



Crl.O.P.No.27032 of 2023

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C.V.KARTHIKEYAN, J.

The petitioner/A2 seeks anticipatory bail in Crime No.36 of 2023 registered by the respondent Police for the offences punishable under Sections 3(2)(a), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956.

2. It is stated that A3 is a sister of A1. So far as this petitioner is concerned/A2, it is the case of the respondent that he is a business partner of A1.

3. It is further stated that this petitioner/A3 and A1 had taken on rent a house at Royapettah for the purpose of running a brothel business. It is further stated that from that particular place, 3 victim women had been rescued. It is therefore contended on behalf of the respondent that the petitioner is directly involved in the offences and therefore, grant of Anticipatory Bail is very seriously objected.

4. The learned Counsel for the petitioner however, widened the scope of arguments by pressing into service the records as produced by the respondent.



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5. The learned Government Advocate(Criminal Side) pointed out that investigation has commenced in this particular case by information being received by the Station Head Officer. The defacto complainant, on instructions, had gone over to the house at Royapettah and had offered himself as a prospective customer seeking physical pleasure and an amount was also bargained and at that time he came back to police station and lodged a compliant and the First Information Report was registered.

6. The learned Counsel stated that a police person should not be employed as a decoy. It is also stated that once information had been received then, any statement recorded subsequent to such information would be a statement recorded during the course of investigation and that such statement would be hit under Section 162 Cr.P.C. It is therefore contended that there is no material at all available for the respondent to proceed further with the investigation.

7. It is also contended that even if it is to be stated that this petitioner/A2 and A1 had taken on lease the building at Royapettah, no such lease agreement had been produced. Further statement of the victim girls had been recorded. It is therefore contended that the petitioner should not be held



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liable for the offence if at all the offence is made.

8. In this connection, the learned Counsel also placed reliance on judgments of High Courts and the Hon'ble Supreme Court which I shall refer to shortly.

9. Section 4(1) Cr.P.C. speaks about investigation. The investigation commences when information is received about commission of cognizable offence. When information is received by the Station House Officer or in the Police station for any offence said to have been committed and which requires further enquiry, then, investigation commences after the information is written down. But, normally whenever information is also received, there is always a possibility of such information either being correct or not being correct or being made with intention to lead the investigating agency astray. Therefore, particularly in offences like the present nature under the Prevention of Immoral Traffic Act, a decoy is often deputed to verify whether such information is correct or not correct. That is in the nature of a discreet preliminary enquiry. It is made for the satisfaction of the officer before the registration of the First Information Report. Whether a police official can go over as a decoy or whether a private individual alone has to be sent as a decoy and matters of interpretation and there cannot be



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any fixed standard on that particular aspect.

10. Particularly when flesh trade is involved and information is received that a particular place is used for prostitution, before registering the First Information Report, a discreet preliminary enquiry is launched. In the instance case, a Special Report had been issued by the defacto complainant and the defacto complainant had stated in his Special Report which was addressed to the Inspector of Police, the Chindhadripet Police Station, that acting under the instructions of the Inspector of Police, he had gone over to the house at Royapettah and when he went there, he found necessary evidence were available that the said place was used for prostitution. He later came back to the station and lodged a complaint. That particular complaint is the basis for commencement of investigation under Section 4(1) of Cr.P.C. It is the reiteration of the secret information received earlier for which discreet enquiry was conducted. The manner in which a discreet enquiry should be conducted would differ from case to case.

11. The learned Counsel for the petitioner also stated about similar information being received of demand of bribe and trap being laid. Even before a trap is laid, when information is received and a trap laying team goes over to actually lay a trap, a preliminary investigation has to be done



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about the conduct and character of the person who had demanded the bribe.

Thereafter satisfaction is recorded that the said particular person was in the habit of seeking bribe and accepting bribe and thereafter a decision is taken to lay a trap.

12. These are steps which are taken as a safeguard, before registration of an FIR, to discern whether information received is information which could creditably be taken forward during investigation or could be dropped later. Even when a First Information Report is registered and investigation commences, the investigating officer always has a right to drop further proceedings either as a mistake of fact or for any other reason. He also has a right to drop any accused from the array of accused. He also has a right to add a person who was not mentioned either in the First Information Report or in any of the statements, as further accused. These are all aspects of investigation which is carried on.

13. Section 4(1) Cr.P.C. then moves on to Section 154 Cr.P.C. and later to Section 161 Cr.P.C. where statements are recorded and later to Section 164 Cr.P.C. where statement or confessions are recorded before a Magistrate. In between, to safeguard that the police would not record statements as they like, law provides protection under Section 162 Cr.P.C.



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that no statement recorded by a police officer during the course of investigation is admissible in any Court of law. It could only be, in extreme circumstances, used for corroboration or for contradiction. It has no sanctity in law at all, but is a necessary steps in the ladder to finally determine the offender. It is one of the principles that only an offence is taken cognizance and on completion of investigation the offender is identified.

14. Even then, which the accused brought before the Court, it is only when charges are framed, that the person actually becomes accused of the offences. Till then he is alleged to have committed the offences. When he pleaded not guilty to the charges then trial process starts.

15. The learned Counsel for the petitioner stated that in the course of investigation that any statement recorded would suffer under Section 162 Cr.P.C. The recording of the statements of the victim girls is only part of the investigation process. Thereafter, on appreciation of the collected materials, the final report is presented before the Court pointing out that the person charged, had committed the offences. When a Magistrate takes cognizance of the final report, he or she will have to pass a judicial order before taking a decision to issue summons to the accused. These are serious orders, since the liberty of an individuals being interfered by judicial process.



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16. In the instant case, it is stated that the defacto complainant had acted on the instructions of the Inspector of Police who had received information. The Inspector of Police had directed the defacto complainant to go to over the place at Royapettah, which is place the petitioner and A1 had taken on lease. Thereafter, the defacto complainant had formed an opinion and had come back to the police station and had lodged a complaint and that complaint was later registered as a First Information Report. It is a report of information gathered and given first to the Station House Officer and that is the basis for further investigation. No officer can be asked to disclose about the source of his information or about the nature of the secret information received or about the manner in which the secret information was received. In the First Information Report, the petitioner is shown as an accused. Once shown as an accused he has to submit himself to the rigour of law.

17. The first judgment which had been relied on by the learned counsel for the petitioner is a judgment of the Delhi High Court reported in **1983 SCC OnLine 137 : (1983) 23 DLT 486, State Vs. Bashir Ahmed**. That was a case which had come up before the High Court by an appeal by the State questioning an order of acquittal of the accused. It must be pointed out that when examining whether a judgment has to be reversed or upheld, the



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materials available and gathered during the course of trial will have to be analysed.

18. Here, unfortunately we are not at that stage. This Court is examining whether the petitioner is entitled for Anticipatory bail or not. This Court is not examining whether the petitioner is entitled for a judgment of acquittal or conviction. Even though the reasonings could be made applicable to the facts of this case, still those reasonings were on the basis of admissible evidence already adduced. Today, only the First Information Report is on hand and on that basis, it has to be examined whether, for further investigation the presence of the petitioner required or not.

19. With due respect to the learned Counsel, the judgment relied had traversed points of law on the basis of evidence and not on the basis of *prima facie* materials available.

20. The second Judgment which had been relied on by the learned Counsel is a judgment of the Hon'ble Supreme Court reported in **1963 SCC online SC 91 : AIR 1964 SC 221, State of Uttar Pradesh Vs. Bhagwant Kishore Joshi**. Again that was an appeal before the Hon'ble Supreme Court from a judgment of the High Court at Allahabad in Lucknow which set aside an order of the Special Judge at Lucknow who had convicted, the



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respondent/accused and had sentenced him to one year rigorous imprisonment for offence punishable under Section 5(2) of the Prevention of Corruption Act.

21. Under the Prevention of Corruption Act, when an information is received about demand of bribe, such information is written down in the general diary by the Station House Officer and thereafter a trap laying team is analysed to go over to the particular place where the accused was and one of the fundamental aspects to be noted is that the trap laying officer should satisfy himself about the character and conduct of the accused and that he was in the habit of taking bribe and only thereafter entertain the defacto complainant and prepare to proceed further with laying of the trap. Again the Hon'ble Supreme Court had examined the issue on the basis of evidence available.

22. The learned Counsel for the petitioner also relied on yet another Judgment of the Hon'ble Supreme Court reported in **(1976) 1 SCC 644, Maha Singh Vs. State (Delhi Administration)**, which is about non-examination of witnesses particularly when there is admission of seizure and planting of incriminating objects and about the corroboration of bribe giver. Once again, before the Hon'ble Supreme Court, it was an appeal against a



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judgment of conviction. I must reiterate that I am only examining the issue of anticipatory bail and certainly not conviction or acquittal of the petitioner herein.

23. The learned Counsel for the petitioner also relied on yet another judgment reported in ***AIR 1962 SC 1189, Kamalabai Jethamal Vs. State of Maharashtra***. Again, the judgment is against the judgment of the High Court of Bombay, which set aside an order of acquittal.

24. Once again, the Hon'ble Supreme Court had examined the issues with respect to the evidence which had been produced and examined whether the evidence produced would be sufficient to bring home the charges as against the accused or not. At this stage, the swinging factors are whether the presence of the petitioner is required for investigation, whether there is a possibility of the petitioner tampering the witnesses and hampering the investigation and whether the petitioner would abscond the process of law. One factor which swings against the petitioner is that the victim girls had been rescued from the house which he had taken on lease. It is alleged that he had a direct interest in that particular house along with A1. The other factor is that A3 is a sister of A1. Therefore, there is always every possibility of either one of them tampering and influencing the victim girls.



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25. The learned Counsel for the petitioner stated that the victim girls had been shifted to a home. But even then, their safety will have to kept in mind, since they are vulnerable witnesses.

26. In view of all these aspects, I am not inclined to grant Anticipatory bail. This Criminal Original Petition stands dismissed.

27. One final statement was made by the learned Counsel for the petitioner that the mother of the petitioner is suffering from serious illness and had been hospitalised and has now been discharged and that it would only be appropriate to extend a facility for the petitioner to visit her without the shadow of the respondent behind her.

28. In view of that particular fact, though anticipatory bail is dismissed, I would grant interim Anticipatory Bail till 19.01.2024 and would grant privilege to the petitioner herein to surrender first before the respondent.

29. Accordingly, the petitioner is ordered to be released on interim anticipatory 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 IV Metropolitan Magistrate, Saidapet, Chennai, on condition that the



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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 conditions that:

[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 is directed to surrender before the respondent on 19.01.2024.

[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.

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

30. Post the matter under the caption 'to report surrender' list on 22.01.2024.

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