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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 15/09/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP(MD)No.14718 of 2023

and

CrI.MP(MD)No.12900 of 2023

M.Senthil @ Senthil Kumar

: Petitioner/ A2

Vs.

State rep. by its
The Sub-Inspector of Police,
Vaiyampatty Police Station,
Trichy District.
(Crime No.365 of 2023)

: Respondent

Raju

... Petitioner / Intervener / Defacto Complainant
in CrI MP(MD)No.12085 of 2023

For Petitioner : Mr.AN.Ramanathan, Advocate.

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

For Intervenor : Mr.M.Jegadeesh Pandian, Advocate.

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

PRAYER:-For Anticipatory Bail in Crime No.365 of 2023 on the file of the Respondent Police.



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ORDER: The Court made the following order:-

The petitioner, who is arrayed as A2 apprehends arrest at the hands of the respondent police for the offences punishable under sections 294(b) and 306 IPC, in Crime No.365 of 2023 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that he had three sons and one daughter. All of them got married. In the year 2005, his 2nd son by name Vadivel married one Rajeswari. They had two daughters. While so, his wife Rajeswari had extramarital affair with one Senthil, who is a close relative. In spite of warning, she used to make phone calls with him. On 29/07/2023, Senthil came to the village and had contacted with the Rajeshwari. So a complaint was lodged, on 29/07/2023 and CSR No.549 of 2023 was issued. During enquiry, Rajeswari appeared and gave an undertaking that she will not continue her affair the above said Senthil and agreed to live with her family members. In the meantime, on 03/08/2023 at about 10.00 am, the de-facto complainant's son Vadivel went to the parental house of his wife namely Rajeshwari. At that time, his wife and others abused and instigated him to commit suicide. Because of that, he consumed



pesticide. He was taken to Government Hospital, Manapparai, where he was declared to be dead. Upon the above said occurrence, a case in Crime No.365 of 2023 was registered for the offences stated above.

3. Seeking anticipatory bail, this criminal original petition has been filed by this petitioner, who is arrayed as A2.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would submit that as per the allegation made in the FIR, the petitioner was not present in the place of occurrence; there was issue between the husband and wife, for which, this petitioner has been wrongly included or implicated; Since he was not present in the place of occurrence, absolutely, he cannot be held responsible for the above said unfortunate event of commission of suicide.

6. It is also submitted that the petitioner is a driver in the Government Transport Corporation and if any arrest is made, then his job will be in trouble. He has also relied upon the following judgment in support of his contention:-

(1) Ramesh Kumar Vs. State of Chhattisgarh [(2001) 9 SCC



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*2.S.S.Chheena Vs. Vijay Kumar Mahajan and another [(2010)
12 SCC 190];*

*3.M.Arjunan Vs. State represented by its Inspector of Police
[(2019)3 SCC 315];*

*4.Kanchan Sharma Vs. State of Uttar Pradesh and another
[(2021)13 SCC 806]; and*

*5.Mariano Anto Bruno and another Vs. Inspector of Police
(2022 SCC OnLine SC 1387).*

for the purpose of argument that the ingredients of the offence under section 306 IPC are not made out against him.

7.Per contra, the learned counsel appearing for the intervenor/de-facto complainant and the learned Additional Public Prosecutor would submit that this petitioner is the root cause for the trouble between the husband and wife. He was



having extra-marital relationship with the wife of the deceased, who is A1 herein.

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Even at one point of time, a complaint was given against both of them, before the police station over the above said affairs and they appeared before the police station and gave a statement that they will not indulge in such sort of activities in future, but in-spite of that, the relationship continued. When that was objected by the deceased, his wife, insulted and humiliated. Since the petitioner is the root cause for the issue between the husband and wife, he is not entitled for the discretionary relief.

8.No doubt that serious allegation has been made against the petitioner stating that he was having extra marital affair with the wife of the deceased and because of that only, frequent trouble has arisen between the husband and wife.

9.No doubt that on the particular date of the occurrence, when the deceased was insulted and humiliated by his wife, this petitioner was not present. But the offence under section 306 IPC does not rest alone on the point of presence of a particular person. The accused need not be present in the place of occurrence. He did not also have any conversation with the deceased. But when he is responsible for creating circumstances, which drove person to commit suicide, then he will be held criminally liable.



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10. There can be no second opinion on the statement of law. The judgments cited by the petitioner speak about the basic principle of the offence under section 306 IPC. Whether the petitioner created circumstances by having extra marital affair with the wife of the deceased is the only matter, which arises for consideration by the Investigating Officer. So the contention on the part of the petitioner that absolutely, there was no intention on his part to see the deceased committed suicide is not at all acceptable.

11. Considering the fact and circumstances of the case, I am of the considered view that this is not a fittest case to exercise the discretionary power. All those cases cited by the petitioner were decided on their own factual circumstances. Moreover by considering the anticipatory bail only, the gravity of the offence will be decided in the above said cases. As mentioned above, the only point for consideration is, as noted above, whether he created circumstances.

12. In the result, this criminal original petition stands **dismissed**. Consequently CrI.MP(MD)No.12900 of 2023 is closed.

sd/-
15/09/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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To,

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1.The Sub Inspector of Police,
Vaiyampatti Police Station,
Trichy District.

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

+1 CC to MR.AN.RAMANATHAN, Advocate (SR-13777[I] dated 15/09/2023)

CrI.OP(MD)No.14718 of 2023
15/09/2023

MK/05.10.2023 7P 4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023