



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

Dated: 25/08/2022

PRESENT

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The Hon'ble Mr.Justice G.ILANGO VAN

Crl.OP (MD) No.9614 of 2022

1.M.Asik Ali
2.Mohamed Ali
3.Junaitha Begam
4.Sadhik Babu
5.S.Riswana @ Riswana Jasmine : Petitioners/Accused
Nos.1 to 3, 5&6

Vs.

1. State rep. By its
The Inspector of Police,
All Women Police Station,
Thallakulam,
Madurai City,
(Crime No.25 of 2022) : Respondent/Complainant
2. Irfana Nasreen : Intervener/Defacto
Complainant

For Petitioners : Mr.M.Ajmal Khan,
Senior counsel
for Mr.D.S.Haroon Rasheed, Advocate
For Respondent : Mr.Vaikkam Karunanithi
Government Advocate (Crl.Side)
For Intervener : Mr.N.Mohideen Basha,
Advocate

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

PRAYER:-

For Anticipatory Bail in Crime No.25 of 2022 on the file of the
Respondent Police.

ORDER: The Court made the following order:-



The petitioners, who are arrayed A1 to A3, A5 A6 apprehending arrest at the hands of the respondent police for the offences punishable under sections 498(A), 406, 417 and 420 IPC, in Crime No.25 of 2022 on the file of the respondent police, seek anticipatory bail.

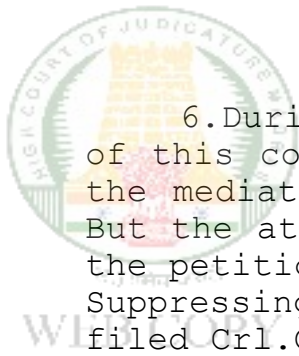
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2.The case of the prosecution is that the de-facto complainant is the wife of the first accused. The marriage between them took place, on 04/04/2021. It was the second marriage for both of them. After the marriage, they started their life at Choolaimedu, Chennai along with in-laws. Right from the marriage, she noticed the indifferent attitude of her husband. He purposely avoided the conjugal relationship. He was treated as a slave boy, by her mother-in-law. He was also abused and after some-time, he also started doubting his own father. He did not like the de-facto complainant to speak with the father-in-law. He started telling that he is not interested in conjugal relation and he is also not interested in having relationship with her. He left the house and after a search, he could be found out. Later he came to the house. In-spite of that, there was mental torture by the in-laws. They also demanded extra money and dowry. After some compromise, counselling was taken for the purpose of the above said behaviour. Later, he demanded luxury flat and BMW car also. She was also directed to bear the domestic expenses. Because of the mental torture, she used to take sleeping tablets. She was also driven out of the house. So, she was staying in her maternal aunt house. Later, she was compromised that they will not speak about the divorce. Believing the words, she went to the matrimonial home. But again the torture continued. She was also physically assaulted. After taking treatment, she returned to home. But in-spite of that, he was told to go to Madurai. At that time, he told that he is going to divorce her. But later, he promised to take after a week. Later, they also started living from 04/11/2021 in Chennai. But there was no improvement in his behaviour. On 04/01/2022, he left the house. Later, did not return. On enquiry, she was told that A1 went to America. Later, sent a Talaq notice through e-mail. Suppressing that he is incapable of having conjugal relation, he performed the marriage, in which the in-laws also joined. In spite of efforts taken by her parents, there was no re-union between them. So because of the continuous torture and abusive insulting words, now she is staying with her parents. With these allegations, she lodged a complaint, over which, the case has been registered.

3. Seeking anticipatory bail, this petition has been filed by A1 to A3, A5 and A6.

4. Heard both sides.

5. An elaborate argument has been advanced on both sides. The entire CD file has been called for and perused.



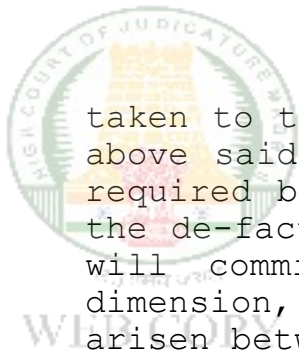
6. During the course of argument, it was brought to the notice of this court that the matter was referred to the mediation and in the mediation process, no settlement was reached. So it was heard. But the attitude of the de-facto complainant during the pendency of the petition that too during the mediation process is to be noticed. Suppressing the pendency of this petition, the de-facto complainant filed Crl.OP(MD)No.11840 of 2022 before the coordinate Bench of this court, seeking inclusion of sections 420, 417 and 379 IPC in the offence on the ground that suppressing impotent nature of A1, the marriage was performed, in which, all the co-accused also joined and suppressing the physical inability of A1, that was also ordered by the coordinate Bench of this court, on 20/07/2022 and that order was much commended by the learned Senior counsel appearing for the petitioners to the effect that suppressing the pendency of this petition, the above said order has been obtained behind back.

7. Now whatever it may be, the offences have been altered and sections 498(A), 406, 417 and 420 IPC have been added. For that purpose, the amendment petition filed in Crl.MP(MD)No.9662 of 2022 is allowed. The Registry is directed to carry out the necessary amendment.

8. Much argument was advanced over the above said suppression of facts. According to the de-facto complainant, even the first marriage that was performed by the A1 was dissolved only due to the above said disability. But that was suppressed; Now the third marriage is also going to be arranged; Such a person and associates of such persons are not entitled to the discretionary relief of anticipatory bail; It has been submitted by him that the petitioners must be directed to undergo the custodial interrogation to bring out the truth; Suppression of such material facts should not be taken as lightly.

9. But however, the learned Senior counsel appearing for the petitioners would submit that even as per the allegation made in the FIR, at one point of time, both the parties went for counselling and later, because of the attitude of the de-facto complainant, it could not be carried further. As we see it is an allegation and counter allegation. Now, it has reached a point of no return.

10. Perusal of the CD file shows that because of the above said disability only, there was frequent trouble between them. But this sort of allegation has been made for the first time in the FIR. Repeated complaints and counter complaints have been made. So given a statement in the form of writing at one point of time, during the course of investigation, she has stated that because of difference of opinion, they could not lead a normal life. Because of the above said difference of opinion, the domestic quarrel became normal and usual. At that point of time, A1 told that they may get divorce. So she depressed over the above said opinion of her husband and on 20/11/2022, she took sleeping tablets for committing suicide. She was



taken to the hospital and during the treatment period, she is above said statement. It has been stated that no further action is required by the police. A1 also started giving complaints against the de-facto complainant stating that she is making threat that she will commit suicide. Later, the above said issue took a new dimension, as if A1 impotent and because of that only, trouble has arisen between them and there was demand of dowry, etc. Even during the course of conciliation process, A1 expressed his unwillingness to resume the matrimonial life.

11. So in the light of the above said facts, later, complaints have been given as if the de-facto complainant entered into the house illegally and occupied the same. A counter complaint has also been given by the de-facto complainant stating that the accused along with rowdy elements entered into the house and snatched the key chain from her mother in a most inappropriate manner and behaviour. On 18/05/2022, the de-facto complainant addressed a letter to the Inspector of Police, All Women Police Station, Tallakulam stating that 160 sovereigns of gold jewels, that was given to her by the in laws has been returned on compulsion. They also recovered the car, which was gifted. But contrary, she has stated that out of 200 sovereigns, only 100 was returned and remaining 100 sovereigns are lying in the hands of the accused persons. She has also stated that Rs.5,00,000/- was paid in cash, after marriage that was given to A1. But that was not returned. So it appears that a portion of the above said jewels and money lying in the hands of A1. So this is the disputed question that has been gone into during the course of investigation.

12. Whether any such money was actually paid and whether 100 sovereigns of gold jewels still lying in the hands of the first accused is also a matter for investigation. But the particulars of gold jewels and others that have been given during the course of marriage has also been recorded, wherein we see that 160 sovereigns of gold jewels and cash amount was given as Mahar. As mentioned above, she has stated that that was returned. So as mentioned above, it is a matter for investigation.

13. In the light of the above said facts and circumstances, this court is inclined to grant **anticipatory bail** to the petitioners with certain conditions. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance before the learned Judicial Magistrate No.II, Madurai and on each of them executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and the first petitioner/A1 shall appear before the respondent police daily at 10.30 am until further orders and the other petitioners shall appearing before the respondent police as and when required for interrogation. The petitioners shall comply with the condition



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shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready, failing which, the petitions for anticipatory bail stands dismissed.

sd/-
25/08/2022

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/09/2022

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

TO

1. THE JUDICIAL MAGISTRATE NO.II,
MADURAI.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
3. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THALLAKULAM, MADURAI CITY.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) No.9614 of 2022
Date :25/08/2022

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USK/SVR/SAR-IV/14.09.2022/5P/5C