



Crl.O.P.No.15450 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	12.07.2023
Pronounced on	:	17.07.2023

CORAM:

THE HON'BLE MR. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.15450 of 2023

S.G.Suryah

... Petitioner

/versus/

The State of Tamil Nadu
Rep. by the Inspector of Police
Cuddalore Police Station
(Crime No.220 of 2023)

... Respondent

Prayer: Criminal Original Petition is filed under Section 438 of Criminal Procedure Code, praying to enlarge the petitioner herein on bail in the event of arrest in connection with the FIR in Crime No.220 of 2023, pending investigation on the file of the respondent police.

For petitioner : Mr.V.Raghavachari, Senior Counsel
for M/s.R.Harikrishnan

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 153, 504, 505 (1) (b) and 505(ii) of IPC, in Crime No.220 of 2023, on the file of the respondent police, seeks anticipatory bail.

2. Mr.V.Raghavachari, learned Senior counsel representing Mr.R.Harikrishnan, learned counsel for the petitioner submitted that, the petitioner has been falsely arrayed as an accused in this case in Crime No.220 of 2023, registered for the offences under Sections 153, 504, 505(1)(b) and 505(ii) of IPC. The petitioner is the Director of an online news and views portal called “The Commune”. He is a law abiding citizen and he belongs to the opposition political party. On 17.06.2023, the petitioner was arrested on a false and frivolous allegations relating to a tweet posted by him on his twitter account. Thereafter, he was enlarged on bail on 20.06.2023. He would submit that the present FIR is registered on the basis of a complaint of the Village Administrative



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Officer, Chidambaram, on some false and frivolous accusation. A reading of the FIR allegations would show that the FIR is made up and is intended to curtail journalistic freedom. The petitioner has just reported an incident that had happened in Chidambaram temple and that, he has not reported anything which had not happened. The allegations made in the FIR while taken in its face value, do not make out ingredients for the offences under Sections 153, 504, 505(1)(b) and 505(ii) IPC. Therefore, this petition is filed seeking anticipatory bail. In support of his submissions, he produced the Judgment of Bombay High Court in ***Aroon Purie Vs. H.L.Varma*** reported in 1999 (1) ***Mh.L.J.*** 60.

3. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, strongly opposed this petition on the ground that, the petitioner had twitted in his online news portal namely “The Commune” alleging that, “the Deekshitars, who opposed the entry, faced physical aggression, with their clothes torn and their sacred threads (poonool/janeu) cut in the process”. The allegation against the petitioner is that, the news that "the sacred thread cut" had not happened at all. By spreading false news



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malignantly or wantonly, the petitioner committed illegal act to give provocation which would result in riot. The petitioner is regularly involving in publishing false news with intent to spread divisiveness among different groups of community. Journalistic freedom of expression is not absolute, it is subject to reasonable restrictions. Petitioner has violated the reasonable restrictions and created a situation leading to law and order issue and breach of public peace. Therefore, he strongly opposed for grant of anticipatory bail to the petitioner. In support of his submission, he relied on the judgment of the Hon'ble Supreme Court as follows;

i. ***In Amish Devgan Vs. Union of India and others*** reported ***in (2021) 1 SCC 1*** wherein, it is held that;

“96. The view expressed by the Bombay High Court in Gopal Vinayak Godse [Gopal Vinayak Godse v. Union of India, 1969 SCC OnLine Bom 88 : AIR 1971 Bom 56] lays considerable emphasis on the words itself, but the view expressed in P.K. Chakravarti [P.K. Chakravarti v. King Emperor, 1926 SCC OnLine Cal 96 : AIR 1926 Cal 1133] and Devi Sharan Sharma [Devi Sharan Sharma v. Emperor, 1927 SCC OnLine Lah 454 : AIR 1927 Lah 594] take a much



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broader and a wider picture which, in our opinion, would be the right way to examine whether an offence under Section 153-A clauses (1)(a) and (b) had been committed. The ordinary reasonable meaning of the matter complained of may be either the literal meaning of the published matter or what is implied in that matter or what is inferred from it. A particular imputation is capable of being conveyed means and implies it is reasonably so capable and should not be strained, forced or subjected to utterly unreasonable interpretation. We would also hold that deliberate and malicious intent is necessary and can be gathered from the words itself—satisfying the test of top of Clapham omnibus, the who factor—person making the comment, the targeted and non-targeted group, the context and occasion factor—the time and circumstances in which the words or speech was made, the state of feeling between the two communities, etc. and the proximate nexus with the protected harm, to cumulatively satiate the test of “hate speech”. “Good faith” and “no legitimate purpose” test would apply, as they are important in considering the intent factor.

97. ...

107. In the context of “hate speech”, including the offences related to promoting disharmony or feelings of enmity, hatred or ill-will, and insulting the religion or the



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religious beliefs, it would certainly require the actual utterance of words or something more than thought which would constitute the content. Without actual utterance, etc. it would be mere thought, and thoughts without overt act is not punishable. In the case of “publication”, again a mere thought would not be actionable, albeit whether or not there is an attempt to “publish” would depend on facts. The impugned act should be more than mere preparation and reasonably proximate to the consummation of the offence, which has been interrupted. The question of intent would be relevant. On the question of the harm's element, same test and principle, as applicable in the case of “likely” would apply, except for the fact that for intervening reasons or grounds public disorder or violence may not have taken place.

ii) *In Kaushal Kishor Vs. State of Uttar Pradesh and Others*

reported ***in (2023) 4 SCC 1***, it is held that;

“31. A careful look at these eight heads of restrictions would show that they save the existing laws and enable the State to make laws, restricting free speech with a view to afford protection to: (i) individuals, (ii) groups of persons, (iii) sections of society, (iv) classes of citizens, (v) the Court, (vi) the State, and (vii) the country. This can be demonstrated by providing in a table, the provisions of the



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Penal Code, 1860 that make some speech or expression a punishable offence, thereby impeding the right to free speech, the heads of restriction under which they fall and the category/class of person/persons sought to be protected by the restriction:

***Table of provisions under IPC restricting
freedom of speech and expression***

<i>Laws restricting free speech</i>	<i>Heads of restriction traceable to Article 19(2)</i>	<i>Person/Class of person sought to be protected and the nature of protection</i>
...		
<i>Section 153-A(1)(a) IPC—</i> <i>Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony</i>	1. Public order 2. Decency and Morality	Groups of persons — Protection from disrupting harmony among different sections of society.
...		
<i>Section 504 IPC—</i> <i>Intentional insult with intent to provoke breach of peace.</i>	1. Incitement to an offence 2. Public order 3. Decency and morality	The public — Protection of peace.
<i>Section 505(1)(b) IPC —</i> <i>Statement likely to cause fear or alarm to the public whereby any person may be induced to commit an offence against the State or against the public tranquility.</i>	1. Sovereignty and Integrity of the State 2. Incitement to an offence 3. Public order	State — Protection from the commission of offences against the State and protection of public tranquility.



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32. ...

251. Every citizen of India must consciously be restrained in speech, and exercise the right to freedom of speech and expression under Article 19(1)(a) only in the sense that it was intended by the Framers of the Constitution, to be exercised. This is the true content of Article 19(1)(a) which does not vest with citizens unbridled liberty to utter statements which are vitriolic, derogatory, unwarranted, have no redeeming purpose and which, in no way amount to a communication of ideas. Article 19(1)(a) vests a multi-faceted right, which protects several species of speech and expression from interference by the State. However, it is a no brainer that the right to freedom of speech and expression, in a human-rights based democracy does not protect statements made by a citizen, which strike at the dignity of a fellow citizen. Fraternity and equality which lie at the very base of our constitutional culture and upon which the superstructure of rights are built, do not permit such rights to be employed in a manner so as to attack the rights of another.

4. In reply, the learned counsel for the petitioner submitted that the petitioner is not the only one who reported the incident that



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happened in Chidambaram temple, but, several other news agencies reported the incident. Especially, TV Channels had telecast the statement given by the wife of the Deekshitar whose Poonool was said to have been cut. However, the respondent police had not taken any action against the other news reports print and electronic media but, targeted only the petitioner.

5. Considered the rival submissions and perused the records.

6. A reading of the FIR allegations shows that the defacto complainant/the Village Administrative Officer of Chidambaram was on watch along with his assistant Sundarraj, to prevent untoward incident due to the aftermath of the incident that happened at Chidambaram temple in connection with Darshan from Kanagasabai. At about 9.00 a.m., on 29.06.2023, when he was guarding near Chidambaram Bus Stand, some persons were talking among themselves that the police department and HR&CE Department officials had forcefully entered the Kanagasabai and assaulted the Deekshitars and indulged in violence by



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cutting their Poonool. They were aggressively advocating among themselves to put an end to this; two other persons joined with them. The defacto complainant intervened them and informed that nothing as alleged by them had happened in Chidambaram temple. Defacto complainant had asked them also who gave this information. One person informed him that this news was reported in a twitter head namely “The Commune”. When the defacto complainant checked this in his cell phone, he also found that the said news was published in the twitter head “The Commune”. In another place also, he found people were talking in groups about the assault against the Deekshitaras and that they should do something to support the Deekshitaras. The news reported in the twitter head “The Commune” created a kind of untrust among the public, which would create a riot. On the said complaint, the FIR in Crime No.220 of 2023 was registered for the offences under Sections 153, 504, 505(1)(b) and 505(ii) IPC.

7. Mr.V.Raghavachari, the learned Senior counsel appearing for the petitioner produced the copy of the news published in the twitter



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head “The Commune” for perusal of this Court which is extracted as follows;

“Police Officials Deny Claims of Deekshitar Being Assaulted And Poonool Being Cut

At the center of the controversy is the decision to restrict public access to the Kanakasabhai (Golden Hall) in the Chidambaram Nataraja Temple for four days following the annual Aani Thirumanjanam festial. This restriction has been longstanding tradition at the temple during this festival.

The Tamil Nadu Government in May 2022 had issued a GO permitted the devotees of Chidambaram Natarajar temple to stand atop “Kanagasabai’ (golden platform) and offer prayer within the temple premises. However, during the Aani Thirumanjanam ceremony, when the temple jewels are adorned by Thillai Nataraja, access to the Kanakasabhai is restricted to ensure security.

The HR&CE officials removed the board placed by



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the Deekshitar announcing these restrictions. This led to an argument between the Deekshitar and the officials.

Based on the information available in public domain and the comments given to the press by the wife of a Deekshitar and the advocate representing the Deekshitar, The Commune had reported that HR& CE officials had forcefully entered the kanakasabai and assaulted the Deekshitar. It was alleged that the Deekshitar was pushed and his poonool got cut off in the episode.

However, Chidabaram police officials have denied that such an incident happened. They say that officials had entered the platform to allow worship as per the government order.

Further clarity on the issue is awaited.”

8. Reading of the above news item shows that the heading itself reads that “Police Officials Deny Claims of Deekshitar Being Assaulted And Poonool Being Cut”. It is stated that the news item was



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published based on the information available in public domain and the comments given to the press by the wife of a Deekshitar and the advocate representing the Deekshitar. It is also reported that, Chidambaram police officials have denied the alleged incident of HR&CE officials had forcefully entering the Kanagasabai and assaulting the Deekshitar. Finally, it was reported that, further clarity on the issue is awaited.

9. It is seen from the news item that the online news portal viz., “The Commune” had just reproduced the comments given by the wife of a Deekshitar and the Advocate representing the Deekshitar, subject to its verification. The comments made to the press by the wife of a Deekshitar, was played in the open Court by the learned counsel for the petitioner in which, she had clearly stated that, Poonool of her husband was cut. However, it appears that, no criminal case was registered against any of the TV News Channels or other print media, which reported the incident.



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10. To prosecute a person under Section 153 IPC, the following three important ingredients have to be present;

1. The act must be illegal.
2. Such illegal act must be malignantly done, and
3. As a result of such illegal act, there must be a situation which may cause riot

11. However, an Editor, who published in good faith, cannot said to be doing an illegal act. The FIR allegations as narrated above, do not indicate the names of the persons who conversed among themselves about the news item. Except the allegation that the news item was likely to create protests, law and order issue, division among public and riotous situation, there is no other material to show that this news item had in fact, created unrest or provocation to anyone or a riotous situation or breach of peace or fear or alarm to the public so as to disturb public tranquility or incite any class or communities against any other class or communities.



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12. Considering the nature of allegations made against the petitioner; the news published in “The Commune”, is available in public domain, this Court is of the view that the custodial interrogation of the petitioner is not necessary. Therefore, this Court is inclined to grant anticipatory bail to the petitioner with conditions, so that the interest of the prosecutor is also protected.

13. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before **the learned Judicial Magistrate-II, Chidambaram**, on condition that the petitioner shall execute 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:



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[a] 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.

[b] the petitioner shall report before the respondent police daily at 10.00 a.m. and 05.00 p.m., until further orders;

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond 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 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].



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[f] If the accused thereafter absconds, a fresh
FIR can be registered under Section 229A IPC.

14. Accordingly, this Criminal Original Petition is ordered.

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To
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1. The Judicial Magistrate-II,
Chidambaram
2. The Inspector of Police
Cuddalore Police Station
3. The Public Prosecutor,
High Court, Madras.



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G.CHANDRA SEKHARAN, J.

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Pre-Delivery Order in
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G.CHANDRASEKHARAN, J.

Before raising for the day, it is represented by Mr.R.Sankaranarayanan, learned Senior Counsel that this Court had directed the petitioner to appear before the Cuddalore Police Station at 10.00 a.m and 05.00 p.m until further orders. It is further submitted that Madurai Bench of this Court in Crl.O.P.No.12615 of 2023 had given directions to the petitioner to appear before Cyber Crime Branch, Chennai for next 20 days. Therefore, it is not possible for the petitioner to appear before Cyber Crime Branch, Chennai and before the Cuddalore Police Station. Hence, he seeks modification of this condition.

2. In the said circumstances, this Court directs the petitioner to appear before Cyber Crime Branch, Chennai for next 20 days as directed by the Madurai Bench of this Court and thereafter before the Cuddalore Police Station until further orders. Accordingly, condition (b) is modified.

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