



CRL OP(MD). No.14648 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23.10.2025

PRESENT

THE HONOURABLE MRS JUSTICE S.SRIMATHY

CRL OP(MD). No.14648 of 2025

1.Dr.M.Asaithambi
2.Dr.R.N.Maya

... Petitioners/Accused

Vs

1. The State of Tamil Nadu,
Rep By the Inspector of Police,
All Women Police Station,
Andipatti Taluk,
(Crime No.30 of 2025)

2. Pandiyammal

... Respondent/Complainant

R2 is impleaded as per the order of this Court
dated 08.09.2025 in Crl.OP(MD).No.14648 of 2025.

For Petitioners : Mr.Niranjana S.Kumar
For Mr.R.N.Kasi Vishwanathan
Advocate.

For Respondent : M/s.M.Aasha,
Government Advocate (Crl.Side)

For Intervenor : Mr.S.Muniyandi



CRL OP(MD). No.14648 of 2025

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PETITION FOR ANTICIPATORY BAIL Under Sec.482 of BNSS

PRAYER :- For Anticipatory Bail in Cr.No.30 of 2025 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 9(m) and Section 10 of Protection of Children From Sexual Offences Act, 2012, Section 296(b), 115(2), 351(2) BNS 2023, Section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in Crime No.30 of 2025 on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is that the petitioners along with other accused persons had verbally abused using filthy language and molested the victim by putting the hand on her cheek, breasts, hip, etc. Further, the 2nd petitioner/3rd accused abused the defacto complainant and her mother both verbally and physically by calling the caste. Hence, the complaint.



CRL OP(MD). No.14648 of 2025

3. The learned counsel appearing for the petitioners submitted that the petitioners are innocent and they are no way connected with the alleged occurrence as stated by the prosecution. In fact, SC/ST Act will not apply in this case based on the counter-affidavit filed by the respondent police. He further submitted that the petitioners are ready and willing to abide by any conditions that may be imposed by this Court. Hence, he seeks anticipatory bail to the petitioners.

4. The learned Government Advocate (Crl. side) submitted that petitioners have committed the offence, especially offence under POCSO and SC/ST Act, hence the petitioners are not entitled to anticipatory bail. Further there is bar in granting anticipatory bail if the offence committed under SC/ST Act. Further stated there is no previous case pending against the petitioners. However, she opposed to grant anticipatory bail to the petitioners.

5. The Learned Counsel appearing for the defacto complainant vehemently opposed for granting anticipatory bail since the petitioners have committed offence under SC/ST Act and there is a bar for granting



anticipatory bail.

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6. It is seen that the petitioners are Doctors by profession and they have land wherein they are doing farming also. The victim girl went to the petitioners' grape farm and took some grapes. At that time, the petitioners abused the victim girl and subsequently, the mother of the victim girl along with others, went to the petitioners' house and damaged the car and intimidated the petitioners. Further, the 2nd petitioner had given a complaint before the Rajathani Police Station and the same was registered in Crime No.207 of 2025 against the defacto complainant and other. The defacto complainant has given a complaint before the respondent police against the petitioners and others and the same was registered in Crime No.30 of 2025 under IPC, POSCO and SC/ST Act. Since the FIR has included the offence under SC/ST Act, this Court had issued notice to the defacto complainant who had appeared through the Counsel and also filed counter affidavit.

7. The Learned Counsel appearing for the petitioner that in the counter affidavit the defacto complainant had taken inconsistent stand



and the same would prove that the alleged offence never happened and relied on the following contents of the counter affidavit:

"The real fact is that the accused persons committed the sexual atrocities on 24.08.2025 at about nearly 03.00 p.m. and thereby my daughter informed about the atrocities committed by the accused persons at evening hours. In the meantime, my brother went to the accused house and questioned about the atrocities committed by them. The accused persons have not properly given reply to my village people. Hence, I went to the Rajathani Police Station to take necessary action as against the accused person at evening hours. The Rajathani police have not taken any steps as against the accused persons and thereby I approached before the Deputy Superintendent of Police, Andipatti at evening hours on the same day."

8. In the FIR, it is stated that the victim's mother went to the petitioners' place, but in the counter affidavit it is stated that the brother of the victim went to the petitioner's house. There is no such contention that the victim's mother went to the petitioner's house. In fact, the victim's mother never went to the place, only brother of the defacto complainant had gone to the place. Hence the inconsistent stand of the defacto complainant would prove that no such incident happened. In such circumstances, the petitioners cannot be harassed.



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9. The Learned Counsel appearing for the petitioner further submitted that there is no bar in granting anticipatory bail for the offence under SC/ST Act and he has relied on the Judgment in *Shajan Skaria vs State of Kerala and Another* reported in (2024 SCC Online SC 2249) para 30 is extracted hereunder:

"30. Taking note of the aforesaid, this Court in *Dr.Subhash Kashinath Mahajan v. State of Maharashtra* reported in (2018) 6 SCC 454. While quashing the proceedings instituted against the appellant, therein under the provisions of the Act, 1989 thought fit to issue the following directions:

"79.1.. Proceedings in the present case are clear abuse of process of court and are quashed.

79.2. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

79.3. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

79.5. Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.

79.6. The above directions are prospective."



10. The Learned Counsel appearing for the petitioner further submitted that prima facie if the FIR does not disclose the necessary ingredients to constitute the offence, then it ought to be construed that no offence is made out and then person is entitled to pre-arrest bail. But the Learned Counsel appearing for the respondents submitted that the prima facie case ought to be “in the first blush or in the first impression”. At anticipatory bail stage the Court cannot elaborately go into the ingredients of the offence.

11. In the Shajan Skaria's the Hon'ble Supreme Court had framed the issue “whether Section 18 of the Act, 1989 imposes an absolute bar on the grant of anticipatory bail in cases registered under the said Act?” and had held that the same would dependent on whether there is prima facie case is made out or not. And the relevant portion is extracted hereunder:

“46. The aforesaid discussion indicates that the term ‘arrest’ appearing in the text of Section 18 of the Act, 1989 should be construed and understood in the larger context of the powers of police to effect an arrest and the restrictions imposed by the statute and the courts on the exercise of such power. Seen thus, it can be said that the bar under Section 18 of the Act, 1989 would apply only to those cases where prima facie materials exist pointing towards the commission of an offence under the Act, 1989. We say so because it is only when a prima facie



CRL OP(MD). No.14648 of 2025

case is made out that the pre-arrest requirements as stipulated under Section 41 of CrPC could be said to be satisfied.”

From the above it is evident that there is no absolute bar and the same is dependent on the fact “whether prima facie the offence is made out”. Therefore, the objection raised by the defacto complainant and the Government Advocate (Crl. Side) is rejected. Consequently, this Court is of the considered opinion that the Courts have power to consider pre-arrest bail even if case is filed under SC/ST Act.

12. In the present case it ought to be considered whether there is any prima facie case. The Learned Government Advocate relied on *Kiran Vs Rajkumar Jivraj Jain* and another reported in 2025 Live Law (SC) 869 wherein it is held that on reading the FIR if on first blush or by first impression it can be concluded that the offence is committed then bail cannot be granted. The Learned Counsel appearing for the petitioner submitted that the judgment rendered in *Shajan Skaria* stated supra had dealt with the phrase prima facie elaborately, wherein it is held as under:

“47. Prima facie is a Latin term that translates to “at first sight” or “based on first impression”. The expression “where no prima facie



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CRL OP(MD). No.14648 of 2025

materials exist warranting arrest in a complaint or FIR” should be understood as “when based on first impression, no offence is made out as shown in the FIR or the complaint”. This means that when the necessary ingredients to constitute the offence under the Act, 1989 are not made out upon the reading of the complaint, no case can be said to exist prima facie.”

The Hon’ble Supreme Court further held that the only test that the Courts ought to apply while considering the pre-arrest bail is whether there is prima facie case is made out and the same ought to be seen whether the ingredients of the provisions are attracted.

13. In the present case the sections that are invoked against the petitioner is sections 3(1)(r), 3(1)(s), 3(2)(va) of the SC/ST Act. First the sections 3(1)(r), 3(1)(s) shall be considered. The relevant provisions are extracted hereunder:

3. Punishments for offences atrocities. — 3[(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(a) ...

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(t) ...



CRL OP(MD). No.14648 of 2025

As far as the allegations in FIR is concerned that the defacto complainant went to the petitioner / accused house and had demanded about the incident happened at grape farm. When the occurrence had happened in the house then the ingredient “public view” may not be there. Therefore, this Court is of the considered view that the sections 3(1)(r), 3(1)(s) may not be attracted and the prima facie case under sections 3(1)(r), 3(1)(s) are not made out.

14. The next allegation against the petitioner is under section 3(2) (va) and the relevant portion is extracted hereunder:

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i)...

(va). commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;

(The sub clause (va) was amended by Act 1 of 2016 with effect from 26.01.2016)



CRL OP(MD). No.14648 of 2025

The aforesaid section is applicable whenever the IPC sections stated under the schedule are attracted. In the present case the BNS sections invoked are 296(b), 115(2), 351(2) of BNS 2023 which are equal to 294, 323, and 506 IPC. The said sections of 294, 323 and 506 IPC are not stated in the said schedule. When the sections stated in the schedule are not attracted, then the section 3(2)(va), may not be attracted. Therefore, this Court is of the considered opinion that the prima facie case under section 3(2)(va) was not attracted, consequently the petitioner is entitled to anticipatory bail.

15. For the reasons stated supra and considering the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

16. Accordingly, the 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 Special Court for Exclusive Trial of POCSO Act Cases, Theni District, on condition that each of the petitioner shall execute a separate bond for



CRL OP(MD). No.14648 of 2025

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 Special Court for Exclusive Trial of POCSO Act Cases, Theni District, failing which, the petition for anticipatory bail shall stand dismissed and on further condition 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 as and when required for interrogation.

(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;

(e) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate



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CRL OP(MD). No.14648 of 2025

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]* and;

(f) if the accused/petitioner thereafter abscond, a fresh FIR can be registered under Section 269 of BNS, 2023.

(S S Y J)
23.10.2025

msrm

To

- 1.The Special Court for Exclusive Trial of POCSO Act Cases,
Theni District.
- 2.The Inspector of Police,
All Women Police Station,
Andipatti Taluk,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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CRL OP(MD). No.14648 of 2025

S.SRIMATHY, J.

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**ORDER
IN
CRL OP(MD) No.14648 of 2025**

Date : 23.10.202