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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 08/08/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP(MD)Nos.14368 and 14373 of 2023

(1)Cr1.OP(MD)No.14368 of 2023:-

Mohammed Abbas : Petitioner/A1

Vs.

The State rep. by
The Inspector of Police,
Tallakulam Police Station,
Madurai.

(Crime No.293 of 2023) : Respondent/Complainant

For Petitioner : Mr.M.Ajmal Khan
Senior counsel
for Mr.C.M.Arumugam

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

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

PRAYER:- For Anticipatory Bail in Crime No.293 of
2023 on the file of the Respondent Police.



(2)Cr1.OP(MD)No.14373 of 2023:-

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Mohammed Abbas

: Petitioner/A1

Vs.

The State rep. by
The Inspector of Police,
Vilakkuthoon Police Station,
Madurai.

(Crime No.277 of 2023)

: Respondent/Complainant

For Petitioner

: Mr.M.Ajmal Khan
Senior counsel
for Mr.C.M.Arumugam

For Respondent

: Mr.S.Ravi
Additional Public Prosecutor

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

PRAYER:- For Anticipatory Bail in Crime No.277 of
2023 on the file of the Respondent Police.

COMMON ORDER: The Court made the following order:-

The petitioner, who is arrayed as an accused, in both cases, apprehends arrest at the hands of the respondent police in Crime No.293 of 2023 for the offences punishable under section 505(1)(b) IPC; and in Crime No.277 of 2023 for the offences punishable under sections 341, 352, 353, 201, 153A(1)(a), 506(i) and 506(ii) IPC, seek anticipatory bail.



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2.The case of the prosecution in brief:-

This petitioner was arrayed as an accused, during the course of investigation in RC No.42/NIA/TLI/2022, which is pending on the file of the Special Court NIA, Poonamallee, Chennai. Subsequent to that, a case in Crime No.277 of 2022 was registered against the petitioner on the basis of the complaint given by the NIA authorities on the ground that on 09/05/2023, search was about to be made in the house of the petitioner at about 05.30 am; He refused to cooperate with the NIA agencies and picked up quarrel. Apart from that, it is also alleged that this petitioner alleged to have abused one Robin, an Officer of NIA saying that he is a North Indian; Some of the associates namely A4 and A5 were also called by the petitioner in support of him. They raised slogans against the officials.

3.On the basis of the complaint given by the complainant, on 27/02/2023, a case was registered in Crime No.277 of 2023 against this petitioner under sections 341, 352, 353, 201, 153A(1)(a), 506(i) and 506(2) IPC.



4.He was arrested and remanded to custody in RC No. 42/NIA/TLI/2002.

5.After arrest, another case was registered against the petitioner in Crime No.293 of 2023 on the ground that he uploaded a post in the face-book, on 06/03/2023, falsely claiming that one Mohammed Ali Jinna, who is the accused in the above said RC No.42/NIA/TLI/2022 was assaulted by NIA officials and admitted in the Madurai Rajaji Government Hospital, with severe injuries. The above said post was made by this petitioner to cause fear among the public and induce the public to commit the offence against the State and public tranquility. So, a case in Crime No.293 of 2023 was registered for the offence under section 505(1)(b) IPC.

6.These two cases are pending investigation, while the petitioner is in the Central Prison, Puzhal, Chennai, in connection with the above said case in RC No. 42/NIA/TLI/2022.

7.After that, three proceedings were initiated by and on behalf of him. He moved CrI.OP No.12229 of 2023



seeking quashment of the case in RC No.42/NIA/TLI/2022. Criminal Appeal No.678 of 2023 was filed under section 21 of the National Investigation Agencies Act, 2008 against the dismissal order passed by the Special Court in Crl.MP No.893 of 2023 seeking bail. The third case HCP No.1114 of 2023 filed by the mother of the petitioner to quash the order, dated 09/05/2023 of remand of the petitioner in connection with RC No.42/2022/NIA/TLI, dated 19.09.2022.

8.All those three matters were clubbed together and were heard by the Division Bench of this court namely the Principal Seat in Criminal OP No.12229 of 2023, Criminal Appeal No.678 of 2023 and HCP No.1114 of 2023. Common order was passed, on 01/08/2023 granting bail to this petitioner and dismissing the other matters.

9.What happened after the above said order is a matter of serious argument by the learned Senior counsel for the petitioner.

10.The learned Senior counsel appearing for the petitioner would submit that to frustrate the order of



bail, that was granted by the Division Bench of this court, attempts were made by the respondent herein to effect arrest in Crime No.277 of 2023. That failed allegedly because of the non-cooperation on the side of the petitioner, PT warrant request was made before the trial court. That was also issued in a lightning speed and about to be executed.

11. So far as Crime No.293 of 2023 is concerned, PT warrant request has been made, it was issued, on 04/08/2023.

12. Both the matters were heard and posted for orders.

13. On yesterday (07/08/2023), a clarification was made with the learned Additional Public Prosecutor with regard to the status of PT warrant in Crime No.293 of 2023, for which, he replied that because of engagement of the police in the VIP duty, the above said warrant could not be executed and it was handed to the Prison authorities.



14. When the matter was taken up for hearing, on 04/08/2023, the learned Additional Public Prosecutor would submit that CrI.OP(MD)No.14373 of 2023 has become infructuous, since the warrant was already executed and the petitioner was remanded to custody in Crime No.277 of 2023. According to him, the matter has become infructuous, since anticipatory bail petition has been filed on 03/08/2023 after the execution of PT warrant, on 02/08/2023.

15. At one point of time, the learned counsel appearing for the petitioner wanted to withdraw the petition, but the learned Senior counsel appearing for the petitioner wanted to argue the matter on merit, by bringing out the facts and circumstances, so that, this court can decide whether the matter has become infructuous or not. On that account, he was heard.

16. So far as CrI.OP(MD)No.14368 of 2023 is concerned, PT warrant is still under the execution stage. This is the factual background.



17. After hearing the learned Senior counsel appearing for the petitioner and the learned Additional Public Prosecutor, this court made clarification with the learned Additional Public Prosecutor as to whether the judicial custody in these two matters is required, in the light of the order of bail granted by the Division Bench of this Court made in Crl.OP No.12229 of 2023, dated 01/08/2023.

18. By taking into consideration of the development, this court wanted to pass orders immediately. The learned Additional Public Prosecutor would submit that with regard to the continuation of the judicial custody in the two matters are concerned, it is left to the discretion of the court. But however, informed the court that SLP preferred by the State against the bail granted by the Division Bench of this court was stayed by the Hon'ble Supreme Court.

19. The learned Senior counsel appearing for the petitioner verified the same and informed the Court that stay was granted by the Hon'ble Supreme Court against the bail order.



20. So with this, let us go to the issue as to whether the judicial custody in these two matters are required. The attempt that was made by the respondent in effecting the arrest in Crime No.277 of 2023 and making steps to execute the PT warrant in Crime No.293 of 2023 are also to be looked into.

21. I am not making any observation at this stage, since a detailed observation has been made by the Co-ordinate Bench of this court in Crl.OP(MD)No.14374 of 2023. The above said Crl.OP(MD)No.14374 of 2023 was moved by this petitioner seeking quashment of PT warrant issued by the Judicial Magistrate No.1, Madurai, in Crime No.277 of 2023. Noting that the above said order was already executed, that petition was dismissed 03/08/2023. On 03/08/2023 itself, these two petitions have been filed by this petitioner as noted above.

22. So in view of the above said development, request was made by the learned Senior counsel to convert the anticipatory bail petition to regular bail application. But, as mentioned above, the learned Additional Public Prosecutor would submit that since



anticipatory bail application was filed after the execution of the PT warrant, it need not be converted.

23. But, as observed by the Co-ordinate Bench of this court, an extraordinary situation has been created by the respondent in moving PT warrant request, after the bail that was granted by the Principal Seat to frustrate it. The extraordinary situation requires an extraordinary remedy.

24. On a similar circumstance, this court converted one anticipatory bail application to regular bail application. That was also allowed. By citing the above said situation, the learned Senior counsel for the petitioner made a request.

25. I am of the considered view that in view of the above said situation, even though, the anticipatory bail application has been filed in this crime number namely 277 of 2023, after the execution of the PT warrant, there is no bar for this court to convert the same into the regular bail application. So, Cr1.OP(MD)No.14373 of 2023 is ordered to be converted as regular bail application.



26. So far as CrI.OP(MD)No.14368 of 2023 is concerned, the above said PT warrant is still not executed, that will be treated as anticipatory bail.

27. Now, as mentioned above, in CrI.OP(MD)No.14374 of 2023, the observation that was made by the Co-ordinate Bench of this court is relevant. In that case, the following observation has been made.

"11. Further the offences allegedly to have committed by Mohamed Abbas in Crime No.277 of 2023 are under Sections 341, 352, 353, 201, 153(A)(1)(a), 506(i) and 506(ii) of IPC. These offences are not that serious which requires immediate arrest and detaining him in the prison without letting him and on bail."

28. The reason for making the above said observation is that the petitioner was arrested, on 09/05/2023 and this case was registered, on 09/07/2023, after a lapse of two months. Not only that till the petitioner was admitted to bail by the Division Bench of this court in Appeal No.678 of 2023, no steps were taken by the respondent to arrest him in this crime also and



subjecting him to custodial interrogation. The respondent waited till the disposal of the above said appeal. On the very next day of the order, immediate steps were taken by the respondent to cause him arrest or remand to judicial custody in this case. This was greatly commended by the Co-ordinate Bench of this court in the above said criminal original petition.

29. Since the respondent has not taken any steps to cause this petitioner to be arrested either at the time of making arrest in RC No.42/NIA/TLI/2022 or during the course of judicial custody in the above said matter, I am of the considered view that as noted above, no more judicial custody is required in this matter. So, he is entitled for bail in Crime No.277 of 2023.

30. In so far as Crime No.293 of 2023 is concerned, as stated above, the learned Additional Public Prosecutor has submitted that even though, PT warrant was issued by the concerned Judicial Magistrate, it could not be executed due to pre-engagement of police in the VIP duty. In the above said FIR, allegation has been made against him that he posted a message in the social media.



31.The learned Senior counsel appearing for the petitioner has also produced the copy of the above said post. According to him, bare reading of the above said post will not attract any of the ingredients of the offence under section 505(1) IPC. This was also cited as one of the reasons for the respondent to implicate this petitioner in the above said crime namely RC No. 42/NIA/TLI/2022.

32.Reading of the above said post does not even remotely indicate any intention on the part of the petitioner to commit the offence under section 505(1) IPC. Judicial custody in this matter is also not required.

33.Since, no steps were also taken like that of the above said case till 01/08/2023, now the attempt on the part of the respondent to cause arrest and judicial custody in this matter also does not require at all. On that account, anticipatory bail is granted to the Crime No.293 of 2023.



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34. In the result, CrI.OP(MD)No.14373 of 2023 is converted as regular bail application and **bail is granted to the petitioner on his executing 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 learned Judicial Magistrate No.I, Madurai. In so far as, CrI.OP(MD)No.14368 of 2023 is concerned, **anticipatory bail is granted**. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his production before the learned **Judicial Magistrate No.II, Madurai** and on his executing 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 learned Judicial Magistrate concerned in the execution of the PT warrant. Since the petitioner is in custody, no condition is imposed upon him.

Index:Yes/No
Internet:Yes/No
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08/08/2023



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To,

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- 1.The Judicial Magistrate No,1,
Madurai.
- 2.The Judicial Magistrate No.II,
Madurai.
- 3.The Inspector of Police,
Vilakkuthoon Police Station,
Madurai.
- 4.The Inspector of Police,
Tallakulam Police Station,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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