



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 29/06/2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

WEB COPY

CRL OP (MD) Nos.7659 & 7661 of 2022

Thangapandiyan

... Petitioner/Accused No.2
in both Crl OPs

Vs

The State rep.by
The Inspector of Police,
CBCID South Nagercoil,
Kanyakumari District.
(Cr.No.4 of 2020).

... Respondent/Complainant
In Crl.OP (MD).7659/2022

The Inspector of Police,
CBCID Nagercoil,
Kanyakumari District.
(Cr.No.8 of 2020).

... Respondent/Complainant
In Crl.OP (MD).7661/2022

IN BOTH PETITIONS:

For Petitioner : Mr.V.KATHIRVELU, Senior Counsel
for Mr.Prabhu.KAdvocate.
For Respondent : Mr.T.SENTHILKUMAR,
Government Advocate (Crl.Side)

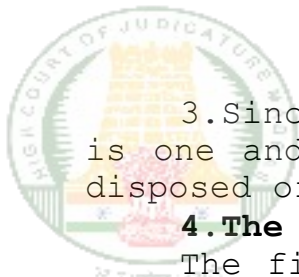
PETITIONS FOR BAIL Under Sec.439 of Cr.P.C.

COMMON PRAYER :- For Bail in Crime No.04 & 08 of 2020 on the file of the respondent police.

COMMON ORDER : The Court made the following Common order :-

The petitioner, who is arrayed as accused No.2 in Crime No.4 of 2022, on the file of the respondent police for the offences punishable under Sections 420, 406, 465, 467, 471, 384, 506(i), 120(B), 109 r/w Section 34 of IPC and Section 4 of Tamilnadu Prohibition of charging Exorbitant Interest Act, 2003 was arrested and remanded to judicial custody on 30.06.2020. For grant of bail in Crime No.4 of 2020, the petitioner filed Crl.O.P (MD) No.7659 of 2022.

2.The petitioner is also arrayed as an accused No.2 in Crime No.8 of 2020, on the file of the respondent police for the offences punishable under Sections 376, 354A, 354B, 354C, 354D, 294(b) of IPC and Section 66B of Information Technology Act. The petitioner was arrested and languishing in jail from 30.06.2020. For grant of bail in Crime No.8 of 2020, the petitioner filed Crl.O.P (MD) No.7661 of 2022.



3. Since the petitioner in both the Criminal Original Petitions is one and the same, both the petitions are taken up together and disposed of by this common order.

4. The case of the prosecution in Crime No.4 of 2020:-

The first accused and the defacto complainant are the friends. The first accused is a money lender. The defacto complainant obtained a sum of Rs.1,00,000/- from the first accused in the month of April 2018 and subsequently it was repaid by the defacto complainant during May 2018 itself. Subsequently, the defacto complainant once again borrowed a sum of Rs.2,00,000/- from the first accused by way of giving one cheque and his two wheeler as security. Thereafter, the defacto complainant settled the entire amount and requested the first accused to return the two wheeler and the cheque. But the first accused told the defacto complainant that the entire amount was not discharged by him and there is a due in repayment and refused to hand over the two wheeler of the defacto complainant. Thereafter, the defacto complainant came to know that the ownership of the his two wheeler was transferred from the name of the defacto complainant to the name of the first accused with the connivance of the petitioner herein and the third accused by name Narayanan. Hence, the defacto complainant lodged a complaint, based on which, a case in Crime No.4 of 2020 was registered as against the petitioner and the other two accused.

5. Submissions of the petitioner's counsel:

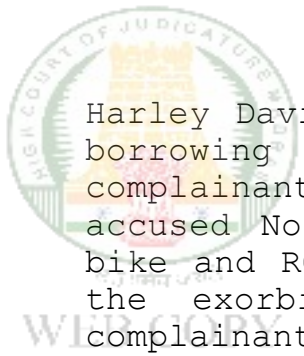
(i) There is no specific overt act as against the petitioner that he lent money to the defacto complainant or he demanded exorbitant interest from the defacto complainant. It is bluntly stated by the defacto complainant that the petitioner played a role in transferring the ownership of the two wheeler from the name of the defacto complainant to the name of the first accused.

(ii) The trial was commenced and that out of 35 witnesses, 20 witnesses were examined. As the trial was already commenced, custodial interrogation of the petitioner is no longer necessary. The petitioner also undertakes to co-operate for the trial.

(iii) The petitioner is a senior citizen and he is having various health ailments. The petitioner is a handicapped person with 50% disability suffering with knee cap displacement in both the legs. The petitioner is also a diabetic patient with various other health ailments. The petitioner is also injecting insulin around three times a day. The petitioner is not having any other previous bad antecedents other than the present two cases that are being falsely foisted against him.

6. Objections of the learned Government Advocate (Crl.side):-

(i) The petitioner is accused No.2 and he is also the father of the first accused, namely Suji @ Kasi. The petitioner and the second accused are doing finance business, collecting exorbitant interest. The defacto complainant in this case is one Dravid has purchased



Harley Davidson street 750 Model Motor Cycle in the year 2016, by borrowing a loan of Rs.4,50,000/- from HDFC Bank. The defacto complainant has also borrowed a sum of Rs.1,00,000/- from the accused No.1 and as a security, the defacto complainant gave his bike and RC Book. The accused collected interest on daily basis at the exorbitant rate and every alternative days, the defacto complainant transferred the interest amount. There was a due of Rs.1,00,000/- in the HDFC Bank and the Bank has taken the possession of the vehicle. This petitioner/the second accused approached the Bank and paid the balance amount and collected NOC by signing in the customer cum acknowledgment receipt form. When the defacto complainant requested them to hand over the bike, the accused 1 & 2 intimidated the defacto complainant that he would fill up the blank cheque of the defacto complainant for a sum of Rs.10,00,000/- and will file a case against the defacto complainant. Thereafter, the accused 1 & 2 forged the signature of the defacto complainant and submitted an application and obtained the forged RC Book and got it transferred in the name of the first accused without the knowledge of the defacto complainant.

(ii) Apart from this case, there are three other criminal cases are pending as against this petitioner. The present case was charge sheeted in the year 2020 and taken on file in CC No.316 of 2020, wherein, among 49 witnesses, 35 witnesses were examined in the year 2020 itself. However, the petitioner has not cross examined those witnesses and filed various petitions to drag on the trial proceedings.

(iii) Only after the rejection of the earlier bail application, the petitioner has cross examined some of the witnesses and the case stands posted on 29.06.2022 for cross examination of PW 24 and PW 25 and 12 other witnesses are yet to be cross examined. The petitioner is also an accused in Crime No.8 of 2020, wherein, the life of several innocent girls have been spoiled and exploited by the first accused and this petitioner is also the main accused in that case along with his son A1. The petitioner filed several petitions to protract the trial in SC No.41 of 2021. The first accused has also taken videograph of the girls in a compromising position and intimidated them and made them to indulge in further offence. The Investigating Officer has recovered the laptop and mobile phone of the first accused from this petitioner, wherein, the investigating agency found 1900 obscene full and half photos and more than 120 girls have been exploited by the first accused. He further submits that the petitioner along with the first accused filed various petitions before the trial Court with an intention to protract the proceedings. Though the final report was filed in the month of January 2021, charges have not been framed in SC No.41 of 2021 by the trial Court, due to filing of different petitions by the accused 1 & 2, for protracting the trial.



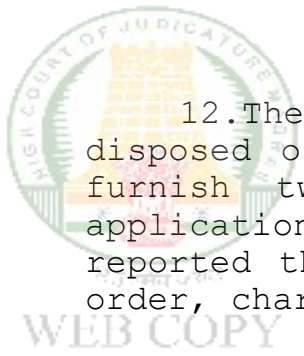
7.This Court considered the rival submissions made and also perused the materials placed on record.

8.To ascertain the stage of the trial in both the cases, this Court by an earlier order dated 26.04.2022, directed the learned Sessions Judge, Mahila Court, Nagercoil to file a report as to the reasons for not framing the charges for the past one year. The learned trial judge has also filed a detailed report on 27.05.2022 stating that due to the vacancy of the post of the Presiding Officer and due to pandemic situation the case was not proceeded further. Due to pendency of discharge petition in Crl.R.C(MD) No.784 of 2021, filed by the second accused before this Court is also one of the reason for non-framing of charges.

9.From the above, it is clear that the petitioner is the second accused in both the cases. The major allegations in both the cases are against the first accused. The allegations as against this petitioner is that he attempted to conceal the evidence. The petitioner was arrested on 30.06.2020. The petitioner is languishing in jail nearly for 2 years. However, on the conduct of the petitioner in protracting the trial in both the cases, this Court refused to grant bail to the petitioner. The petitioner has moved this application on the ground that in CC No.316 of 2020, 35 witnesses were examined and most of the witnesses were also cross examined. In SC No.41 of 2021 charges are framed. Considering this change of circumstances, the learned senior counsel insisted that this Court has to consider the bail application positively.

10.Considering the subsequent developments, this Court is inclined to allow the Crl.OP(MD) No.7659 of 2022.

11.Insofar as Crime No.8 of 2020 is concerned, the final report was filed in Crime No.8 of 2020 during the month of January 2021 and committed to the Court of Sessions. But, the petitioner filed a petition under Section 207 of Cr.P.C in the month of May 2021 that certain documents were not furnished to him and the petition was returned with certain queries. The petitioner without representing the same, filed an application before this Court in Crl O.P(MD) No.9479 of 2021 and protracted the proceedings to some extent. This Court by order dated 12.08.2021 disposed of the said Crl.O.P.No.9479 of 2021, with a direction to the petitioner to re-present the petition before the trial Court with a further direction to the trial Court to furnish the eligible documents to the petitioner as per rules. Accordingly, the petitioner represented the petition on 14.09.2021. The trial Court has also partly allowed the application directed to furnish some more documents to the petitioner. Not satisfied with the same, the petitioner filed the Criminal Revision Petition in Crl.R.C(MD) No.784 of 2021 before this Court and another application under Section 227 of Cr.P.C before the trial Court to discharge him from the case.



12.The Criminal Revision Petition filed by the petitioner was disposed of on 24.02.2022 with a direction to the trial Court to furnish two more documents to the petitioner. The discharge application filed by the petitioner was also dismissed. Now it is reported that after the query raised by this Court in the earlier order, charges have been framed as against the accused.

13.The case of the prosecution in Crime No.8 of 2020 is that the first accused Suji @ Kasi allured several girls on the pretext of love and had physical contact with them and recorded the same without their knowledge and threatened the victim girls using the video taken by him and committed sexual act repeatedly as against the victim girls. The Investigating Agency recovered a laptop and an apple cellphone from this petitioner on 26.04.2020. Since the accused refused to give Pin Number, the Investigating Agency referred the laptop and mobile phone to the Tamil Nadu Forensic Science Laboratory and found that there are 1900 obscene full and half naked photographs and 400 videos. According to the Investigating Agency, 120 girls were exploited in a similar manner and only few have come forward to stood as witness. This accused by filing repeated petitions had also delayed the process of trial to some extent. Therefore, the victims of this nature may get demoralised.

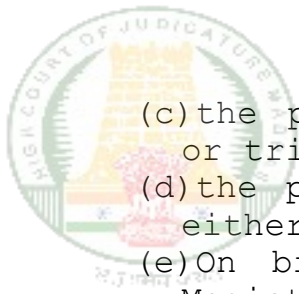
14.Considering the grave nature of the offence involved and the stage of the trial that the evidence of victims have not been recorded so far, this Court is not inclined to consider this bail application in Crl.O.P.No.7661 of 2022 at this stage. However, the petitioner is at liberty to renew this application as and when the victims in this case were examined and their cross examination was also completed.

15.In view of the above, **Crl.OP(MD) No.7661 of 2022 is dismissed. Crl.OP(MD) No.7659 of 2022 is allowed.** The petitioner is ordered to be released on bail in Crime No.4 of 2020, on his executing a bond for a sum of Rs.2,00,000/-(Rupees Two Lakhs only) each with two sureties each for a like sum to the satisfaction of the Judicial Magistrate No.III, Nagercoil, Kanyakumari and on further conditions that:

(a)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.

[a](i) the petitioner shall also file an affidavit of undertaking that he would not tamper the witnesses and co-operate the trial by cross examining the remaining witnesses, without taking further time.

(b)the petitioner shall report before the respondent police daily at 10.30 am, until further orders.



- (c) the petitioner shall not abscond either during investigation or trial.
- (d) the petitioner shall not tamper with the evidence or witness 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 Judge/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 abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-
29/06/2022

/ TRUE COPY /

29/06/2022
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 JUDICIAL MAGISTRATE NO.III, NAGERCOIL.
- 2 THE CHIEF JUDICIAL MAGISTRATE, KANYAKUMARI DISTRICT AT NAGERCOIL.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE INSPECTOR OF POLICE,
CBCID SOUTH NAGERCOIL, KANYAKUMARI DISTRICT.
- 5 THE INSPECTOR OF POLICE,
CBCID NAGERCOIL, KANYAKUMARI DISTRICT.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE SESSIONS JUDGE, MAHILA COURT, NAGERCOIL.

+2. CC to M/S. PRABHU.K. Advocate SR.No.6329 & 6330

ORDER IN

CRL OP (MD) Nos. 7659 & 7661 of 2022
Date : 29/06/2022

SA/PN/SAR.3/29.06.2022/6P/10C

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