



Crl.O.P.No.28214 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM

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

Crl.O.P.No.28214 of 2024

P.Surularayanarasami

... Petitioner/Defacto Complainant

Vs.

1.N.Mohan Babu

...1st Respondent / Petitioner

2.The State Rep. by

The Inspector of Police,

City Crime Branch Police Station,

Crime No.Not Known / 2023.

... 2nd Respondent / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 439(2) r/w Section 482 of Cr.P.C., prayed to call for the records pertaining to the order in Crl.M.P.No.4845 of 2023 dated 17.10.2023 passed by the learned Principal District and Sessions Judge, Coimbatore, granting anticipatory bail to the 1st respondent and set aside the same by cancelling the anticipatory bail granted to the 1st respondent.

For Petitioner : Mr. John Sathyan, Senior Counsel
For Mr. S.B.Viswanathan



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For R1 : Mr.N. Anand
For R2 : Mr. R. Vinothraja
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been seeking to call for the records with respect to an order dated 17.10.2023 in Crl.M.P.No.4845 of 2023 passed by the Principal District and Sessions Court, Coimbatore, by which order the learned Principal District and Sessions Judge, had granted anticipatory bail to the 1st respondent herein.

2.It must be mentioned that originally, the 1st respondent had filed Crl.M.P.No.4845 of 2023 seeking anticipatory bail. He had mentioned that the offence was under Section 420 IPC, but however on that date, the FIR had not been registered. The learned Principal District and Sessions Judge, by order dated 08.09.2023 after hearing the contentions of all the parties had opined that it was a fit case to be referred to mediation and therefore, granted interim anticipatory bail to enable the petitioner to participate in the



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mediation process. Therefore, the matter was again listed before the learned Principal District and Sessions Judge, and by a further order dated 17.10.2023, after observing that the 1st respondent had complied with the directions to appear before the 2nd respondent, had granted anticipatory bail on the conditions already imposed.

3.This order is now questioned by the defacto complainant.

4.The learned Senior Counsel for the petitioner herein pointed out that on the date when both the interim anticipatory bail and anticipatory bail were granted, the Investigating Officer had not registered the FIR. It would therefore imply that the Investigating Officer had a wide range of offences under which he could register the FIR. The only offence mentioned in the petition seeking anticipatory bail was under Section 420 IPC. It is therefore contended by the learned Senior Counsel that the learned Principal District and Sessions Judge, had erred in granting interim anticipatory bail and anticipatory bail to the 1st respondent. It is stated that thereafter, it was only on 07.03.2024 that the FIR was registered under Sections 406 and 420 of IPC in Crime No.16 of 2024.



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5. According to the learned Senior Counsel, this itself would indicate that Section 406 IPC had not been incorporated in either one of the two orders, and therefore, the order now questioned should be interfered with by this Court.

6. The learned Government Advocate (Crl. Side) for the 2nd respondent had forwarded an observation made by the Constitutional Bench reported in **(2020) 5 SCC 1, Sushila Aggarwal Vs. State (NCT of Delhi)**, wherein, the Hon'ble Supreme had observed as follows:

“92.1. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.”

7. The Constitution Bench had been very clear in laying down the condition under which anticipatory bail could be granted, if FIR has not been registered and that is the facts must be clear and there must be reasonable basis for apprehending arrest.



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8.In the instant case, the very fact is FIR had been registered by incorporating Section 406 IPC shows that at the initial stage, the facts were not made clear to the learned Principal District and Sessions Judge. It was not an offence of 420 IPC simplicitor, but also under 406 IPC. There is also no discussion about apprehension of arrest made by the learned Principal District and Sessions Judge, but only that, since it is an offence under Section 420 IPC which is compoundable, the parties can be referred to mediation and therefore, to enable the petitioner to participate in mediation, interim anticipatory bail was granted. The concept of interim anticipatory bail is questionable in certain circumstances. The Court could grant protection from any coercive action but the term interim anticipatory bail is not found in the Code of Criminal Procedure.

9.In view of all these facts, I would set aside the order granting anticipatory bail to the petitioner herein, which would indicate that the order dated 17.10.2023 in Crl.M.P.No.4845 of 2023 granting anticipatory bail to the petitioner herein is hereby cancelled.



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10. But however, the 1st respondent had the advantage of the anticipatory bail having been granted to him. That should not be taken away by this Court. To that extent, a direction is given that the 1st respondent should file necessary application seeking anticipatory bail before the learned Principal District and Sessions Judge, Coimbatore on or before 05.04.2024. Till such time, let there not be any coercive action taken against the 1st respondent. But if he does not so file any application, the 2nd respondent is at liberty to proceed further in manner known to law. If ever any application is filed seeking anticipatory bail, the learned Principal District and Sessions Judge, may put the defacto complainant on notice and hear all the parties and take a considered decision.

11. Observing as above, this Criminal Original Petition stands allowed.

13.03.2024

smv

Index	: Yes / No
Neutral Citation	: Yes / No
Speaking Order	: Yes / No



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To,

- 1.The Principal District and Sessions Judge, Coimbatore.
2. The Inspector of Police,
City Crime Branch,
Coimbatore.
- 3.The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

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