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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.11381 of 2022

1. Rajik Mohamed
2. Navab Sha

... Petitioners/Accused
Nos.1 & 3

Vs

State rep.by
The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
(Crime.No.189 of 2022).

... Respondent/Complainant

For Petitioner : M/s.Jinnah S M A, 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.189 of 2022 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners / Accused Nos.1 and 3, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 153, 153A, 504, 505(i)(b) and 505(ii) I.P.C., in Crime No.189 of 2022, on the file of the respondent police, seek anticipatory bail.



Hijabs in Educational Institutions. The meetings, now in dispute were convened to protest against the judgment passed by the Karnataka High Court.

3. 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 05.00p.m. near Adhirampattinam bus stand. 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.

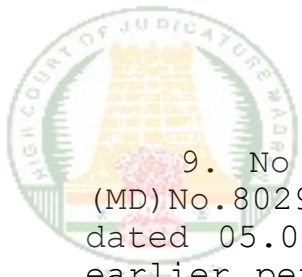
4. It is not in dispute that in the first meeting, the main speaker who is the first accused has already been arrested and is in judicial custody and that the other two accused connected with the first meeting and all the five accused connected with the second meeting are now apprehending arrest.

5. 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.

6. 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.

7. The learned Additional Public Prosecutor appearing for the State 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.

8. 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.



9. No doubt, the petitioners' earlier application in Crl.O.P. (MD)No.8029 of 2022 was dismissed by this Court, vide common order dated 05.05.2022. The learned Counsel for the petitioners in the earlier petition has also raised a plea relying on the decision of the Hon'ble Supreme Court in **Arnesh Kumar's case**, that the arrest is not at all necessary for the offences which attract punishment upto seven years and that the penal sections under which the petitioners were charged with are not made out.

10. As rightly contended by the learned Additional Public Prosecutor, the said plea of the petitioners have already been dealt with by this Court and rejected the same and the relevant passages in the earlier order are extracted hereunder:

"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 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:



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"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 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 subsection, 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



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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 office 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."



11. The learned Counsel for the petitioners would further submit that the first accused in Cr.No.223 of 2022 on the file of the Tallakulam Police Station is the main speaker, that after the registration of the present case, the Bangalore Police has also registered a case against him and he has been remanded to judicial custody in both the cases, that subsequently, he moved an application for bail in CrI.O.P.(MD)No.8765 of 2022 before this Court and this Court, vide order dated 06.05.2022 has granted bail with certain conditions, that since this Court has already granted bail to the main accused, the petitioners being the organizers of the meeting, they may be enlarged on anticipatory bail.

12. The learned Counsel for the petitioners would further submit that though the first accused in Cr.No.223 of 2022 was granted bail by this Court, he has not furnished sureties and he has not complied with the conditions imposed on him, as he was not granted bail in the case registered by the Bangalore police.

13. As rightly contended by the learned Additional Public Prosecutor, the first accused in Cr.No.223 of 2022 has filed an affidavit wherein the said accused had admitted of his provocative speech and also tendered his unconditional apology. In the bail order passed in CrI.O.P.(MD)No.8765 of 2022, it has been specifically observed that the learned Counsel for the first accused submitted, not by way of a concession from the Counsel, but under specific oral instructions that the said first accused admits and pleads his guilt and that he feels sorry for the provocative speech. This Court, by recording the affidavit submitted by the first accused, by observing that since the speech of the first accused was made public, the apology also deserves to be made public, directed him to issue public apology in terms of the statements made in his affidavit and accordingly granted bail by imposing stringent conditions which includes that he has to cause a publication of public apology shown in paragraph No.11 of the order along with his passport size photograph and also to cause publication in one English Daily having national circulation, namely The Times of India as well as in one Tamil Daily, namely Daily Thanthi and he shall also upload a copy of the aforesaid public apology in the social media ie., You Tube along with his photograph.

14. The learned Counsel for the petitioners would submit that the petitioners herein have also filed joint affidavit tendering their unconditional apology and also undertakes that they will never conduct, or participate or organize any such kind of meeting or agitation against the Hon'ble Judges and Indian Judiciary. It is necessary to refer the relevant paragraphs of the joint affidavit filed by the petitioners which are extracted hereunder:



" We respectively submit that we are the District President of TNTJ Party and the Town President of TNTJ Party and we only organized the meeting and unfortunately the Accused No.2 namely Jamal Mohamed Ushamani @ Jamal Mohamed delivered the speech without our knowledge and we undertake that in future we will not

conduct or organize any such kind of speech meeting with intent to create or promote enmity. Further the Accused No.2 namely Jamal Mohamed Ushmani @ Jamal Mohamed was released on bail by the learned Judicial Magistrate, Pattukkottai in Cr.M.P.No.1474 of 2022, dated on 23.05.2022."

15. 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.

16. 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.

17. Considering the above facts and circumstances of the case and also the charges levelled against the present petitioners, who are the organizers of the said meetings and also the fact that the main speakers were already granted bail and also taking note of the undertaking affidavit filed by the petitioners tendering their unconditional apology, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

18. Accordingly, 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 Judicial Magistrate, Pattukottai, on condition that the petitioners shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) each 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:



Magistrate may obtain a copy of their Aadhar card or Bank pass book to ensure their identity;

(b) the petitioners shall stay at Adirampattinam and report before the respondent police daily at 10.30a.m., until further orders and shall not leave Adirampattinam until further orders;

(d) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(e) the petitioners shall not abscond either during investigation or trial;

(f) 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]**; and;

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

Sd/-

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

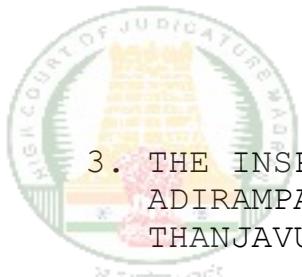
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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE,
PATTUKOTTAI.

2. -DO- THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
PATTUKOTTAI,
THANJAVUR DISTRICT AT KUMBAKONAM.



3. THE INSPECTOR OF POLICE,
ADIRAMPATTINAM POLICE STATION,
THANJAVUR DISTRICT.

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

ORDER

IN

CRL OP (MD) No.11381 of 2022

Date :18/07/2022

SP/SVR/SAR I/29/07/2022/9P/5C