



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.07.2024

Delivered on : 29.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL.M.P.(MD)No.6574 of 2024

in

CRL.O.P.(MD). No.7017 of 2024

B.Kumari

... Petitioner/Defacto Complainant

Vs.

1.The State Represented by,
The Inspector of Police,
Manimuthar Police Station,
Tirunelveli District.

... 1st Respondent/Respondent

2.Mani

... 2nd Respondent/Petitioner/Accused No.2

PRAYER :-

The petition under Section 439(2) of Cr.P.C., has been filed to cancel the Anticipatory Bail order dated 29.05.2024, granted in Crl.O.P.(MD)No.7017 of 2024 in Crime No.37 of 2024, on the file of the second respondent.

For Petitioner : Mr.S.Satheesh Kumar, Advocate

For 1st Respondent : Mr.S.Ravi,
Additional Public Prosecutor

For 2nd Respondent : Mr.S.Mahendrapathy, Advocate



CRL.M.P.(MD)No.6574 of 2024

ORDER

WEB COPY

A Criminal Miscellaneous Petition in Crl.M.P.(MD)No.6574 of 2024, came to be filed by the petitioner/defacto complainant, seeking to cancel the anticipatory bail order passed by this Court on 29.05.2024, in Crl.O.P.(MD)No.7017 of 2024, in Crime No.37 of 2024, of Manimuttaru Police Station.

2.The claim of the defacto complainant is that, the first accused in Crime No.37 of 2024 is the cousin brother of the complainant, who is a practicing Advocate before this Court and the second accused is his father. Due to a pre-existing civil dispute between the defacto complainant's family and that of the accused, the first accused had played a key role in intimidating his father to attack the defacto complainant along with his father. Resultantly, the first accused had brutally attacked the defacto complainant and the same had been photographed and videographed by the minor daughter of the defacto complainant. While doing so, the second accused had behaved in an abusive manner by removing his dhoti, which would attract the offence under Section 11 of the Protection of Children from Sexual Offences Act, 2012 and the first accused by his influence as a practicing Lawyer managed the jurisdictional Police from registering a case excluding the provisions of Protection of Children from Sexual Offences Act, 2012. Hence, the defacto complainant had made



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

a representation to the Superintendent of Police on 21.03.2024. Since there was no response from the Superintendent of Police, the defacto complainant was forced to file Crl.O.P.(MD)No.5824 of 2024 to transfer the investigation to any other investigating agency and the matter was disposed of on 17.04.2024, by this Court and the operative portion of the same is extracted as follows:-

“3.Considering the aforesaid submissions made by the petitioner, this Court hereby directs the first respondent/Superintendent of Police, Tirunelveli District, to take a call on this issue and to find out whether the investigation is being done in a proper manner. If there is any violation, the first respondent is directed to transfer the investigation of this case from the file of the 2nd respondent to any other investigating agency.”

3.In the meanwhile, an Anticipatory Bail Application was filed by the first accused in Crl.M.P.No.2856 of 2024 before the learned Principal Sessions Judge, at Tirunelveli and on producing the order passed by this Court in Crl.O.P.(MD) No.5824 of 2024 before the aforesaid Court, the Anticipatory Bail Application came to be dismissed on 30.04.2024. Subsequently, by virtue of the order passed by this Court in Crl.O.P.(MD)No.5824 of 2024 and the First Information Report in Crime No.37 of 2024 on the file of the jurisdictional Police came to be altered from Sections



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

294(a), 294(b), 324, 307, 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998, to one under Sections 294(a), 294(b), 324, 307, 506 (ii) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and Section 12 r/w. 11(1) and 17 r/w. 12 of Protection of Children from Sexual Offences Act, 2012. However, suppressing the alteration of the FIR and the reasons for the cancellation of the earlier anticipatory bail, an Application for anticipatory bail was made by the first accused before this Court. Neither the order passed by this Court in CrI.O.P.(MD)No.5824 of 2024 or the alteration report filed by the investigating officer before the jurisdictional Magistrate on 17.05.2024, was brought to the knowledge of this Court either by the petitioner in the Anticipatory Bail Application, that is, by the counsel for the first accused or by the prosecution.

4.However, the learned Government Advocate (Criminal) appearing for the respondent Police submitted that the injured was already been discharged from the hospital. Based on the submission made by either parties, this Court was pleased to allow the Application for Anticipatory Bail in CrI.O.P.(MD)No.7017 of 2024, by order dated 29.05.2024 with certain conditions. Requiring this Court to cancel the aforesaid order of anticipatory bail passed in favour of the first accused, this Application came to be filed by the defacto complainant on 24.07.2024.



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

5. When the matter was taken up for hearing, the learned counsel for the petitioner/defacto complainant categorically submitted that the minor daughter of the defacto complainant has herself had videographed both the accused involving in certain physical activities which would attract the offences under the POCSO Act, 2012. In view of the same, this Court directed the learned Government Advocate to produce the video along with the complete file regarding alteration in the FIR relating to the Crl.O.P.(MD)No.7017 of 2024 and posted the matter to 26.07.2024. On 26.07.2024, the Investigating Officer along with the learned Government Advocate produced the complete file of the alteration report in Crime No.37 of 2024, on the file of Ambasamudram Police Station along with the video which was claimed to have been taken by the minor girl/victim.

6. On careful perusal of the entire materials available before me, this Court found that on the complaint of the defacto complainant, namely, Kumari, aged 33, wife of one Bala Subramanian on 17.03.2024, at about 20.30 hours, a crime in Crime No.37 of 2024 came to be registered as against both the accused under sections 294(a), 294(b), 324, 307, 506(ii) IPC and 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998. Pursuant to the order passed by this Court in Crl.O.P.(MD)



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

No.5824 of 2024, which was filed by the defacto complainant requiring this Court to transfer the investigation to any other investigating agency, it is found that the Investigating Officer had plunged into action and thereafter, altered the FIR in First Information Report in Crime No.37 of 2024 from Sections 294(a), 294(b), 324, 307, 506 (ii) IPC and section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 to one under Sections 294(a), 294(b), 324, 307, 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 12 r/w. 11(1) and 17 r/w. 12 of Protection of Children from Sexual Offences Act, 2012. Such an alteration report was filed by the investigating officer before the jurisdictional Magistrate Court on 17.05.2024. Following which, the learned Judicial Magistrate, at Ambasamuthram, in Criminal Miscellaneous Petition No.1334 of 2024 had issued summons to the victim minor girl on 16.05.2024, requiring her to appear before the jurisdictional Magistrate Court on 22.05.2024. Following which, the minor victim girl was produced by her mother/defacto complainant on 22.05.2024 before the learned Judicial Magistrate, at Ambasamuthram and the learned Judicial Magistrate in an in-camera proceeding and had obtained the Statement of the minor victim girl under Section 164 of the Code of Criminal Procedure, 1908 and the operative portion of the same is extracted as follows:-



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

மாதிக்கப்பட்ட சிறுமி [REDACTED] பிள்ளைகளால் பழிவு செய்வதற்குப் பிழைத்தது மேல் 3.00 PM
17.03.2024ம் தேதி காலை 3.30 மணிக்கு மணி மய்யசவுன், தாய்மொ தாத்தாவன்
விட்டுக்கு வந்து கத்திட்டு கிழித்தான். என்னினு என் அம்மா பாதிக போனாங்க என்
அம்மா மூஞ்சில் கயிற்று அடிச்ச என் அம்மாவை வெட்டிட்டாங்க என் அம்மா அடி வீசுச்சு
எடுத்தாரு என் அம்மாவை அடக்கி கடிச்ச தாய்மொ விடக்கிட்டாங்க நானும் போயின
விடியா எடுத்தேன் அம்மா தாய்மொ தாத்தா தோஷங்க கழட்ட என்ட்ட காலிச்சி நல்ல
சீடயா எடுன்னு சொன்னாங்க அம்மா மணி மய்ய நல்ல காட்டு அப்ப குடியிடு
பாத்துட்டு எவட்டுன்னு சொன்னாங்க என் அம்மாவை அடிச்சிட்டு வெட்டிட்டாங்க
பொய்யொத்தாங்க சொன்னாங்க
மாதிக்கப்பட்ட சிறுமி [REDACTED] வக்கிரமசவுன் பழிவு செய்வதற்கு மேல் 3.00 PM
மேற்படி மாதிக்கப்பட்ட சிறுமி [REDACTED] வக்கிரமசவுன் பழிவு செய்வதற்கு மேல் 3.00 PM
நீதிமன்றத்தில் பழிவு செய்வதற்கு மாதிக்கப்பட்ட சிறுமி வக்கிரமசவுன் பழிவு செய்வதற்கு
மேல் 3.00 PM மாதிக்கப்பட்ட சிறுமி [REDACTED] வக்கிரமசவுன் பழிவு செய்வதற்கு
வக்கிரமசவுன் பழிவு செய்வதற்கு மாதிக்கப்பட்ட சிறுமி [REDACTED] வக்கிரமசவுன் பழிவு செய்வதற்கு

17.03.2024

[Signature]



CRL.M.P.(MD)No.6574 of 2024

too indecently removing his dhoti and exposing his private parts to a minor girl
emphatically directing her to videograph his private parts daringly without minding
the consequence of his action, consciously, that too, in the presence of a minor girl
cannot be taken easily by this Court, seriously considering the
psychological/physiological implication of such an act on the victim minor girl. The
Protection of Children from Sexual Offences Act, 2012, ensures the welfare and
safety of children irrespective of their gender. Section 11 of the aforesaid Act defines
sexual harassment and the same is extracted as follows:-

“11. Sexual harassment.—A person is said to commit sexual
harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or
exhibits any object or part of body with the intention that such word or
sound shall be heard, or such gesture or object or part of body shall be
seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is
seen by such person or any other person; or

(iii) shows any object to a child in any form or media for
pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor. Explanation.— Any question which involves “sexual intent” shall be a question of fact.”

8.No doubt, the act of the accused which is clearly videographed by the victim herself would clearly attract the offence under Section 11, that is, sexual harassment by exposing his private part to a minor girl child blatantly and wantonly with an intention to harass the defacto complainant and the victim child. The Constitution of India under the Directive Principles of State Policy under Article 39(f), mandates to ensure that the freedom and dignity of every child is protected against exploitation. Sexual harassment of minor children should be dealt with iron hands and the offenders should be made to realize the gravity of exploitation, which they had caused on the mind and psychology of the minor child.

9.This case is a clear case where the material facts were concealed wantonly and the attitude of the petitioner in the Anticipatory Bail Application in Crl.O.P. (MD)No.7017 of 2024 cannot be taken easily by this Court. Since the crime in Crime



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

No.37 of 2024 was registered as early as on 17.03.2024 and the alteration came to be made on 17.05.2024, the Provisions of the erstwhile Criminal Laws would be applicable to this case. The Hon'ble Apex Court in the case of *Susheela Agarwal and others vs state (NCT of Delhi) and another*, by its judgement, dated 29.01.2020, has affirmed that the discretion of grant or cancellation of bail can be exercised by the Court which granted the bail either at the instance of the accused, the public prosecutor or the complainant, on finding new material or circumstances at any point of time. The Hon'ble Apex Court in yet another case in *Miss.X vs the State of Maharashtra and another* reported in 2023 LiveLaw Supreme Court 205, has dealt with the case of anticipatory bail and the relevant portion of the same is extracted as follows:-

“20. As can be discerned from the observations made in *Pradeep Ram (supra)*, addition of a serious offence can be a circumstance where a Court can direct that the accused be arrested and committed to custody even though an order of bail was earlier granted in his favour in respect of the offences with which he was charged when his application for bail was considered and a favourable order was passed. The recourse available to an accused in a situation where after grant of bail, further cognizable and non-bailable offences are added to the FIR, is for him to surrender and



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

apply afresh for bail in respect of the newly added offences. The investigating agency is also entitled to move the Court for seeking the custody of the accused by invoking the provisions of 437(5)33 and 439(2)34 Cr.P.C., falling under Chapter XXXVIII of the Statute that deals with provisions relating to bails and bonds. On such an application being moved, the Court that may have released the accused on bail or the Appellate Court/superior Court in exercise of special powers conferred on it, can direct a person who has been released on bail earlier, to be arrested and taken into custody.”

10.No doubt, an anticipatory bail once granted can be cancelled by the same Court on establishment of change in circumstances and alteration of the offences involved. Considering the nature of the offence, the role of the accused and the likelihood of the first accused as a lawyer, in influencing the course of investigation/tampering the evidence, this Court is of the considered view that the anticipatory bail granted to the accused No.2, by order dated 29.05.2024, should necessarily be cancelled.

11.Coming back to the facts of the instant case, it is not in dispute that when the second accused filed an Application for Anticipatory Bail before this Court, the



CRL.M.P.(MD)No.6574 of 2024

WEB COPY

offences mentioned in the First Information Report, where under Sections 294(a), 294(b), 324, 307, 506(ii) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. However, when the Application for Anticipatory Bail was taken up for hearing on 29.05.2024, in between much of water had flown by altering the First Information Report by inclusion of offences under Section 12 r/w. 11(1) and 17 r/w. 12 of POCSO Act, 2012, along with the already existing offences. Even the jurisdictional Magistrate had taken Statement of the victim under Section 164 of the Code of Criminal Procedure, 1973, in between. Despite the same, when the matter was taken up for hearing on 29.05.2024, neither the prosecution nor the learned counsel for the second accused, that is, the petitioner in CrI.O.P.(MD) No.7017 of 2024, made it explicit before this Court as to what had transpired in between the filing of the petition for Anticipatory Bail and when the matter came up for admission on 29.05.2024. Seriously, viewing the suppression of material facts before this Court, both by the prosecution and by the petitioner in CrI.O.P.(MD) No.7017 of 2024, the Anticipatory Bail granted on 25.05.2024, is hereby cancelled. I further hasten to add that this Court has not expressed any opinion on the merits of the case. The Investigating Officer is further directed to file the charge sheet within a period of 2 months from the date of receipt of copy of this order.

12. Accordingly, CrI.M.P.(MD)No.6574 of 2024 in CrI.O.P.(MD)No.7017 of 2024



CRL.M.P.(MD)No.6574 of 2024

is hereby allowed. The respondent Police is directed to take further action as per law.

WEB COPY

sd/-
29/10/2024

/ TRUE COPY /

/11/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

MRN

To

- 1.The Judicial Magistrate No.III,
Tirunelveli.
- 2.Do through the Chief Judicial Magistrate,
Tirunelveli District.
- 3.The Inspector of Police,
Manimuthar Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD) No.6574 of 2024
IN
CRL OP(MD) No.7017 of 2024
Date :29/10/2024



CRL.M.P.(MD)No.6574 of 2024

ED/VR /SAR- (22/11/2024) 14P / 5C

WEB COPY

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