



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2023

PRESENT

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

CRL.O.P (MD)Nos.1488 and 1493 of 2023

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Nalamurugan

...Petitioner/Accused No.2
in CRL OP(MD)No.1488 of 2023

...Petitioner/Accused No.1
in CRL OP(MD)No.1493 of 2023

-Vs-

1.State represented by
Inspector of Police,
Peraiyur Police Station,
Ramnad District
(in Cr.Nos.78 and 79 of 2022) ...Respondent/Complainant
in both petitions

2.Manimegalai ... Petitioner/Intervenor/
Defacto Complainant
in CRL OP(MD)No.2117 &2118 of 2023
in CRL OP(MD)No.1488& 1493 of 2023

PRAYER: Criminal Original Petitions are 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.Nos.78 and 79 of 2022.

(IN BOTH PETITIONS)

For Petitioner : Mrs.Porkodi Karnan, Advocate
for M/S.POLAX LEGAL SOLUTIONS

For Respondent : Mr.M.Veeranthiran
Government Advocate (Crl.side)

For Intervenor : Mr.A.N.Ramanathan, Advocate

C O M M O N O R D E R

The petitioner, who apprehends arrest at the hands of the respondent Police for the offences punishable under Sections 417, 376, 354(c), 294(b), 506(ii) IPC in Crime No.78 of 2022 and under Sections 409, 341, 294(b), 323, 506(i), 379(NP) IPC and Section 4 of



TNPBW Act in Crime No.79 of 2022 on the file of the r. at Police, seeks anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant Manimegalai in Crime No.78 of 2022 is that she has completed B.Com degree and she was in love with one Nalamurugan, the petitioner herein, for the past 6 years and on 14.02.2020, on false assurance of marrying her, the accused had sexual intercourse with her and at that time, her younger brother Mareeswaran had come to the house and seen them together and since the accused had promised her brother that he would marry the defacto complainant, her brother did not create any problem at that time. Subsequently, the accused had on the promise of marrying her taken lewd photos of her and on the threat that the photos would be uploaded in face book, he had sexual intercourse with her on several occasions. Once again, during 19.06.2022 the first accused, Nalamurugan, who was working in CRPF had come for family function and at that time also he had indulged in sexual intercourse with her. Subsequently, when the defacto complainant has asked the first accused to marry her, the mother of the first accused told that she will not permit her son to marry the defacto complainant and he would marry her brother's daughter since they would give 100 sovereigns of jewels. Later on 20.06.2022, the defacto complainant had given a complaint to the Deputy Superintendent of Police, Muthukulathur, based on which, an enquiry was conducted on 22.06.2022 and during such time, the accused had agreed to marry the defacto complainant and later on 27.06.2022, betrothal was performed in the presence of the elders in the village and the accused had taken the defacto complainant to Karur and he had reset the phone and deleted all the photos and after vacation, he had left to Chennai on 04.07.2022 and later there was no communication and he has changed the phone number and when the defato complainant had enquired the parents and relatives of the first accused, they told that if she come with 100 sovereigns of jewels and Rs.4 lakhs cash, they will accept for the marriage and threatened her with dire consequences. Hence, the complaint.

2.i) The case of the prosecution, as per the de-facto complainant Manimegalai in Crime No.79 of 2022 is that she had completed B.Com and on a complaint given by her on 11.10.2022 before the All Women Police Station, a case was registered against the first accused Nalamurugan and on coming to know of the registration of the case, on the instigation of the accused and her parents, on 12.10.2022 on mid night at 1.00 a.m, Kasinathan the younger brother of the abovesaid Nalamurugan, the second accused in this case had, by covering his face, stolen the Redmi Cell phone (No.63791 91197) from the house of the defacto complainant and while so, on the same date at 7. p.m when the defacto complainant had started to the Police Station to give complaint, the fifth accused Kasinathan, the brother of the abovesaid Nalamurugan, the second accused in this case had assaulted the defacto complainant and slapped her and when the relatives of the defacto complainant attempted to save the



defacto complainant, he had threatened and intimidated them that he had only taken the cell phone. 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. He would also submit that admittedly, the alleged victim is a B.Com graduate aged about 24 years and she is a grown up girl, who is well aware of the consequences of the relationship. She would further submit that as stated in the FIR, there was love affair between the defacto complainant and the said Nalamurugan for 6 years pursuant to which they had consensual sex with each other and consent was not obtained by any fraudulent act or misrepresentation and even in the complaint, the victim had stated that even after it came to the knowledge of her younger brother, there was no problem. Even thereafter, admittedly there had been several instances of consensual physical relationship between them. Whereas later due to some misunderstanding between them, the petitioner could not marry her. She would also submit that it is not a case where promise was made only for the purpose of satisfying lust of the petitioner. It is her further submission that even when the sexual relationship between two willing partners does not culminate in marriage, still the same will not amount to rape, in the absence of any factor that vitiates the consent for sex. He would submit that a subsequent refusal to marry or a failure to lead the relationship into a marriage are not factors that are sufficient to constitute rape even if the partners had indulged in a physical relationship. The sexual relationship between a man and a woman can amount to rape only if it was against her will or without her consent or when consent was obtained by force or fraud. She would further submit that the defacto complainant has given an exaggerated complaint and she has stated that the petitioner has indulged in sexual relationship by threatening her that he would expose her private photos in the social media and that she was having them in her phone which were sent to her. No such thing had happened it is only a false statement and in order to get over the same subsequent complaint has been given against the brother of the accused as if he has committed theft of her mobile phone during night hours and that he had threatened her mother and relative.

4. The learned Government Advocate (Crl.side) would submit that there was a relationship between the victim girl and the petitioner for 6 years. The petitioner on a false assurance of marriage had sexual intercourse with her and he had also subsequently taken obscene photos of the victim girl and by threatening her that it would be uploaded in the social media, the petitioner had compelled to have sex. He would further submit that the petitioner's brother had also on the instigation of the petitioner and family members had stolen the mobile phone belonging to the defacto complainant and based on the complaint of the defacto complainant a case in Crime No.79 of 2022 has been registered against the petitioner, who has



5. The learned counsel for the intervenor/defacto complainant would submit that the defacto complainant was cheated by the petitioner on a false promise of marriage the accused had committed rape on her and threatened her by threatening that he will send the obscene photos and videos in social media, the petitioner had sexual intercourse with her on several occasions and he had also sent the photos to her mobile phone. Later to destroy the evidence, the brother of the petitioner had stolen the mobile phone of the defacto complainant. He would strongly object for grant of anticipatory bail to the petitioner.

6. Taking into consideration the facts and circumstances of the case and on perusing the 164 Cr.P.C. statement of the victim girl, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7. 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 District Munsif-cum-Judicial Magistrate, Kamuthi, 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., 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 FII registered under Section 229A IPC.

sd/-
06/02/2023

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

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TO

1.THE DISTRICT MUNSIF-CUM-JUDICIAL MAGISTRATE, KAMUTHI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM.

3 INSPECTOR OF POLICE,
PERAIYUR POLICE STATION,
RAMNAD DISTRICT

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

+2 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-1883,1884[I] dated
07/02/2023)

ORDER
IN
CRL OP(MD) No.1488 of 2023
Date :06/02/2023

RK/VR/SAR-3 (13/02/2023) 6P/7C