



CrI.O.P.No.6648 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.03.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CrI.O.P.No.6648 of 2022

Dr.Subbiah Shanmugam, M/54,
S/o Shanmugam

.. Petitioner

/versus/

State Rep.by its
The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai District.
(Cr.No.1123/2020)

.. Respondent

Prayer: Criminal Original Petition has been filed under Section 439 of Cr.P.C., to enlarge the petitioner on bail in Crime No.1123 of 2020 on the file of the respondent police.

For Petitioner :M/s R.C.Paul Kanagaraj

For Respondent :Ms.g.V.Kasthuri,
Additional Public Prosecutor



Crl.O.P.No.6648 of 2022

ORDER

WEB COPY

The petitioner, who was arrested and remanded to judicial custody on 19.03.2022 for the alleged offences punishable under Section 4 of the Tamil Nadu Women Harassment Act and Sections 271 and 427 of IPC later altered into Sections 271, 427, 447 of IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damaged and loss) Act, 1992 r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 in Crime No.1123 of 2020 on the file of the respondent police, seeks bail.

2.The petition for bail moved as an urgent motion today, without approaching the trial Court alleging there is a gross violation of fundamental rights and abuse of power by the respondent police.

3.On considering the request of the learned counsel appearing for the petitioner, the matter is taken up for consideration.

4.The petitioner herein is a Surgical Oncologist serving at Stanly Government Medical College Hospital. On 25.07.2020 one Balaji Vijayaraghavan has given a complaint to the respondent police alleging



Crl.O.P.No.6648 of 2022

that the petitioner herein, due to enmity, has thrown the used mask inside the gate and urinated in front of the residence of the defacto complainant.

For this complaint, a case has been registered under Sections 271, 427 and Section 4 of TNPHW Act, 2002 and later, it has been altered into Sections 271, 427, 447 IPC and Section 3 of Tamil Nadu Public Property(Prevention of Damaged and loss) Act, 1992 r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. He was arrested on 19.03.2022(Saturday) on a public holiday.

5.The learned counsel appearing for the petitioner states that the dispute between the defacto complainant and the petitioner herein ended into a compromise long ago, but this action has been taken on the pressure of the men in power, since the petitioner is an Office bearer of the Students Organization. Further, it is also stated that the petitioner was placed under suspension and that has been challenged by the petitioner in W.P.No.4594 of 2022. In order to place the petitioner under suspension again this petitioner was arrested on a public holiday with an intention to detain him for more than 48 hours and thereby invoke the Conduct Rules to place him under suspension.



WEB COPY 6. Hearing the submission, this Court is remind of the observation made by the Central Information Commission in an appeal, where it is stated that the individuals are arrested during night of Friday, so that they will not be in a position to move the Court of law till Monday. Such detention would be absolutely violation of Article 21 of the Constitution of India and it could be both a crime and tort(civil wrong) also.

7. The High Court of Andhra Pradesh, the High Court of Gujarat and the High Court of Rajasthan had dealt with the similar cases and condemned action of the police officials. The unwarranted arrest on the public holiday with sole intention is to prevent the detenu from getting legal assistance is violation of fundamental rights.

8. In fact, the Hon'ble Supreme Court in ***Joginder Kumar v. State of Uttar Pradesh reported in (1994) 4 SCC 260***, had observed that:

“No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in



WEB COPY

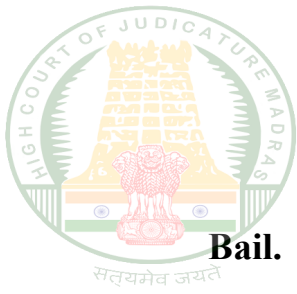


CrI.O.P.No.6648 of 2022

police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.”

9. This Court finds patent error in the arrest of the petitioner herein leading to violation of fundamental rights and that error has been committed with an ulterior motive to take departmental action and place him under suspension. It is further added that since the arrest itself apparently and erroneously made, the arrest will not give any ground for taking departmental action against this petitioner. Therefore, this Court grant Interim Bail to the petitioner herein. He should be released on executing bond for Rs.25,000/- (Rupees twenty five thousand only) to the satisfaction of the Superintendent of Prison, Chengalpet.

10. Accordingly, the petitioner is ordered to be released on **Interim**



Bail.

WEB COPY



CrI.O.P.No.6648 of 2022

11. Since the learned Additional Public Prosecutor requests time to file counter and this Court also eager to know what prompt the Investigating Officer to arrest a person on a public holiday based on the complaint given 1 ½ years ago, the matter may be listed on 24.03.2022.

21.03.2022

ari

Note:

- 1) Registry is directed to forward the bail order through e-mail to the concerned prison.
- 2) Issue order copy today i.e 21.03.2022.

To:

1. The Additional Mahila Court, Alandur.
2. The Inspector of Police, S-8, Adambakkam Police Station, Chennai District.
3. The Sub Jail, Chengalpet.
4. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.O.P.No.6648 of 2022

Dr.G.JAYACHANDRAN,J.
ari

Crl.O.P.No.6648 of 2022

21.03.2022