



Crl.O.P.(MD)No.12368 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.OP(MD)No.12368 of 2024

Durai Murugan @ Sattai Durai Murugan,

... Petitioner

Vs

1.The Deputy Superintendent of Police,
Cyber Crime Police,
Trichy.

2.The Inspector of Police,
Cyber Crime Police(Ccd Iii),
Trichy,
Crime No.34/2024.

3.A.K.Arun

...Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the 1st Additional District Judge(PCR), Tiruchirappalli to accept the surrender of the petitioner and to consider his bail application on the same day of his surrender in Crime No. 34/2024 on the file of the 2nd respondent police.

For Petitioner : Mr.V.Kathirvelu, Senior Counsel for
Mr.T.Karthik Raja.

For R1 & R2 : Mr.M.Sakthi Kumar
Government Advocate (Crl.side)



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ORDER

The petitioner/accused in Crime No.24 of 2024, which is pending on the file of the second respondent police has approached this Court, seeking a direction to the learned I Additional District Judge(PCR), Tiruchirappalli to accept his surrender and to consider his bail application on the same day of his surrender.

2.The learned senior counsel appearing for the petitioner submits that the petitioner is a propaganda secretary of a registered political party and during the election campaign conducted by his party, the petitioner has delivered a speech in a public meeting has been projected with a criminal colour and a criminal case has been registered in Crime No.34 of 2024, for the offence under Sections 111(1)(2), 192, 196(1), 353 of the Bharathiya Nyaya Sanhita, 2023 and under Section 3(1) (r) and 3(1)(s) of SC/ST (POA) Act, 1989. The complaint has been lodged by the third respondent that he has noticed a video in Youtube, wherein, this petitioner has made certain derogatory remarks as against the Ex-Chief Minister of Tamil Nadu and abused him by referring to his



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community. Since the third respondent belongs to the scheduled caste, he felt that he has been insulted by the remarks. Therefore, he has lodged a complaint, based on which, the second respondent has registered the case. Since a case has been registered for the offence under SC/ST (POA) Act, 1989, the petitioner is not in a position to move an application for anticipatory bail, in view of the bar under Section 18 of SC/ST (POA) Act, 1989. Therefore, this petitioner has approached this Court, seeking a direction to the learned I Additional District Judge(PCR), Tiruchirappalli to accept his surrender and to consider his bail application on the same day of his surrender.

3.The learned senior counsel further submits that the respondent police has arrested the petitioner on 11.07.2024 and also produced him before the I Additional District Court (PCR,Trichy) for remand on 11.07.2024, at about 8.30 p.m. The learned Additional District Judge after perusing the materials found that no offence has been made out as against this petitioner and accordingly, rejected the request of the respondent police for remand. However, the respondent police is attempting to arrest this petitioner again in connection with this case and



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in the event, if he is arrested, he would be foisted with some other cases.

In order to avoid the same, the petitioner is now inclined to surrender before the Court. However, in view of the provision under Section 18 of the Act, the petitioner seeks a direction. The learned senior counsel further submits that the petitioner has now come forward to file an affidavit of undertaking before this Court that he will not make any such statements in future.

4.Mr.M.Sakthi Kumar, learned Government Advocate (Crl.side), who takes notice for the respondents 1 and 2 submits that before passing an order, an opportunity be provided to the third respondent. He also submits that this petitioner is in the habit of making allegations as against the leaders of the State, as it is generating very good revenue through his Youtube channel. According to him, some people are interested in watching Youtube channels of hate speeches and upon the viewers, the Youtube is paying the Youtubers, like petitioner. In order to attract more viewers and to earn more money, several Youtubers like petitioner are making false and defamatory statements.



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5.He further submits this petitioner has intentionally made this statement by degrading the community of the third respondent, which needs to be addressed only by registering a case and therefore, the respondent police has rightly registered the case as against this petitioner.

6.This Court, considered the rival submissions made.

7.The petitioner claims that he is the propaganda secretary of a political party. The allegation as against the petitioner is that he has delivered a speech in a public meeting pertaining to his political party, wherein, he has made certain derogatory remarks as against the Ex-Chief Minister of Tamil Nadu by referring to a community, which is termed as scheduled caste. Since the third respondent also belongs to the same community, he has lodged a complaint, based on which, a case has been registered as against this petitioner. The petitioner, who is claiming to be the propaganda Secretary of a political party, must have certain responsibility and be cautious, while delivering a speech in public. This is not the first time, the petitioner has involved in such an activity. In



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fact, this petitioner has made certain derogatory remarks as against the Former Chief Minister and also given an undertaking before this Court, in his earlier bail application in Crl.OP(MD) No.9381 of 2021 that he will not indulge in such activity anymore. After giving undertaking before this Court, he is repeating the same offence. Therefore, the contentions of the learned Government Advocate (Crl.side) cannot be easily brushed aside.

8.Freedom of speech and expression is guaranteed to every citizen of this Country under Article 19(1)(a) of the Constitution of India. However, this right guaranteed under Article 19(1)(a) of the Constitution of India is not absolute, subject to certain restrictions, which are listed under Article 19(2) of the Constitution of India, such as incitement to an offence, defamation, Obscenity, Incitement to communal violence etc., The Honourable Supreme Court has also held that these restrictions are necessary to protect the rights of others and to maintain public order. In the case of R.K. Suresh Vs.the State of Karnataka, it was held that hate speech is not protected by the right to freedom of speech and expression and can be punished under the Law.



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The Honourable Supreme Court has also held that the Government has a duty to take steps to prevent hate speech and to prevent those, who indulge in it. Hate speech may be in any form of expression through which, speakers intend to vilify, humiliate, or incite hatred against a group or a class of persons on the basis of race, religion, skin colour, sexual identity, gender identity, ethnicity, disability, or national origin.

9.The learned senior counsel appearing for the petitioner submits that he had advised his client and produced an affidavit of undertaking sworn by the petitioner herein once again reiterating that he will not indulge in such offence in future. In paragraph No.7 of his undertaking affidavit, he stated as under:-

“7.I humbly submit that without prejudice to my case in the instant FIR No.34/2024, I hereby undertakes, swear and affirm to this Hon'ble Court that I won't give any speech containing any unparliamentary words or whatsoever, either in Youtube or in Public meeting, in any manner that would promote any kind of provocation or enmity against any individual or group of persons belonging to SC/ST community or any particular class of people.”



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10.In this case, the petitioner has used a word, which according to the prosecution refers to a community of scheduled caste. However, the petitioner has not made any derogatory statement defaming the community. His intention appears to be as against the former Chief Minister. Criticizing the Government and its policies would certainly come under the freedom of speech and right to expression and the speakers have to maintain their Lakshman Rekha by not converting it as a hate speech. As stated earlier, the Honourable Supreme Court has held that hate speech can be punished under other laws, such as the Bharatiya Nyaya Sanhita, which criminalises acts of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and acts of promoting hatred and ill-will between different groups. It was also held that the Government has a duty to take steps to prevent hate speech and to punish those, who indulge in it.

11.In fact, this petitioner has filed a similar affidavit in Crl.OP(MD) No.9381 of 2021 that he would not release such videos, promoting enmity and affecting the sentiments of any one in future.



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However, within a month from his sworn statement, the petitioner has violated. Therefore, the bail granted to this petitioner was cancelled by this Court in Crl.MP(MD) No.9457 of 2021 in Crl.OP(MD) No.9381 of 2021. Even then, the petitioner has not changed his attitude. Probably, it appears to be his profession. The petitioner has to realize that apart from such hate speeches, there are so many constructive things can be done by a political leader.

12.In this case, the allegation as against this petitioner is that he has used the name of the community of the third respondent. Reading of the First Information Report does not disclose that it has been made intentionally, degrading his community. This nature of statement does not require a custodial interrogation. In view of the above, this Court is inclined to allow this petition.

13.Accordingly, this Criminal Original Petition is allowed with a direction to the petitioner to surrender within a period of two weeks from today before the learned Judge, I Additional District Court,



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(PCR), Trichy and the learned Judge of the Special Court is directed to entertain the bail applications if any filed by the petitioner on the same day. The Public Prosecutor concerned is expected to be in the Court and he can very well get instructions with the available scientific modes. The bail application in any event shall be disposed on merits on the same day.

01.08.2024

NCC : Yes/No

Index : Yes/No

Internet:Yes

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Note: Issue order copy on **06.08.2024.**



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To
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- 2.The Deputy Superintendent of Police,
Cyber Crime Police,
Trichy.
- 3.The Inspector of Police,
Cyber Crime Police(Ccd Iii),
Trichy,
Crime No.34/2024.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J

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Order made in
Crl.OP(MD)No.12368 of 2024

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