



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



Wednesday, the First day of March Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL.O.P(MD)No.21882 of 2022

Kalayarasan

...Petitioner/Sole accused

-vs-

State represented by
The Inspector of Police,
All Women Police Station-South,
Madurai City
(in Crime No. 56 of 2022)

...Respondent/Complainant

Sameera

...Intervening petitioner/
Defacto Complainant in
Crl.MP(MD).No.2633 of 2023

(Crime number is amended as per order of the court dated 4.1.2023 in Crl.M.p(MD)No.15669 of 2022 in Crl.O.P(MD)No.21882 of 2022)

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioner on anticipatory bail in the event of his arrest by the respondent Police with respect to Cr.No.56 of 2022.

For Petitioner : Mr.S.Mahendrapathy, Advocate

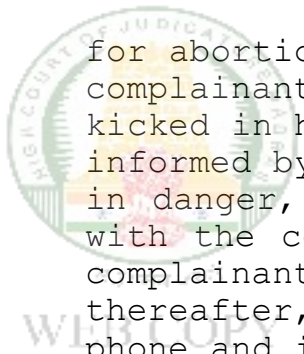
For Respondent : Mr.P.Kottai Chamy
Government Advocate (Crl.side)

For Intervenor : Mr.C.Susi Kumar, Advocate

ORDER

The petitioner, who apprehends arrest at the hands of the respondent Police for the offences punishable under Section 376(i), 313 and 506(i) IPC in Crime No.56 of 2022 on the file of the respondent Police, seeks anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant is that she was living separately with her female child. In that situation, she became acquainted with the petitioner and both of them were living together at Ellis Nagar, Madurai. Further, April 2022, the defacto- complainant told the petitioner that she was pregnant and the petitioner gave pills to the defacto- complainant

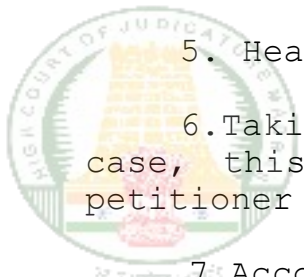


for abortion and as a result, fetus got aborted. Later, the complainant became pregnant again. On hearing this, the petitioner kicked in her stomach and she was taken into the hospital and was informed by the Doctors that the defacto-complainant's life would be in danger, if abortion was not performed. Hence, abortion was done with the consent of both of them. The petitioner left the defacto-complainant at home after being discharged from the hospital and thereafter, the defacto complainant contacted him several times by phone and in person, but he did not respond. He threatened her by saying that if she tells anyone about their relationship, he will spread it on social media and kill her. Hence, this case.

3.The learned counsel for the petitioner would submit that the petitioner is an innocent person and due to misunderstanding, a false complaint has been given. He would further submit that the defacto complainant is a married woman and the petitioner is also a married man and they got acquainted with each other and there was a consensual relationship and during such time the defacto complainant became pregnant and since the growth of fetus was not good, the petitioner had taken her to Iswarya Fertility Centre and it was diagnosed that there was missed abortion and on the advise of the Doctors, foetus was removed by suction and evacuation. Admittedly, abortion was done on 06.10.2022 and later due to subsequent misunderstanding, a false complaint has been given as if pregnancy got aborted due to the assault made by the petitioner. He would also submit that the petitioner is ready to abide by any condition that may be imposed by this Court and he shall co-operate with the respondent police for investigation. He would seek for anticipatory bail.

4.The learned Government Advocate (Crl.side) would submit that as per the allegation, the petitioner is stated to have assaulted the defacto complainant due to which pregnancy was aborted. He would further submit that the report has been received from Iswarya Fertility Centre and a statement has also been received from Dr.Laveena, M.B.B.S., D.G.O., wherein she has stated that the victim was admitted in the hospital on 03.10.2022 with the complaint of bleeding and abdominal pain and 04.10.2022 scan was done and there were findings of missed abortion and on 06.10.2022, suction and evacuation was done and foetus was removed. He would also submit that as per the prosecution at the relevant time, the victim had not reported of any assault on her. He would oppose for grant of anticipatory bail to the petitioner.

5. Mr.Susi Kumar, learned counsel for the intervenor/defacto complainant would submit that the petitioner and the defacto complainant were living in living together relationship during such time, the defacto complainant became pregnant and since she was assaulted by the petitioner, she suffered miscarriage and she was taken to the hospital and fetus was aborted. He would also submit that the petitioner is continuing with threat even thereafter and he would strongly object for grant of anticipatory bail to the petitioner.



5. Heard and perused the materials available on record.

6. Taking into consideration the facts and circumstances of the case, 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 Judicial Magistrate No.1, Madurai, 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 stay at Kanyakumari District and report before Kanyakumari police station everyday at 10.30 a.m for a period of two weeks and thereafter report before the respondent police 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 FIR can be registered under Section 229A IPC.

sd/-

01/03/2023

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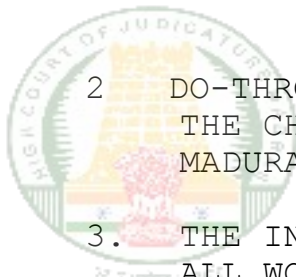
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CM

TO

1 THE JUDICIAL MAGISTRATE NO.1,
MADURAI.

<https://www.mhc.tn.gov.in/judis>



- 2 DO-THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.
3. THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION-SOUTH,
MADURAI CITY.
4. THE INSPECTOR OF POLICE
KANYAKUMARI POLICE STATION,
KANYAKUMARI.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- +1. CC TO M/S.MAHENDRAPATHY S ADVOCATE SR.NO.3166.

ORDER
IN
CRL OP(MD) No.21882 of 2022
Date :01/03/2023

SI/SKN/SAR-1/ (08.03.2023) 4P/ 7C