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Crl.O.P.No.31260 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.01.2025**

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CRL OP NO. 31260 of 2024

G.Nithish Udupa

Petitioner(s)

Vs

The State Rep by
The Inspector of Police,
W-4, AWPS Kilpauk,
Chennai.
Cr.No.7 of 2024

Respondent(s)

For Petitioner(s):

R.C.Paul Kanagaraj

For Respondent(s):

Dr.C.E.Pratap
Government Advocate (Crl.Side)

For Intervenor:

Mr.M.Mohammed Riyaz

ORDER

Apprehending arrest in connection with Crime No.7 of 2024 registered for the offences punishable under Sections 417, 376 of IPC and Section 4 of Women Harassment Act, the present petition has been filed by the petitioner seeking anticipatory bail.



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2. The case of the prosecution is that on 21.11.2024, the defacto complainant lodged a complaint stating that she had a love affair with the petitioner from her school days since 2015 and they had a close relationship; that in the year 2017, the defacto complainant's classmates called the petitioner and the defacto complainant for a party and thereafter, their relationship became stronger and on the promise of marriage, the petitioner had sexual intercourse with the defacto complainant on several occasions; that during the 2nd week of October 2019, due to an illness, the defacto complainant lost the vision in her right eye and also thereafter, the petitioner had sexual intercourse with the defacto complainant and took pictures of the defacto complainant in a compromising position; and that on 14.11.2024, when the defacto complainant asked the petitioner and his parents to get the petitioner married to the defacto complainant, they had informed her that they were looking for a rich girl. Thereafter, the defacto complainant was threatened with dire consequences.

3. Mr.R.C.Paul Kanagaraj, learned counsel for the petitioner would submit that admittedly, it is a case of consensual relationship, which lasted



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for a very long period of time; that notice under Section 41(A) Cr.P.C. was issued to the defacto complainant on 23.11.2024 and in compliance, she had appeared before the respondent and an enquiry was also conducted; and that the mobile phone of the petitioner has also been handed over to the respondent for the purpose of investigation and in any case, the custodial interrogation of the petitioner is not required for the purpose of investigation and he prayed for anticipatory bail.

4. Mr.M.Mohammed Riyaz, learned counsel for the Intervenor would submit that though there was a long period of relationship, the first instance of sexual intercourse was committed when the victim was aged 17 years and therefore, it is not only a case under Section 376, but also a case of cheating.

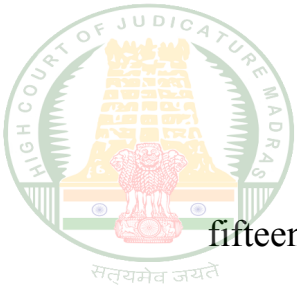
5. The learned Government Advocate (Crl.Side) for the respondent reiterated the said submission and produced a copy of the statement of the victim recorded under Section 183 of BNSS, which shows that the first occurrence took place when the victim was 17 years old.



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6. Admittedly, the petitioner and the victim had a long period of relationship, which started in the year 2015. The allegations in the complaint would show that the victim was neither gullible or naive and she was aware of the consequences of the act. The sexual intercourse had not happened only on the false promise of marriage. *Prima facie*, in any case, the question as to whether the petitioner committed rape or the offence of cheating had to be decided in the trial. Neither the learned counsel for the Intervenor nor the learned Government Advocate (Crl.Side) are able to point out as to why the custodial interrogation of the petitioner is required for the purpose of investigation. It is also admitted that the phone of the petitioner was handed over to the respondent; and that the petitioner had participated in the enquiry conducted by the respondent.

7. In such circumstances, this Court is of the view that the custodial interrogation of the petitioner is not required for the purpose of investigation and this Court is inclined to grant anticipatory bail to the petitioner with certain conditions and accordingly, he is ordered to be released on bail in the event of arrest or on his appearance within a period of



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fifteen days from the date of receipt of a copy of this order, before the

Additional Mahila Court, Egmore, Chennai, on condition that the petitioner shall execute a 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 condition that:

[a] the petitioner 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 petitioner shall report before the respondent police twice a week i.e on every Monday and Thursday at 10.30 a.m for a period until further orders.

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

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

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



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conditions have been imposed and the petitioner 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 abscond, a fresh FIR can be registered under Section 269 of B.N.S.

28.01.2025
(2/2)

Anu

To

1.The Additional Mahila Court, Egmore,
Chennai.

2. TheThe Inspector of Police,
W-4, AWPS Kilpauk,
Chennai.

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