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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 14/07/2022

PRONOUNCED ON:18/07/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.10257 of 2022

Palai Rafi @ Mohamed Rafi

... Petitioner/Petitioner
Accused Rank Not Known

Vs

State rep.by
The Inspector of Police,
Melapalayam Police Station,
Melapalayam,
Tirunelveli City.
(Crime No.93 of 2022).

... Respondent/Complainant

For Petitioner : M/s.Palani Velayutham S, Advocate.

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

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

PRAYER :-

For Anticipatory Bail in Crime No.93 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner / Accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 153, 294(b), 504, 505(i)(c) and 505(ii) I.P.C., in Crime No.93 of 2022, on the file of the respondent police, seeks anticipatory bail.

2. The first meeting was convened on 18.03.2022 at about 05.00p.m, near Adhiramapattinam bus stand and the second meeting was convened on 20.03.2022 at 11.05a.m., near Nesam Tea Stall, Santhai



roundana, Melapalayam. In the first meeting, the second accused in Cr.No.189 of 2022 is shown as State Level main speaker and the accused 1 and 3 are the office bearers of TNTJ party, Tirunelveli, who have convened and arranged the meeting. In the second meeting, the first accused is the State President of MMMK party and the second accused is the District Secretary of the said party, who had arranged and convened the meeting.

3. It is not in dispute that in the second meeting, the second accused who had convened the meeting has already been granted anticipatory bail by the Principal Sessions Court, Tirunelveli in Cr.M.P.No.3269 of 2022, vide order dated 19.04.2022. The main speaker of the second meeting is before this Court.

4. Regarding the petition in Crl.O.P.(MD)No.7684 of 2022, the learned Counsel for the petitioner would submit that the petitioner did not have any iota of intention to cause any communal disturbance in the particular area and his alleged speech is not intended and is not motivated, that though the meeting was held on 20.03.2022, there was no following consequences occurred in the particular area and that the present case has been registered out of political pressure. He would further submit that the petitioner is holding a key post in the political party and he is aware of his responsibility in the Society, that he did not cause any threat or violence as against any political party members, other religion and that he is innocent and he has not committed any offence as alleged.

5. As already pointed out, he is the main speaker of the meeting and he has delivered lengthy speech attacking the political leaders and the Judiciary. On considering the speech made in the meeting, 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.

6. The learned Counsel for the petitioner would submit that the main speaker in the case registered in Cr.No.223 of 2022, on the file of the Tallakulam Police Station, Rahamathullah was already granted bail by this Court in Crl.O.P.(MD)No.8765 of 2022, dated 06.05.2022, that another case was registered against the said Rahamathullah by the Bangalore Police and he was remanded to judicial custody so far as the said case also and that the present petitioner is not having any other cases registered for the alleged occurrence and that the petitioner is ready to abide by the conditions imposed by this Court to the said Rahamathullah in the order dated 06.05.2022.

7. Before entering into further discussion, it is necessary to refer the order passed by the Hon'ble Mr.Justice M.S.RAMESH, in Crl.O.P.(MD)No.8765 of 2022, dated 06.05.2022 and the relevant passages are extracted hereunder:



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"8. I respectively submit that in view of the said affirmation, I swear this affidavit herein. Furthermore this Hon'ble Court may please to enlarge me on bail in Crime No.223 of 2022 on the file of the respondent police station. Therefore, it is most respectfully prayed that this Hon'ble Court may be pleased to accept my undertake unconditional apology by way of filing this affidavit in Crl.O.P.(MD) No.8765 of 2022 and record the same part and parcel of my bail petition and pass appropriate order to deem fit and proper of this Hon'ble Court and thus render justice. Sd/- Solemnly affirmed at Madurai this BEFORE ME the 06th day of May, 2022 having understood the contents of the affidavit sd/- and read over the same from English to Jailor Tamil in presence of the prison officials Central Prison, of the Central Prison, Madurai and signed. Madurai."

8. In the aforesaid affidavit, the petitioner herein has admitted of having made the provocative speech and has also tendered his unconditional apology. When I had pointed out to the learned counsel for the petitioner that the affidavit does not, in explicit terms, admits the guilt of the petitioner, Mr.S.M.A.Jinnah, learned counsel for the petitioner submitted, not by way of a concession from the counsel, but under specific oral instructions, that the petitioner admits and pleads his guilt and that he feels sorry for his provocative speech. The learned counsel also agreed to publish the substance of the petitioner's affidavit pertaining to his apology and undertaking.

9. The speech of the petitioner has reached the four corners of the entire Country, as well as abroad. Now that the petitioner has admitted his guilt and has expressed his regret and tenders his apology, I intend to consider his apology, not for the sake of granting bail to him alone, but to make the world known, that the petitioner regrets for his mischief.

10. What has been done, requires to be undone. When the speech was made public, the apology also deserves to be made public.

11. In this background, I am of the view that if the admission of guilt and the apology tendered by the petitioner is made public by him,



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the intensity of the situation created by him, could be alleviated. Simultaneously, the petitioner can also be subjected to stringent conditions of bail to prevent him from making any other speeches that might intimidate any section of the public. Thus, by accepting the petitioner's affidavit dated 06.05.2022, this Court is of the view that the petitioner be directed to issue a public apology in terms of the statements made in his affidavit, which publication shall contain the substance of his affidavit in the following manner:

.....

11. In the result, the petitioner herein is ordered to be released on bail, subject to the following pre-conditions:

(a) The petitioner shall cause a publication of the extract in Paragraph:11 of this order, along with his clear passport size colour photograph, appended to the publication;

(3) The publication referred above shall be made in one English Daily having national circulation, namely, The Times of India, as well as in one Tamil Daily, namely, Daily Thanthi. The publications referred herein, shall not be less than a quarter page of the two newspapers referred above ; and

(4) The petitioner shall also upload a copy of the aforesaid public apology in the social media viz., You Tube, along with his photograph."

8. In the case on hand, the petitioner has also filed an affidavit dated 11.07.2022 and the same reads as follows:

" 1, Palai Rafi @ Mohamed Rafi, S/o. Mr. Shahul Hameed, Male, Indian Muslim, aged about 57 years permanently residing at No.6A/1, Pichivana Theru, Palayamkottai, Tirunelveli District and now temporally come down to Madurai do hereby solemnly affirm and sincerely state as follows:

1. I respectively submit that I am the Petitioner herein in the above Criminal Original Petition and as I am well acquainted with facts of the case and as such I competent to swear this affidavit.



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2. I respectively submit that I have filed the above Anticipatory Bail application before this Hon'ble Court for my release on bail in the event of my arrest in connection with Crime No.93 of 2022 on the file of the Inspector of Police, Melapalayam, Tirunelveli City and Melapalayam Police Station, the same was taken on file as Crl.O.P.(MD) No.10257 of 2022 on 10.05.2022. Originally, a case was registered by the Respondent Police as against me and others for having committed alleged offences punishable U/S 153, 294(b), 504, 505(i) (c) and 505 (ii) of IPC on 20.03.2022 Vide Crime No.93 of 2022.

3. I respectively submit that the de-facto complainant has lodged a complaint against me and others on 20.03.2022. It is his complaint that, on the said date, while the de-facto complainant was in patrolling duty protest at Santhai Roundana very Near to Nesam Tea Stall organized by Manitha Neya Makkal Munetra Kazhagam, which is a political party in which I am the President and also one of the main speaker in the said protest meeting.

4. I respectively submit that during the said meeting, I criticized the judgment passed by the Karnataka High Court in Hijab issue. During the demonstration I spoke that I would threatened the Hon'ble Judges and Central Government that, the judgment is biased one and under the influence of BJP, RSS and abet the public to conduct struggle against the Central Government and threaten the Government. If they fail to withdraw the prohibition order of Hijab in Education Institution, the Government would face the troubles. Hence, in this regard, this occurrence, the de-facto complainant lodged a complaint and FIR was registered by the Respondent Police.

5. I respectively submit that I am one of the State Speakers of the Manitha Neya Makkal Munetra Kazhagam and while it is being so, on 20.03.2022, I delivered the speech at Santhai Roundana very Near to Nesam Tea Stall, Melapalayam, Tirunelveli District. While protesting about Hijab wear at the educational institute at Karnataka and at that time, my speech is against the Hon'ble Judges of Karnataka High Court and other Courts Stating that the killing of Jharkhand State District Court Judge, while he was walking in a



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road, by hitting by auto, on this like, the Hon'ble High Court judges of Karnataka and Apex Court judges were possibility to kill. My intention is not like that, it would be happened by some other rival political party, but the blame would foisted against the Muslim minorities. Moreover, I spoke to without any mensrea or without any intention in view of the banning order of the Karnataka Government to wearing Hijab in educational institution it would affect the education carriers of Muslim women Students on account of this hate, emotional speech against the Hon'ble Judges without any intention, though it is ultimately false one then, only I realize my hater speech's against the Hon'ble judges.

6. I respectively submit that I am sincerely realized and regret for the hate and emotional speech held by me on 20.03.2022. If my speech is insulting or hurting the Hon'ble Judges, I would really regret the same and tender unconditional apology. This hate speeches only delivered by me in view of the confused mind at that time and affected the carriers of Muslim Women's students in the Karnataka Educational Institutions. Further I am willing to tender my unconditional apology by way of given an apology statement in any one of the Vernacular Daily Newspapers.

7. I respectively submit that I really fact that about my objectionable speech and I undertake that in future I never conduct or participate or organize any such kind of speech meeting against the Hon'ble Judges and Indian Judiciary.

8. I respectively submit that in view of the said Furthermore, this affirmation, I swear this affidavit herein. Hon'ble Court may please to enlarge me on bail in the event of my arrest in connection with Crime No.93 of 2022 on the file of the Respondent Police Station.

9. I respectively submit that I am the Chairman of "NASEEHACHARITABLE CLINIC "and "NASEEHAKIDNEY DIALYSIS CENTRE" and also chairman of "PARADISE BROTHERS MEDICAL TRUST" and "KANMANIGAL ORPHANED CHILDREN CARING TRUST " and doing charitable services to all community people to keep social harmony and keep humanity and also running a "FREE AMBULANCE" service to all community people. Never made any such mistakes and never spoke



disparagingly of anyone till now. Due to the stress of my work load I have misspoken. So court may be please accept my undertake unconditional apology.

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Therefore, it is most respectfully prayed that this Hon'ble Court may be pleased to accept my undertake unconditional apology by way of filing this affidavit in CrI.O.P.(MD) No.10257 of 2022 and record the same part and parcel of my Anticipatory Bail and pass appropriate order to deem fit and proper of this Hon'ble Court and thus render Justice."

9. 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.

10. 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 High Courts and Supreme Court. As already pointed out, the first accused in Cr.No.223 of 2022 of Tallakulam Police Station and the second accused in Cr.No.73 of 2022, on the file of the Thiruvadanai Police Station, who were the main speakers, were already granted bail.

11. Considering the above facts and circumstances and also the fact that the main speakers in similar cases were already granted bail and also taking note of the undertaking affidavit dated 11.07.2022 filed by the petitioner rendering his unconditional apology, this Court is inclined to grant anticipatory bail to the petitioner subject to the following pre-conditions:

(1) the petitioner shall cause a publication of public apology in terms of the affidavit dated 11.07.2022 filed by the petitioner before this Court;

(2) the publication above referred shall be made in one English Daily, namely, The Hindu, as well as in Tamil Daily, namely Daily Thanthi both having State level circulation and the publication shall not be less than a quarter page of the two newspapers referred above;

(3) The petitioner shall also upload a copy of the aforesaid public apology in the social media viz., You Tube, along with his photograph;



12. The petitioner shall be released on bail on satisfaction of the aforesaid preconditions and subject to the following conditions:

13. Accordingly, the petitioner is ordered to be released on bail in the event of his 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 No.V, Tirunelveli District on condition that the petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh 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 condition that:

(a) the petitioner shall produce a copy of the publication of the apology before the Judicial Magistrate No.V, Tirunelveli District and satisfy that the publication is in accordance with the directions of this Court while executing sureties;

(b) 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 Aadhar card or Bank pass Book to ensure their identity;

(c) the petitioner shall reside at Tirunelveli City and report before the respondent police daily at 10.30a.m., until further orders and shall not leave Tirunelveli city until further orders;

(d) the petitioner shall not participate or address any public meetings whatsoever until the completion of the investigation and filing of the final report in Cr.No.93 of 2022 by the respondent police;

(e) the petitioner shall surrender his original passport before the Judicial Magistrate No.V, Tirunelveli;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) the petitioner shall not abscond either during investigation or trial;

(h) 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 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;



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

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Sd/-
18/07/2022

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

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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.V,
TIRUNELVELI DISTRICT.
2. -DO- THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
3. THE INSPECTOR OF POLICE,
MELAPALAYAM POLICE STATION,
MELAPALAYAM, TIRUNELVELI CITY.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP (MD) No.10257 of 2022
Date :18/07/2022

SP/SVR/SAR I/25/07/2022/9P/5C