



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 17/02/2022

PRONOUNCED ON : 22/02/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP (MD) . No.20157 of 2021

T.Nagaraja

... Petitioner/Sole Accused

Vs

State rep.by
The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.
(Crime No.106/2021).

... Respondent/Complainant

For Petitioner : M/s.Suresh Kumar.S, Advocate.

For Respondent : M/s.M. Muthumanikkam,
Government Advocate (Crl.Side)

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

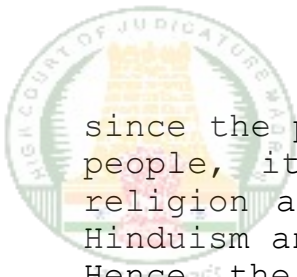
PRAYER :-

For Anticipatory Bail in Crime No.106 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Section 295(A) I.P.C., and Sections 67 and 79 of Information Technology Act, 2000 in Cr.No.106 of 2021, seeks anticipatory bail.

2. The case of the prosecution is that the defacto complainant, is an Advocate and Union Secretary of DMK party, that on 02.05.2021, the petitioner has posted in his face book the defamatory statement about the Hindus in DMK party, that it hurts the Hindu people, that



since the petitioner's defamatory statement has reached thousands of people, it hurts the defacto complainant as a follower of Hindu religion and that the petitioner through the above statement about Hinduism and feminism, is trying to create commotion in the society. Hence, the present complaint.

WEB COPY

3. The case of the petitioner is that the defacto complainant is the officer bearer of DMK political party, that the petitioner is the member of BJP political party, that on the day of announcement of the Tamil Nadu Assembly Election results 2021, the petitioner could not able to bear the successful result of DMK, so he posted the defamatory statement in his face book and deleted it immediately.

4. The learned Counsel for the petitioner would submit that the petitioner has no intention to defame the DMK political party or hurt the followers of Hindu religion and that since the petitioner is also the follower of Hindu religion, there is no intention to hurt the followers of Hinduism.

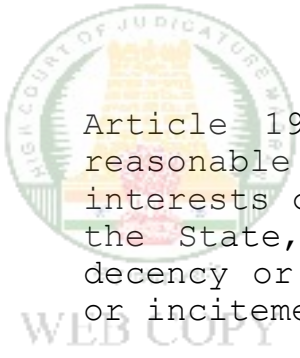
5. The learned Government Advocate (Crl.Side) appearing for the State would submit that the petitioner in his face book account had posted the defamatory statement with malicious intention of insulting the followers of a particular political party and to create enmity between the parties.

6. The learned Counsel for the petitioner has filed an affidavit sworn by the petitioner whereunder the petitioner has given a specific undertaking that he will never post any caste, religion, race based scandalous comments and abusive comment against the political parties and other persons.

7. At this juncture, it is necessary to refer to the decision of this Court in **Durai Murugan VS. the Inspector of Police, Thuckalay Police Station in Crl.O.P.(MD)Nos.17209 and 17587 of 2021, dated 25.11.2021**, wherein this Court held as follows:

"10. An old adage says that one man's right ends, where the other man's nose begins. Justice Oliver Wendell Holmes Jr., in a more poetic way said "Your Liberty to swing your fist ends just where my nose begins". No doubt, the freedom of speech and expression is an internationally recognized right. Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) contemplates that right of freedom of speech can be regulated in order to honour the rights of others and in the interest of public order, public health or morals. Similarly Article 10(2) of European Convention on Human Rights provides reasonable duties and restrictions during the exercise of one's fundamental right to free speech.

11. The Constitution of India under Article 19(1)(a) provides the right to freedom of speech and expression. However, under



Article 19(2), the Constitution of India also provides for the reasonable restrictions against the freedom of speech in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

12. As already pointed out, along with other exemptions notified under Article 19(2) of the Constitution of India, public order has been an exception that has been given a liberal interpretation in various judgments given by Constitutional Benches. This exception brings into its ambit all the activities that can possibly cause public disorder irrespective of any actual disruption whether caused by such activity or not. The public order has been further read to mean public peace, safety and tranquility. Freedom of speech is not regarded as absolute, when the same conflicts with other rights and protections.

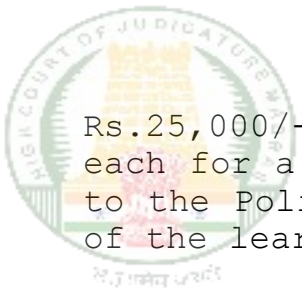
13. Hate speech is defined in the Black Law's Dictionary as "Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence". Hate speech constitutes a criminal charge under Section 153(A) I.P.C., which is the offence of promoting communal disharmony or feelings of hatred between the different religious, racial, language or regional groups or castes or communities. Section 505 I.P.C., criminalises the act of delivering speeches that incite violence. Hate speech has affected freedom of speech and expression widely in recent times and give rise to social unrest and public disturbance. Social networkings have become the most ordinary tool for spreading hate speech.

8. In the case on hand, the petitioner has allegedly used the filthy, vulgar and derogative words as against the members of the DMK political party. It is necessary to refer the words uttered by the petitioner, which are extracted hereunder:

" திருக-வில் இருக்கும் இந்துக்கள் தேவடியா பசங்க இது சத்தியம்; "

9. Considering the entire facts and circumstances and taking note of the specific undertaking given by the petitioner that he will never post any caste, religion, race based scandalous comments and abusive comment against the political parties and other persons and also the fact that the petitioner is not having any previous case for similar offence, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

10. 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.III, Nagercoil, on condition that the petitioner shall execute a bond for a sum of



Rs.25,000/- (Rupees Twenty Five thousand 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 deposit a sum of Rs.20,000/- **(Rupees Twenty Thousand only) for each case to the credit of the Chief Minister Public Relief Fund, Government of Tamil Nadu, in IOB, Secretariat Branch, Chennai-9 (Account No.11720 10000 00070, IFSC Code: IOBA0001172), without prejudice to his rights and contentions before the trial Court and produce the receipt/acknowledgment before the concerned Court while executing sureties.**

(b) the petitioner 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 report before the respondent police daily at 10.30a.m., for period of one month and thereafter as and when required for interrogation.

(d) the petitioner is directed not to make any derogative commentry or remarks directly or through any medium and in case of violation of the said direction, the respondent police is directed to take necessary steps for cancellation of anticipatory bail immediately.

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

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

(g) 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;

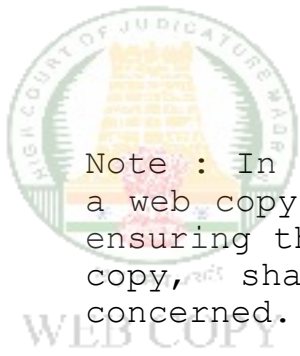
(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

Sd/-
22/02/2022

/ TRUE COPY /

/ /2022

Sub-Assistant Registrar (C.S.II)
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. -DO- THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
3. THE INSPECTOR OF POLICE,
SOUTH THAMARAikulam POLICE STATION,
KANYAKUMARI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO:

THE OFFICER INCHARGE,
CHIEF MINISTER PUBLIC RELIEF FUND,
SECRETARIAT, CHENNAI-9.

+ 1CC to M/S.S.SURESH KUMAR, ADVOCATE SR.NO.1486

ORDER
IN
CRL OP(MD) No.20157 of 2021
Date :22/02/2022

SP/JM/SAR II/24/02/2022/5P/7C