



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2023

PRESENT

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P (MD) No.674 of 2023

WEB COPY

S.Syed Mohamed Abbas

...Petitioner/Accused No.1

-vs-

The State represented by
The Inspector of Police,
All Women Police Station,
Srirangam,
Trichy District.
(in Cr.No.01 of 2023)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioner on bail in the event of his arrest by the respondent Police with respect to Cr.No.01 of 2023.

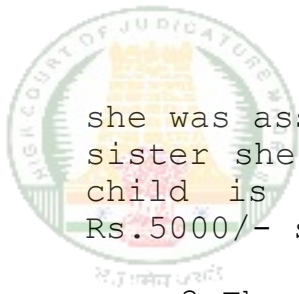
For Petitioner : Mr.B.Jameel Arasu, Advocate.

For Respondent : Mr.P.Kottai Chamy
Government Advocate (Crl.side)

ORDER

The petitioner, who apprehends arrest at the hands of the respondent Police for the offences punishable under Sections 376(1), 323, 120(b), 506(1) IPC in Crime No.01 of 2023 on the file of the respondent Police, seeks anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant Syed Ali Fathima is that her elder sister was affected by Covid-19 and was admitted in Trichy Government Hospital and hence, she has gone to the house of her elder sister to take care of her sister's son and at that time, the accused, who is her brother-in-law, had threatened her and had sexual intercourse with her against her will and thereby she became pregnant and she had given a complaint against the accused before the All Women Police Station and since her sister was also assisting her brother in law, the matter was settled and thereafter her sister had taken a house for her in RBS Nest Apartment and under the guise of taking care of her, her sister had compelled her to abort the pregnancy and since she was not interested in aborting the pregnancy, she has refused to do so and the accused had abused her and assaulted her. While so, on 12.01.2023, she delivered a male child by name Mohamed Jaine. Since



she was assaulted by her brother-in-law and on the compulsion of her sister she took pills for abortion during the pregnancy period, her child is suffering. Further, the accused have also taken away Rs.5000/- sent her father. Hence, the complaint.

3.The learned Counsel for the petitioner would submit that the petitioner is an innocent and a false complaint has been given by the defacto complainant to extort money from the petitioner. He would also submit that the petitioner's wife is the elder sister of the defacto complainant; the petitioner and the defacto complainant belong to Muslim religion; the defacto complainant was earlier married to one Sivasankar in the year 2016; the defacto complainant deserted her husband; during such time, there was consensual relationship between the petitioner and the defacto complainant; later when it came to the knowledge of the petitioner's wife/A2, she had warned her that the petitioner and the defacto complainant should not continue such relationship whereas the defacto complainant insisted for such relationship and she refused to leave their home and later she had given a complaint before the All Women Police Station, Trichy in respect of which an enquiry was conducted in CSR.No.25 of 2022 and during such time, the father of the defacto complainant and the second accused were present and a memorandum of understanding has entered into between the petitioner and the defacto complainant whereby Rs.1,50,000/- was paid by the petitioner as compensation to her; the defacto complainant had stated that she will not give any further complaint thereafter; the defacto complainant demanded more money and since the petitioner refused to give more money to her, she has given the present complaint.

4. The learned counsel for the petitioner would also submit that the petitioner is in the habit of giving complaint against the family members and she has also given a complaint against her own father before the All Women Police Station in CSR.No.454 of 2016. He prays for grant of anticipatory bail to the petitioner.

5.The learned Government Advocate (Crl.side) would submit that the defacto complainant is the sister-in-law of the petitioner and the petitioner threatened her and compelled her for having sexual intercourse with her against her wish due to which she became pregnant and thereafter, the petitioner and his wife had attempted to abort the pregnancy and later, the defacto complainant had delivered a child. He would further submit that the petitioner and the petitioner's wife were threatening the defacto complainant. He prays for dismissal of this application.

6. Heard. Perused the materials available on record including the FIR in Crime No.01 of 2023, the copy of the complaints in CSR stage and the affidavit of undertaking given by the defacto complainant.

<https://www.mhc.tn.gov.in/> Taking into consideration the facts and circumstances of the



case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

8. 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 Additional Mahila Court, Magisterial Level at Trichy, 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:

[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 everyday at 10.30 a.m., for a period of two weeks and thereafter, every Saturday at 10.30 am 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]**.

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

sd/-

11/01/2023

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/01/2023

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

CM

TO

1 THE ADDITIONAL MAHILA COURT,
MAGISTERIAL LEVEL AT TRICHY.

2 -DO- THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.

<https://www.mhcn.org.in/judis>



3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SRIRANGAM,
TRICHY CITY.

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

+1. CC to M/S.JAMEEL ARASU B Advocate SR.No.652(I)

ORDER

IN

CRL OP(MD) No.674 of 2023

Date :11/01/2023

VA/VR/SAR-3/24.01.2023/4P/5C