

Mrs.Rubini vs Rajadurai on 19 December, 2023

Author: C.V.Karthikeyan

Bench: C.V.Karthikeyan

CrI.O.P.No.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.27194 of 2023

Mrs.Rubini ...Petitioner /defacto complainant

Vs.

1. Rajadurai
2. Murugesan
3. Rajathi ... Respondents 1-3/Petitioners/A
to 3
4. The Inspector of Police
Deevattipatti Police Station
(Crime No. 555/2023)

... 4th Respondent/Respondent/Complainant

PRAYER:Criminal Original Petition is filed under Section 439(2) of Cr.P.C. praying to cancel the anticipatory bail granted to the first and third respondents herein by the learned Principal Sessions Judge Salem in C.M.P.No. 2659 of 2023 dated 04.09.2023.

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<https://www.mhc.tn.gov.in/judis>

CrI.O.P.No.

For Petitioner : Mr. M.S. Sindhuza

For RR 1 to 3 : Mr. R.Dinesh Kumar

For 4th Respondent : Mr. R.Vinoth Raja
Government Advocate, (Crl. Sid

ORDER

The petition has been filed by the defacto complainant in Crime No. 555 of 2023 seeking cancellation of anticipatory bail granted to the first, second and third respondents/accused by order dated 04.09.2023 in C.M.P.No. 2659 of 2023 by the learned Principal Sessions Judge at Salem.

2. Even before narrating the facts which led to the lodging of the complaint and registration of FIR in Crime No. 555 of 2023, a few background facts will have to be stated:

3. Originally, FIR in Cr.No. 31 of 2018 had been registered by All Women Police Station, Omalur on 31.12.2018 under Sections 363 <https://www.mhc.tn.gov.in/judis> and 366 of IPC and Section 5(i) and 6 of Protection of Child from Sexual Offences Act, 2012 on a complaint given by the mother of the petitioner herein against the first respondent.

4. In the said complaint, it had been stated that the petitioner herein had been kidnapped by the first respondent and when enquired proper information was not given. The complaint was lodged which led to registration of FIR in Cr.No. 31 of 2018. After investigation was conducted, final report was filed and it was originally taken cognizance as Special S.C.No. 38 of 2019 and subsequently renumbered as Special S.C.No. 237 of 2019 by the Special Court for Trial of Cases in POSCO Act, Salem.

5. The matter went to trial and Judgment was delivered on 20.08.2020 whereby the first respondent was convicted of offences under Section 363 and 366 of IPC and under Section 6 of POSCO Act and was sentenced to undergo rigorous imprisonment of four years and fine of Rs.5,000/- and in default, three months simple imprisonment for offence <https://www.mhc.tn.gov.in/judis> under Section 363 IPC and for four years rigorous imprisonment and fine of Rs.10,000/- in default six months simple imprisonment for offence under Section 366 IPC and for 10 years rigorous imprisonment and fine of Rs.50,000/- in default two years simple imprisonment for offence under Section 6 of POSCO Act. The total fine amount was determined at Rs.65,000/-.

6. The Judgment had been delivered after examining and analysing the evidence produced on behalf of the prosecution in which the mother of the petitioner herein was examined as PW-1 and the petitioner herein, the victim child, was examined as PW-2. There were also six other witness including the medical doctors, PW-6 & 7 and the Inspector of Police PW-8. The prosecution also produced Exs. P-1 to P- 21 which included the statement recorded under Section 164 Cr.P.C., of the victim child as Ex.P-3. The educational certificate of the victim child was narjed as Ex.P-71 to determine her age, the medical examination report was marked as Ex.P-13, the forensic Laboratories report were marked as Exs. P-14 and P-15 and the FIR as Ex.P-17. <https://www.mhc.tn.gov.in/judis>

7. The accused/ first respondent herein did not examine any witness nor did he produce any material objects.

8. As stated, on analysis of the materials available, including oral and documentary evidence, the first respondent had been convicted for offences punishable under Sections 363, 366 IPC and Section 6 of POSCO Act and was sentenced accordingly.

9. To narrate the sequence of events, it is informed that the first respondent had filed Crl.A.No. 349 of 2020 before this Court and Judgment was delivered on 25.08.2021.

10. The one factor which had weighed on the mind of the learned Single Judge was that after the order of conviction, the petitioner herein, who had attained the age of majority and the first respondent, who was the accused in FIR in Cr.No. 31 of 2018 had married each other. Considering this particular aspect though the order of conviction was sustained by the learned Single Judge in the Criminal Appeal, the <https://www.mhc.tn.gov.in/judis> sentence alone was interfered with and reduced from 10 years to 7 years rigorous imprisonment.

11. Thereafter, the first respondent had filed a further appeal against the order of conviction before the Hon'ble Supreme Court and I am informed that the said Appeal is still pending but exemption had been granted to the first respondent from surrendering.

12. When the matter rests at that, the petitioner herein had lodged a complaint on 29.08.2023, which had been registered as FIR in Cr.No. 555 of 2023 against the respondents herein, who are her husband and his two parents for offences punishable under Sections 294(b), 323, 506(i) of IPC and Section 4 of Prohibition of Harassment of Women Act 2002.

13. The accused therein/ the first, second and third respondents herein then filed C.M.P.No. 2659 of 2023 seeking anticipatory bail which came up for consideration before the learned <https://www.mhc.tn.gov.in/judis> Principal Sessions Court at Salem on 04.09.2023 and after examining the facts and noting that it was a normal family dispute, anticipatory bail had been granted with conditions to appear before the respondent police and not to tamper with evidence or with the witnesses. It must be pointed out that the prime witness in that particular FIR was the petitioner herein / wife of the first respondent.

14. That particular order granting anticipatory bail by the learned Principal Sessions Judge is now sought to be cancelled by the petitioner herein. Among other grounds under which order is sought to be cancelled, it had been stated that the accused/the respondents had obtained the order of anticipatory bail by suppressing a material fact, namely, the order of conviction as stated above.

15. It is the contention of the learned counsel for the respondents however that the respondents also had filed a complaint against the father of the petitioner herein on 28.10.2023 and FIR in Cr.No. 678 of 2023 had been registered under Sections 341, 294(b), 323, <https://www.mhc.tn.gov.in/judis> 324 and 506(ii) IPC on 28.10.2023. It must be stated that the names of the accused had not been mentioned in that FIR. However, the father of the petitioner herein had filed Crl.O.P.No. 26580 of

2023 before this Court and by an order dated 23.11.2023, anticipatory bail had been granted.

16. It is the contention of the learned counsel for the petitioner that after this particular petition seeking cancellation of anticipatory bail has been filed and listed before this Court, the respondents herein again came and threatened the petitioner calling upon her to withdraw the complaint. In this connection, yet another complaint had been given to the respondent on 12.12.2023 and C.S.R.No. 1515 of 2023 had been issued to the petitioner herein. It is therefore contended by the learned counsel that the petitioner is being continuously harassed. It is contended that the order of anticipatory bail granted should be cancelled.

17. The learned Government Advocate (Crl. Side) stated that based on the complaints received, an FIR had been originally registered <https://www.mhc.tn.gov.in/judis> in Crime No. 555 of 2023 and the investigation is still pending and that the accused therein/respondents herein had obtained anticipatory bail from the learned Principal Sessions Judge at Salem. It is also contended by the learned Government Advocate (Crl. Side) that subsequently, the first respondent herein had lodged a complaint of being assaulted and FIR in Cr.No. 678 of 2023 had also been registered and investigation had hardly commenced in the same. It is also contended by the learned Government Advocate (Crl.Side) that the petitioner herein had given a complainant on 12.12.2023 in which C.S.R.No. 1515 of 2023 had been issued and that enquiry is underway.

18. An examination of the above facts would reveal the following sequence of events:-

19. FIR in Cr.No. 31 of 2018 registered on 31.12.2018 under Sections 363 & 366 of IPC and Section 5(i) and 6 of POSCO Act on complaint lodged by the mother of the petitioner herein. The victim child was the petitioner herein.

<https://www.mhc.tn.gov.in/judis>

20. The Judgment of the Special Court under POSCO Cases in renumbered Spl.S.C.No. 237 of 2019 convicting the first respondent for offences under Sections 363, 366 IPC and Section 6 of POSCO Act by Judgment dated 20.08.2020.

21. Marriage between the petitioner herein and the first respondent.

22. The Judgment in Crl.A.No. 349 of 2020 sustaining the conviction, but reducing the sentence from 10 years to 7 years taking into consideration the fact that the petitioner and the first respondent have married and the petitioner herein was also in an advanced stage of pregnancy.

23. Complaint by the petitioner herein lodged on 29.08.2023 and FIR No. 555 of 2023 under Sections 294(b), 323 and 506(1) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

<https://www.mhc.tn.gov.in/judis>

24. Grant of anticipatory bail to the respondents by order dated 04.09.2023 by the Principal Sessions Court at Salem in C.M.P.No. 2659 of 2023.

25. Registration of FIR in Cr.No. 678 of 2023 on 28.10.2023 under Sections 341, 294(b), 323, 324 and 506(ii) of IPC, on a complaint lodged by the first respondent.

26. Grant of anticipatory bail to the father of the petitioner in Crl.O.P.No. 26580 of 2023, order dated 23.11.2023.

27. The lodging of complaint by the petitioner leading to issuance of CSR No. 1515 of 2023 dated 12.12.2023.

28. The petitioner was not only a victim of kidnapping but was also sexually assaulted by the first respondent herein. The first respondent was convicted of the said offences by the trial Court. As a matter of fact, she also conceived a child in her womb. It is contended <https://www.mhc.tn.gov.in/judis> that the child had been aborted. The petitioner and the first respondent however married each other. The conviction of the first respondent was upheld by a learned Single Judge of this Court in Crl.A.No. 349 of 2020. The sentence was alone reduced from 10 years R.I to 7 years R.I. This did not bring about any change in the categorisation of the first respondent as a convicted accused. He filed an Appeal before the Hon'ble Supreme Court but only exemption from surrendering and confined to jail alone had been granted.

29. It is only natural that disputes would escalate between the petitioner and the first respondent since even though they had married, the first respondent still carried the identity of a convicted accused, convicted owing to a complaint given by the mother of the petitioner herein and also on the basis of the evidence deposed by the petitioner herein. It could never be considered to be a marriage with conviction but could also be termed as a marriage of convenience. Though the learned Single Judge had noted the fact of marriage, still the conviction had been sustained and only the period of sentence had been reduced from 10 <https://www.mhc.tn.gov.in/judis> years R.I to 7 years R.I. This did not give any advantage to the first respondent herein. It is therefore only evident that the disputes between the petitioner and the first respondent could never ebb but would always simmer and would gather fire at regular intervals. This is what has happened.

30. The petitioner had lodged a complaint leading to registration of FIR in Cr.No. 555 of 2023. The only ground before this Court in which the anticipatory bail granted by the Principal Sessions Court, Salem, is sought to be cancelled is suppression of the order of conviction of the first respondent. But to balance that particular order of conviction is the fact that the petitioner herein and the first respondent have now moved over from being categorised as complainant and accused to being spouses. That fact would have played on the learned Principal Sessions Judge, who had to exercise discretion to either grant anticipatory bail or not to grant anticipatory bail. <https://www.mhc.tn.gov.in/judis>

31. Further events had happened leading to lodging of further complaints and registration of FIR in Cr.No. 678 of 2023 and issuance CSR No. 1515 of 2023. These are subsequent events and are not the

initial grounds on which the anticipatory bail was sought to be cancelled.

32. It would only be appropriate that further fire is not fanned and the emotions of the parties are tempered down. The issues between then be settled only by a Court exclusively dealing with marital difference. They have to be settled in manner known to law. It is not admisable that the parties take to the streets to fight with each other.

33. The learned counsel for the petitioner vehemently argued that the petitioner is being threatened and harassed by the respondents herein. But that was not the position prior to the filing of the application seeking cancellation of anticipatory bail. The filing of this particular application had again aggravated the discord between the parties. <https://www.mhc.tn.gov.in/judis>

34. It is the contention of the learned counsel for the respondents that the father of the petitioner herein had caused grievous injuries on the first respondent leading to registration of FIR in Cr.No. 678 of 2023.

35. I am not able to comprehend as to why the two parties are litigating against each other by lodging complaints and counter complaints instead of taking a mature decision to resolve their dispute relating to their marital life. A final solution will have to be obtained and till then, the respondent / Investigating Agency will have to bear a series of complaints by either one of two parties each other continuously being lodged at regular intervals.

36. The issue is whether these aspects would be a ground to cancel the anticipatory bail. There could be suppression of the material fact of conviction. The supervening circumstance is that, after conviction, the petitioner had taken a conscious decision to marry the first respondent. Let me not fan the fire any further but instead of <https://www.mhc.tn.gov.in/judis> cancelling the anticipatory bail place restrictions on the contact between the petitioner and the respondents. The petitioner of-course is the wife of the first respondent and has every right to stay with him. I am informed that she is however now staying with her parents. Therefore let them both file undertaking statements that they will not contact each other and not aggravate the situation any further. The statements must be presented before the Investigating Officer, who may file it on record in both FIR No. 678 of 2023 and C.S.R.No. 1515 of 2023.

37. I am making it very clear that this order is passed only owing to the circumstances which prevail on this particular date.

38. Let notices be issued by the investigating Officer in C.S.R.No. 1515 of 2023 to the petitioner herein and to the respondents and let statements be filed by all the parties that they would restrain themselves from coming into contact with each other and also undertake that they would not interfere with the life of the other life or threaten or assault or commit any other offence.

<https://www.mhc.tn.gov.in/judis>

39. As stated, in this petition the primary ground seeking cancellation of bail was suppression of the order of conviction. But the supervening circumstance is the marriage between the petitioner and the second respondent. Let me therefore at this juncture, particularly taking into consideration, the age of the petitioner herein, who is still young and has a future to go forward, strike a middle path and direct statements to be filed before the respondent, who may then ensure that there is no breach of any of the terms in the said statements.

40. The anticipatory bail granted is not interfered with.

41. This order is passed as on the circumstances as on date, and if situation warrants, the petitioner is at liberty to file fresh petition. <https://www.mhc.tn.gov.in/judis> C.V.KARTHIKEYAN, J.

vsg

42. This Petition seeking cancellation of anticipatory bail is disposed of accordingly, for the present and directing the parties to appear before the Investigating Officer in C.S.R.No. 1515 of 2023 and file necessary statements.

Vsg

Index: Yes/No
Internet: Yes/No

To

1. Principal Sessions Court, Salem.
2. The Inspector of Police
Deevattipatti Police Station.
3. The Public Prosecutor,
High Court, Madras.

<https://www.mhc.tn.gov.in/judis>