



Crl.O.P.Nos.26 and 13 of 2024

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C.V.KARTHIKEYAN, J.

The Petitioner/A1 has filed an application in Crl.O.P.No.26 of 2024 and the Petitioner/A2 has filed an application in Crl.O.P.No.13 of 2024, both in same Crime No.30 of 2023 originally registered by the respondent police for the offences under Sections 376, 323 and 506(1) IPC and subsequently, altered to Sections 417 and 420 IPC. They seek anticipatory bail.

2. The defacto complainant had lodged a complaint that she was in relationship with the Accused A1 for about five months and that he had given a false promise to marry her and also, they both had physical relationship. It is also stated that he had given some tablets to abort the pregnancy but later he had refused to marry her. It is under those circumstances that the complaint was lodged and the First Information Report came to be registered.

3. When the matter came up for hearing, it was informed that the respondent had altered the offences from Sections 376, 323 and 506(1) IPC



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to Sections 417 and 420 IPC. It is stated that the said alteration was the result of the statement recorded under Section 164(5) of the Code of Criminal Procedure of the victim. The statement is interpretable in any manner but primarily, such interpretation will have to be done during the course of trial by the Court.

4. The Accused have now taken advantage of such downgrading of the offences by stating in Court that the Accused had no occasion to even touch the defacto complainant.

5. It is also contended by the learned counsel for the Petitioner/A2 that the Accused A2 is only a friend of the Accused A1 and he did not even remotely connected with the commission of the offences.

6. An affidavit had been filed by the Investigating Officer, wherein, it had been stated that on perusal of the statement recorded under Section 164(5) of the Code of Criminal Procedure, the respondent had come to a conclusion that the accused had sexual intercourse many times with the permission of the defacto complainant. But that statement is a finding, which



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should be given by the Court and not by the Investigating Officer. At the stage of gathering information, it is incumbent on the part of the Investigating Officer to file a final report in accordance with the materials gathered but not in accordance with the personal opinion of the Investigating Officer.

7. The statement recorded under Section 164(5) of the Code of Criminal Procedure had also been perused by this Court. At any rate, now that the alteration report had been filed before the jurisdictional Magistrate, namely, the Judicial Magistrate, Tiruporur, it is for that Court to now examine the alteration report filed and the nature of the investigation conducted.

8. This Court with respect to the grant of anticipatory bail, considering the fact that since the respondent themselves had come to a conclusion that there has been a consensual relationship but which has to be examined only during the course of trial, this Court is inclined to grant anticipatory bail to the Petitioners, on the basis of the statement made by the Investigating Officer, subject to the following conditions. Accordingly, the



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Petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before **the Judicial Magistrate, Thiruporur**, on condition that the petitioners shall execute a separate 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 conditions that :

[a] the petitioners 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 petitioners shall report before the respondent police daily at 10.30 a.m., until further orders.

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioners shall not abscond either during investigation or trial.



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[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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.

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