



CrI.O.P.No.27763 of 2022

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S.VAIDYANATHAN,J.

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The petitioner, who is an accused in Crime No.1 of 2016 for the offences under Sections 498-A and 304-B IPC, apprehends arrest at the hands of the respondent police and seeks anticipatory bail.

2. The case of the prosecution is that the petitioner married one Banupriya on 12.06.2011 and was blessed with a girl child by name Dhanusri. On 01.01.2016 at about 5:00pm, the wife of the petitioner poured kerosene on her body, by holding her baby on her hip. When both were taken to the Government Medical College Hospital, Adukkamparai, both were succumbed to death on account of severe burnt injuries. The further case of the prosecution is that initially, a case under Section 174 Cr.P.C. was registered and during enquiry, it came to light that on account of dowry torture, the wife of the petitioner was forced to commit suicide and therefore, the case was altered into the one under Sections 498-A and 304-B IPC.

3. Learned counsel for the petitioner has submitted that the wife of the petitioner committed suicide, when she was in her grandfather's house and even though the petitioner has been very much available in the locality, the respondent Police did not arrest him and now after a lapse of seven years, there is no need to arrest the petitioner. He has further submitted that the petitioner is willing to cooperate with the Police and that investigation has already been completed.

<https://www.mhc.tn.gov.in/judis>4. Per contra, learned Additional Public Prosecutor has contended that the



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accused was absconding all along and that an absconding charge sheet was also filed before the Judicial Magistrate No.V, Vellore, which was not taken on file.

He has further contended that this Court had granted the relief to the parents and sister of the petitioner herein and in case the charges are proved against the petitioner, the punishment that may be inflicted would be life sentence. He has also contended that if it is a case of dowry harassment, domestic violence or cruelty, the respondent would not have sought for arrest of the petitioner, as the punishment that may be imposed for anyone of the aforesaid provisions would be less than seven years.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State. Mr.T.Ravi, Inspector of Police, Sathuvachari Police Station, Vellore District is present today.

6. In the present case on hand, two lives including one child had been scorched by the flame of fire by way of self immolation. According to the prosecution, owing to the continuous torture meted out at the hands of the petitioner, his wife had been forced to take such a decision, which is supported by the report of the Revenue Divisional Officer. The Apex Court in the case of **Arnesh Kumar vs. State of Bihar**, reported in **(2014) 8 SCC 273**, which has been followed by the Apex Court in a recent judgment in the case of **Deepak Shrikant Aggarwal vs. The State of Maharashtra (MANU/SCOR/37281/2022)**



categorically held as follows:

"Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.;

(2) All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding / producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.



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(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

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7. The proposition laid down in the aforesaid case cannot be mechanically applied to the one on hand for the reason that the present case has been altered to Sections 498-A and 304-B IPC, which stipulates that whoever commits dowry death shall be punished with imprisonment for a term, which shall not be less than seven years but which may extend to imprisonment for life. Therefore, the petitioner cannot be let go scot free by enlarging him on bail, instead, a direction is issued to him to appear before the Judicial Magistrate No.V, Vellore on or before 24.04.2023, who shall consider the case of the petitioner and pass suitable orders in accordance with law, on the application that may be filed by the petitioner. In case of positive order in favour of the petitioner / accused, the Judicial Magistrate No.V, Vellore shall ensure the following, apart from other conditions that may be issued by the Magistrate:

i) The petitioner shall not leave the jurisdiction of Tamil Nadu without informing the jurisdictional Magistrate and the respondent police, by furnishing the full details of his travel and stay;

ii) The petitioner shall furnish his mobile number, which shall not be changed till the issue comes to a logical conclusion and permanent residential address to the police and the trial Court. The petitioner is permitted to change the portability and not the mobile number;

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iii) The petitioner shall surrender his passport, if any to the concerned Magistrate Court and whenever he wants to go abroad, he is entitled to take the original and furnish the correct particulars as to where he is going and for what purpose.

This Criminal Original Petition is disposed of, accordingly.

06.04.2023

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