



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 20/06/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN
CRL OP(MD). No.10229 of 2023

WEB COPY

1.Badrinarayanan

2.Srinivasarav @ Srinivasan ... Petitioners / Accused Nos.1 & 2

Vs.

The Inspector of Police,
Srirangam Police Station,
Trichy City.
(Crime No.834 of 2023.)

... Respondent/Complainant

For Petitioners : Mr.A.Ramesh, Senior Counsel
for Mr.M.Killivalavan, Advocate

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

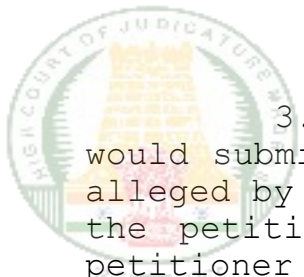
PRAYER :-

For Anticipatory Bail in Crime No.834 of 2023 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/accused Nos.1 and 2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 304(A) of I.P.C., r/w 75 of the Juvenile Justice Board in Crime No.834 of 2023 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that one Sridharan lodged the complaint before the respondent Police stating that his elder son Vishnuprasath stayed and studied at "Srirangam Sriman Trust Pattar Gurukulam Padasalai" and his son studied 7th standard and Religious studies in Gurukulam and his wife received a phone call on 14.05.2023 at about 07.00 a.m., from Gurukulam and they informed that the son of the defacto complainant and other two children went to take bath in the Kollidam River in morning hours and three of them drowned in the water and were swept away by the water and died. Hence, the complaint. Originally, the case was registered under Section 174 of Cr.P.C and later it was altered to the alleged under Section 304(A) of I.P.C., r/w 75 of the Juvenile Justice Board Act.



3.The learned senior counsel appearing for the petitioners would submit that the petitioners did not involve in the offence as alleged by the prosecution. There are totally two accused, in which, the petitioners are arraigned as Accused Nos.1 and 2. The first petitioner is the founder of Gurukulam and the second petitioner is the incharge of Gurukulam. There are totally 15 students studying in Gurukulam. It is a residential School and it was started in the year 2007. They are providing free stay, food and education. All the children are taken care with utmost love and affection. Every day, the students are doing 'Sandhyavandhanam' at the Kollidam River. Unfortunately, on the date of occurrence, the river the Kollidam had flooded by opening the Cauvery River and diverted into River the Kollidam. Therefore, when the deceased students were doing 'Sandhyavandhanam', they were swept away by an un-timed flood. He further submitted that, without any prior intimation, 1,903 cubic feet of water was opened. Therefore, there was a huge water flow in the Kollidam River and without knowing the same, while the students were taking bath, they were swept away by water.

4.The learned senior counsel appearing for the petitioners would further submit that the first petitioner is only the founder of Gurukulam and he is no way connected with the day-to-day affairs of Gurukulam. Now, the petitioners have been booked for the offence under Section 304(A) of I.P.C r/w 75 of the Juvenile Justice Board Act, in which, 304(A) of I.P.C is bailable in nature. In so far as the offence under Section 75 of the Juvenile Justice Board Act is concerned, where a person in actual charge or control of a child is made penally liable for any action of assault, abandonment, abuse, exposure or wilfully neglects the child or causes or procures the above to be done in a manner likely to cause such child unnecessary mental or physical suffering. Therefore, there was actual charge of Gurukulam by the first petitioner. Neither any action of any assault has been attributed to the first petitioner nor is there any allegation that the first petitioner had connived with the said Act in any manner whatsoever. He also cited the Judgment of this Court in C.R.P.No.696 of 1972 and W.P.No.1178 of 1972, dated 30.04.1976 [Subbammal and Others Vs. The President, the Tenkasi Co-operative Urban Bank Limited, Tenkasi], in which, this Court held that the scope of the expression "wilfully" means an act done deliberately and internationally not by accident or inadvertence so that the mind of the person who does the act can be said to go with it and that "neglect" is the want of reasonable care, that is, the omission of such steps as a reasonable person would take. Therefore, there is no wilful neglect on the part of the first petitioner. He also produced the application form of one of the deceased and submitted that the Rules and Regulations of their curriculum are to wake up from 04.30 to 05.00 a.m., bath in the Kollidam, doing 'Sandhyavandhanam' and thereafter, have energetic food and these conditions were duly agreed by the parents of the deceased. On the date of the unfortunate incident, the deceased while taking bath in the Kollidam river, there was a huge flow of water and as such, they were swept



out, in which, they all drowned and died. The entire act was on the part of the negligence of the petitioners.

5. Heard the learned senior counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

6. On perusal of the statements recorded from the student, namely Gopalakrishnan, who also went along with the deceased boys to the the Kollidam River, revealed that the second petitioner is the warden of the said Gurukulam. He used to take all the students for taking bath. If any student committed any mistake, in order to punish them, he used to direct them to conduct poojas and give food without salt and finally, they were directed to take water from the the Kollidam River. While being so, on the date of occurrence, the deceased Vishnu Prasath and Saisurya Abraham fought each other. In order to punish them, they were directed to take water from the the Kollidam River on 14.05.2023 at about 05.00 a.m by the second petitioner. Along with the said two students, two students, namely Hariprasath and Gopalakrishnan also had gone for their protection. The said Vishnu Prasath had no knowledge to swim. Therefore, he was drowned in the water and asked for help. Therefore, the other two students, namely Hariprasath and Saisurya Abraham went for rescuing him, unfortunately, they were also swept out in the water and they drowned and died. Immediately, it was informed to the second petitioner and with the help of the fire service, the dead bodies were recovered from the river.

7. Admittedly, the second petitioner is in charge of the said Gurukulam. He used to take the students to take baths in the the Kollidam River. He also used to punish the students for their mistakes, in which, one of the punishments is that the students have to take water from the the Kollidam River. Therefore, "wilful negligence" on the part of the second petitioner is clearly proved and he is responsible for the death of three tender children and they died due to the negligence on the part of the second petitioner.

8. In so far the second petitioner is concerned, his custodial interrogation is very much required in this case and this Court is not inclined to grant anticipatory bail to the second petitioner. **Accordingly, this Criminal Original Petition is dismissed in respect of the second petitioner.**

9. Taking into consideration of the facts and circumstances of the case and also the fact that though the first petitioner is the founder of Gurukulam, he was not actively involved in the day-to-day activities of the students, therefore, the custodial interrogation of the first petitioner does not require and this Court is inclined to grant anticipatory bail to the first petitioner, with certain conditions:



Accordingly, the first 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, Srirangam, on condition that the first petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five 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 first 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 first petitioner shall report before the respondent Police, daily at 10.30 a.m., for a period of four weeks and thereafter, as and when required for interrogation.

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

[d] the first 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 first petitioner in accordance with law as if the conditions have been imposed and the first 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/-

20/06/2023

/ TRUE COPY /

/06/2023

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

PS

To

1.The District Munsif cum Judicial Magistrate,

<https://www.mh.gov.in/judis>



2.Do through the Chief Judicial Magistrate,
Trichy District.

3.The Inspector of Police,
Srirangam Police Station,
Trichy City.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.SENTHIL, Advocate (SR-9276[I] dated 21/06/2023)

ORDER

IN

CRL OP(MD) No.10229 of 2023

Date :20/06/2023

ED/VR/SAR- (22/06/2023) 5P 6C