attacking judiciary in such a way.

7. The learned Counsel for the petitioners would submit that the present petitioners have not given any such speech, that they were not in agreement with the speech made by the main speakers and that for the speech made by the main speakers, the petitioners cannot be mulcted with criminal liability.

8. As rightly contended by the learned Additional Advocate General, the main speakers in the alleged meetings have delivered lengthy speeches and admittedly the petitioners who were very much available at the meetings have not taken any steps to cut short the speeches made by the main speakers or to stop them from continuing their speech or to stop the meetings itself. According to the prosecution, after the address by the main speakers, the meetings were further proceeded and ended with a vote of thanks.

9. It is not the case of the petitioners that they have clarified their position or the stand of their organisation in that meetings itself that they were not in agreement with the speeches allegedly delivered by the main speakers and that the above speeches were to be taken as the personal views or opinions of the main speakers. But on the other hand, as rightly contended by the learned Additional Advocate General, they have proposed vote of thanks, expressing their thankfulness to the main speakers who have come from different places.



10. As already pointed out, the petitioners, who are the office bearers of the said organisation in that particular Districts, have convened those meetings and invited the State Level speakers to address the gatherings and as such, they were rightly arrayed as accused.

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11. The learned Additional Advocate General has also produced the transcript of the speech delivered by the speakers at the said meetings. It is evident that the speakers have given an "open threat of murder" to the Honourable Chief Justice of Karnataka High Court and other two Judges.

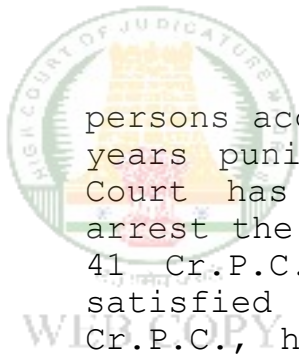
12. As rightly pointed out by the learned Additional Public Prosecutor, they have referred to the incident in which the Additional District Judge of Dhanbad District was killed while he was walking and according to them, an auto rickshaw had intentionally ran over and killed the said Judge. They have not only threatened the Judges of the High Court who gave the verdict, but also the Judges of the Hon'ble Supreme Court who are going to hear the appeals and pronounce the judgment. The speaker went to the extent of threatening the judges of Supreme Court that in case, if the judgment is not in their favour, they would face major accidents somewhere and if any accident, murder or any other untoward incident happens to them, they are responsible for the same.

13. The learned Counsel for the petitioners would submit that as per the decision of the Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar reported in (2014)8 SCC 273**, the arrest is not necessary for the offences which attract punishment upto 7 years, that the penal sections under which the petitioners were charged with are not made out and that therefore, the petitioners are entitled to be enlarged on anticipatory bail.

14. Section 41 or any other provision of the Code of Criminal Procedure does not say anywhere that any person accused of any offence which attracts less than 7 years or 7 years punishment should not be arrested. Section 41 Cr.P.C., provides that in case if the police officer is satisfied that such arrest of the accused is necessary, he must record his reasons while making such arrest and in case if the police officer is of the view that no arrest is necessary, then he can issue notice under Section 41-A Cr.P.C., and after appearance of the persons accused of any offence, in response to the notice issued under Section 41-A Cr.P.C., and if the Investigating Officer during enquiry is of the view that such accused is to be arrested, he can very well proceed to arrest the accused.

15. The Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar reported in (2014)8 SCC 273**, has nowhere stated that the

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



persons accused of any offence which attracts less than 7 years or 7 years punishment cannot be arrested at all. The Hon'ble Supreme Court has specifically held that the Investigating Officer can arrest the accused after satisfying with the requirements of Section 41 Cr.P.C., and also mandates the Magistrate that he must be satisfied that the condition precedent for arrest under Section 41 Cr.P.C., has been satisfied and only thereafter he will authorize the detention of the accused. It is necessary to refer the following passages of the judgment of the Hon'ble Supreme Court in **Arnesh Kumar's case**, which are extracted hereunder:

"As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Cr.PC which is relevant for the purpose reads as follows:

"41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) x x x x x

(b) 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 punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary - to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not



making the arrest.

X x x x x x From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of [Section 41](#) of Cr.PC."

Hence, the main contention of the petitioners that their arrest in the present cases are not at all necessary, since the offences attract punishment upto 7 years, is absolutely devoid of merits and



the same is liable to be rejected.

16. Moreover, it is not an ordinary case, as put forth by the learned Counsel for the petitioners, but it is an extraordinary case which requires to be dealt with sternly and seriously. On considering the speech made in the meetings, it can easily be inferred that they have been attempting to turn a particular community or a particular section of the community against the judiciary.

17. No doubt, everyone can express their view, opinion, or comments or even criticise the judgments of the Courts, but that must be within the limits of reasonable courtesy and good faith. Undoubtedly, the judgments are open to criticisms, but no person can be permitted to overstep the limits of fair, *bonafide* and reasonable criticism of a judgment.

18. In ***Re.Roshan Lal Ahuja's case*** reported in **1992(3)SCALE 237**, a three Judge Bench of the Hon'ble Apex Court has held as follows: However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of the judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bestir themselves to uphold their dignity and the majesty of law. No litigant can be permitted to overstep the limits of fair, bona fide and reasonable criticism of a judgment and bring the courts generally in disrepute or attribute motives to the Judges rendering the judgment. Perversity, calculated to undermine the judicial system and the prestige of the court, cannot be permitted for otherwise the very foundation of the judicial system is bound to be undermined and weakened and that would be bad not only for the preservation of rule of law but also for the independence of judiciary. Liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the Judges or the courts in relation to judicial matters. No system of justice can tolerate such an unbridled licence.

19. The Hon'ble Supreme Court in *P.N.Duda Vs. P.Shiv Shanker and Others* reported in (1988)3 SCC 167 has observed that the judgments can be criticized, motives to the judges need not be attributed, it brings the administration of justice into deep disrepute and that faith in the administration of justice is one of the pillars on which democratic institution functions and sustains.

20. The Hon'ble Supreme Court in ***Rajendra Sail Vs. Madhya Pradesh High Court Bar Association and Others*** reported in **(2005)6 SCC 109**, while dealing with contempt has observed as follows:

"It has been repeatedly held that the rule of law is the foundation of the democratic

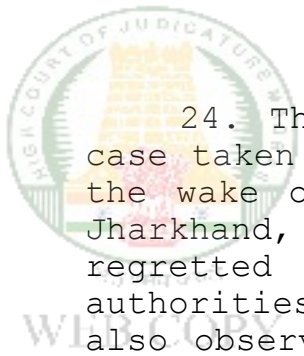


society. The judiciary is the guardian of the rule of law. The confidence, which the people repose in the courts of justice, cannot be allowed to be tarnished, diminished or wiped out by contemptuous behaviour of any person. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded."

21. Considering the seriousness and gravity of the offences alleged and also taking note of the swift action allegedly taken by the respondent police, this Court has raised a question to the learned Additional Advocate General as to why there was a delay in registering the complaints and the learned Additional Advocate General, on instructions, would submit that the police authorities have to transcript the speeches allegedly made by the speakers and they have to forward the same to Chennai and only after getting permission, a case has to be registered.

22. Neither the Code of Criminal Procedure nor any other Law mandates the police officials to get permission from their headquarters for registering the cases even in cases involving cognizable offences. In the first case, though a meeting was conducted at 17.30hours on 17.03.2022, the F.I.R. came to be registered at 11.00a.m. On 18.03.2022. Regarding the second meeting, which was conducted at 17.30hours on 18.03.2022, F.I.R. came to be registered at 10.00a.m. On 20.03.2022. In the first case, according to the prosecution, the accused have convened the meeting without getting any permission. But in the second case, according to them, the accused have applied for permission, but the same was refused. If that be the situation, this Court is at loss to understand as to why the police authorities have not taken any steps to stop the meeting even at the commencement. Even in the F.I.Rs, it has been specifically stated that police officers were very much present at the place of meetings.

23. Chapter XI Cr.P.C., deals with the preventive action of the police and Section 149 Cr.P.C., contemplates that every police officer has to take necessary steps for preventing the commission of any cognizable offence and Section 151 Cr.P.C., permits the police officer even without warrant or orders from the Magistrate to arrest any person in order to prevent the commission of any cognizable offence.



24. The Hon'ble Supreme Court, while considering the *suo motu* case taken by it on the issue of protection of Judges and Courts in the wake of killing of Additional District Judge in the State of Jharkhand, three Judge Bench headed by the Hon'ble Chief Justice has regretted that Judges are not a priority for the investigative authorities and that their complaints are ignored. The Bench has also observed that there needs to be something effective on ground to prevent terrorism and attack on judges. The Bench has also expressed their concerns that the Judges are being slandered and threatened for failing to issue favourable orders in "high profile cases" and that the Intelligence Bureau (IB) and Central Bureau of Investigation (CBI) do not do justice at all. The Bench has also emphasised the State's obligation to protect judges to ensure they can perform their duties fearlessly.

25. This Court is reminding the respondent authorities of the concerns and regrets expressed by the Hon'ble Supreme Court. It is fundamental that the judiciary has to function independently without any fear. If anyone of the Judges gets fear or apprehension by the threatenings, then the judicial independence would vanish eroding the very edifice on which the institution of justice stands and that the very foundation of the democracy of the Country would crumble.

26. In the case on hand, as already pointed out, the speakers have exceeded the limits and went to the extent of threatening the judges of the High Courts and Supreme Court that they would kill them, if any judgment is pronounced against them.

27. The learned Additional Advocate General would submit that considering the nature and the way in which speeches were made, whether there is any larger conspiracy and who were behind such dangerous speeches are to be investigated.

28. Considering the magnitude and barbaric nature of the threatenings made, seriousness and gravity of the offences alleged and also the fact that the petitioners were the organisers of the meetings, in which such open and dangerous threatenings were made against the higher judiciary and that the investigation is at the initial stage as stated by the learned Additional Advocate General appearing for the State, this Court is not inclined to grant anticipatory bail to the petitioners.

29. In the result, both the Criminal Original Petitions are dismissed.

sd/-
08/04/2022

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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.

TO

- 1 THE INSPECTOR OF POLICE
TALLAKULAM POLICE STATION,
MADURAI CITY.
- 2 THE INSPECTOR OF POLICE
THIRUVADANAI POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADRURAI.

ORDER
IN
CRL OP (MD) . Nos.5430 and
5513 of 2022
Date :08/04/2022

PKP/SVR/SAR-2/11.04.2022/10P/4C