



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.03.2024

Pronounced on : 28.03.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.25653 of 2023
and
Crl.O.P.Nos.2148, 4723 & 5457 of 2024

1.Kalaiselvan

2.Shanmugasundaram

3.Prabakaran

... Petitioners / A3, A6 & A7 in Crl.O.P.No.25653 of 2023

1.S.Suresh

2.N.Ilara

... Petitioners / A11 & A12 in Crl.O.P.No.2148 of 2024

1.R.Baskar @ Baskaran

2.R.Rajmohan

... Petitioners / A8 & A9 in Crl.O.P.No.4723 of 2024

G.Kamalrajan

... Petitioner / A10 in Crl.O.P.No.5457 of 2024

Vs.

The State Rep. by

The Inspector of Police,

Vigilance and Anit-Corruption,

Tiruvarur District.

(Crime No.8 of 2021)

... Respondents in all Crl.O.Ps



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PRAYER: Criminal Original Petitions filed under Section 438 of Cr.P.C.,
prayed to enlarge the petitioners on anticipatory bail in the event of their
arrest in Spl.C.C.No.10 of 2023 on the file of the Chief Judicial Magistrate,
Thiruvavarur.

For Petitioners : Mr. D. Veerasekaran
in Crl.O.P.No.25653 of 2023

For Petitioners : Mr. A. Arunbabu,
in Crl.O.P.No.2148 of 2024

For Petitioners : Mr. M.P. Yuvaraj
in Crl.O.P.No.4723 of 2024

For Petitioner : Mr.K.M.Subramanian
in Crl.O.P.No.5457 of 2024

For Respondent : Mr. R. Vinothraja,
Govt. Advocate (Crl. Side)
in all Crl.O.Ps.

COMMON ORDER

A3, A6 and A7 have filed Crl.O.P.No.25653 of 2023. A11 and
A12 have filed Crl.O.P.No.2148 of 202. A8 and A9 have filed
Crl.O.P.No.4723 of 2014 and A10 has filed Crl.O.P.No.5457 of 2024. All the



petitioners seek anticipatory bail in Spl.C.C.No.10 of 2023 now pending before the learned Chief Judicial Magistrate, Thiruvavur.

2.Originally, FIR in Crime No.8 of 2021 had been registered by the respondent for the offences punishable under Sections 120(B), 420, 409, 468, 471 of IPC and Section 13(2) r/w Section 13(1)(a) of the Prevention of Corruption Act, 2018 and Section 109 of IPC. Subsequently, the provisions had been altered to Section 120(B), 420, 409, 468, 471 of IPC and Section 13(2) r/w Section 13(1)(c) of Prevention of Corruption Act, 1988 r/w Sections 109 IPC and 120(B), 420, 409, 468, 471 of IPC and Section 13(2) r/w Section 13(1)(a) and Section 12 of Prevention of Corruption Act, 1988.

3.The facts in brief are that, the petitioners are said to have extended benefits under the Pradhan Mantri Awas Yojana Scheme to non-beneficiaries and had obtained illegal gratification for the same. All the accused are Block Development Officers, Zonal Deputy Block Development Officers, Deputy Block Development Officers (Panchayat), Junior Engineer, Union Overseer of Mannargudi.



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4.It may not be proper on the part of this Court to enter into a detailed discussion on the facts of this case, since investigation has been completed and final report has been filed, which would indicate that it is the trial Court which will now have to frame charges and proceed to invite the prosecution to tender oral and documentary evidence to establish the charges.

5.The charge sheet had been taken cognizance as Spl.C.C.No.10 of 2023 by Chief Judicial Magistrate, Thiruvarur. In the charge sheet the petitioners herein have been categorized as absconding accused. During the course of investigation none of these petitioners have bothered to approach any Court of law seeking anticipatory bail. Additionally, as against A8, A9 and A10 NBW has also been issued.

6.All the learned counsel for the petitioners made a fervent plea that this Court should grant anticipatory bail to the petitioners herein. But however, once the petitioners are shown as absconding accused they have no other alternate but to surrender and subject themselves to judicial process before the learned Chief Judicial Magistrate, Thiruvarur.



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7.The learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2003) 8 SCC 77, *Bharat Chaudhary and Another Vs. State of Bihar and Another***, wherein the Hon'ble Supreme Court had examined the factors to be taken into consideration for grant of anticipatory bail. Among other factors, they are the gravity of the offence and need for custodial interrogation. It had been further held that the mere fact of taking cognizance of filing of charge sheet is not by itself a bar against grant of anticipatory bail.

8.The learned counsel for the petitioners also relied on the judgment of the Hon'ble Supreme Court reported in **(2010) 1 SCC 684, *Ravindra Saxena Vs. State of Rajasthan***, wherein again, the factors to be taken into consideration for grant of anticipatory bail had been examined and it had also been held that anticipatory bail can be granted any time so long the applicant has not been arrested.

9.Placing reliance on the aforementioned observations of the Hon'ble Supreme Court, the learned counsels sought anticipatory bail to the petitioners.



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10. But however, there is yet another judgment of the Hon'ble Supreme Court reported in **MANU/SC/0198/2024, Srikant Upadhyay and Ors. Vs. State of Bihar and Ors**, wherein, after examining whether anticipatory bail can be granted after charge sheet has been filed and particularly, when the accused are categorized as absconding accused and also when NBW has been issued, the Hon'ble Supreme Court had held as follows:

“24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the Rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the Accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an



*interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, **when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power.** Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. **But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.**”*

(Emphasis Supplied)

11. In view of the categorical pronouncement by the Hon'ble Supreme Court in the judgment referred *supra*, wherein it had been held that when warrant of arrest or proclamation had been issued, the applicant is not entitled to invoke extra-ordinary power of grant of anticipatory bail, I am not inclined to grant anticipatory bail to the petitioners. Accordingly, these Criminal Original Petitions stand dismissed.

28.03.2024

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Index: Yes / No

Neutral Citation: Yes / No

Speaking order : Yes / No



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C.V.KARTHIKEYAN, J.

smv

To

- 1.The Inspector of Police,
Vigilance and Anit-Corruption,
Tiruvarur District.
- 2.The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.25653 of 2023
and
Crl.O.P.Nos.2148, 4723 & 5457 of 2024

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