



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Thirtieth day of May Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice M.V.MURALIDARAN

CRL OP(MD) No.6217 of 2017

T.MICHAEL STANIS PRABHU

... PETITIONER/ACCUSED NO.I

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
TUTICORIN SOUTH POLICE STATION,
TUTICORIN DISTRICT.
CRIME NO.1193 OF 2016.

... RESPONDENT/COMPLAINANT (

For Petitioner : MR.KATHIRVELU, Senior Counsel for
MR.G.BALAJI Advocate

For Respondent : MR.A.P.BALASUBRAMANI, Govt. Advocate (Crl. Side)

For Intervenor : M/S.L.SHAJICHELLAN, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner/accused, who apprehends arrest at the hands of the respondent Police for the offence punishable under Sections 147, 148, 294(b), 323, 307 and 506(ii) of IPC in crime No.1193 and P.R.C.No.7 of 2017 on the file of the Judicial Magistrate No.I, Tuticorin, seeks anticipatory bail.

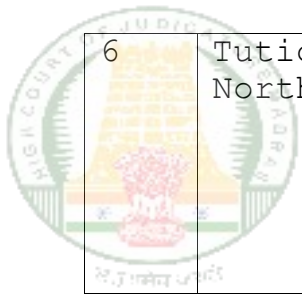
2.The petitioner, who is an accused No.1 in Crime No.1193 in P.R.C.No.7 of 2017, has filed this criminal original petition under Section 438 of Cr.P.C for anticipatory bail.

3.The case of the petitioner is that he is a practicing lawyer and was the President of the Tuticorin Bar Association. He has also come forward by saying that he is active participant in the issues which affects the public and always raised voice against the activity of the State and Central Government and for the same, several cases have been foisted against him and against which, the petitioner has availed legal remedy and almost



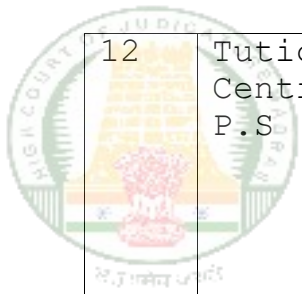
90% of the cases were dropped by the Government and the cases and its current position is narrated hereunder:-

S.No	Police Station	Crime No. & Sections	Case Details	Case Status
1	Tuticorin South P.S	Cr.No.515/2002 dt.02.07.2002 U/s.147, 148, 120(b) IPC and 25(1) (a) of Arms Act and Sec 5 of E.S.Act	Arms Act Case. Complainant is a Sub-Inspector of Police	S.C.No.375/2004 Acquitted on 04.07.2005
2	Tuticorin North P.S	Cr.No.879/2008 dt.28.12.2008 U/s.353, 307, 506(ii) IPC and 25(1) (b), 27 of Arms Act	Arms Act Case. Complainant is an Inspector of Police	S.C.No.13/2010 Acquitted on 13.12.2013
3	Tuticorin North P.S	Cr.No.115/2009 dt.28.01.2009 U/s. 294(b), 427, 387, 506 (ii) IPC and 4 of TNPWH Act	Family dispute. Petitioner's Mother is the Complainant.	Closed as Mistake of Fact on 29.05.2009
4	Tuticorin Central P.S	Cr.No.148/2009 Dt. 28.02.2009 U/s. 147, 285 of IPC and Sec.10, 13(2) of Unlawful Activities Prevention Act r/w. 7(1) (a) CLA Act	Political agitation case. Complainant is an Inspector of Police.	C.C.No.508/2009. Pending Trail.
5	Thalaimuthu Nagar P.S	Cr.No.197/2009 dt.09.05.2009 U/s.391(1) (x) of SC/ST POA Act	Political motive. Complainant Mickelraj belongs to opposite party.	Closed as Mistake of Fact on 10.05.2009



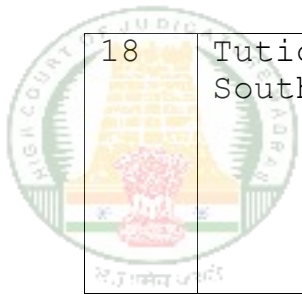
WEB COPY

6	Tuticorin North P.S	Cr.No.536/2009 dt.13.05.2009 U/s. 294(b), 323, 506(ii) IPC	Political Motive. Complainant Manoharan belongs to opposite party.	Acquitted on 27.01.2010 U/s.248(1) Cr.P.C
7	Tuticorin North P.S	Cr.No.537/2009 Dt.13.05.2009 U/s. 294(b), 323, 506(ii) IPC	Political Motive. Complainant is one Balaji, a ward Councillor belongs to opposite party.	Acquitted on 11.01.2010 U/s.248(1) Cr.P.C
8	SIPCOT P.S	Cr.No.279/2010 dt.26.07.2010 U/s. 147, 342, 285, 353, 506(i) IPC	Political Agitation. Complainant is the Personal Assistant to the District Collector.	Not Taken on File. (Stayed by this Hon'ble High Court in a Quash Petition filed by the Petitioner in CrI.M.P(MD) . No. 9249/2016 CrI.O.P(MD) . No. 18450/2016 dated 27.09.2016
9	Tuticorin Central P.S	Cr.No.3/2012 Dt.16.01.2012 U/s. 143, 341, 188 IPC	Tuticorin Bar Association agitation. Complainant is a VAO	LF Vide No.58/2013 dt.22.04.2013
10	Tuticorin Central P.S	Cr.No.393/2012 dt. 13.09.2012 U/s.143, 188 IPC	Political agitation. Complainant is the Inspector of Police.	Pending Trial
11	Tuticorin North P.S	Cr.No.696/2013 dt.12.01.2013 U/s. 151 Cr.P.C	Political agitation. Complainant is the Inspector of Police.	Action Dropped



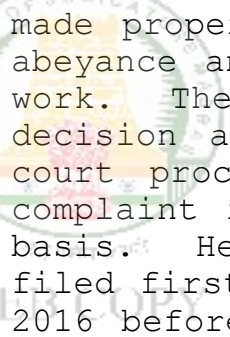
WEB COPY

12	Tuticorin Central P.S	Cr.No.75/2013 dt.25.03.2013 U/s. 341, 143, 188 IPC	Tuticorin Bar Association agitation. Complainant is a VAO.	LF vide No. 20/2014 dt.09.04.2014
13	Tuticorin Central P.S	Cr.No.78/2013 dt.26.03.2013 U/s. 143, 341, 188, 285 IPC	Tuticorin Bar Association agitation. Complainant is a VAO	LF vide No. 155/2013 dt.23.11.2013
14	Tuticorin North P.S	Cr.No.291/2014 dt.27.03.2014 U/s. 151 Cr.P.C	Political agitation. Complainant is the Inspector of Police	Action Dropped on 27.03.2014
15	Tuticorin North P.S	Cr.No.743/2014 dt.10.12.2014 U/s.147, 341, 332, 353, 225 IPC	Tuticorin Bar Association agitation. Complainant is a Sub-Inspector of Police	Acquittal
16	Tuticorin Central P.S	Cr.No.195/2015 dt.08.04.2015 U/s. 143, 285 IPC	Political agitation. Complainant is a Sub-Inspector of Police	Pending Trail
17	Tuticorin Central P.S	Cr.No.427/2015 dt.02.09.2015 U/s. 147, 148, 364(A), 384, 387, 506 (ii) IPC	Complainant is one Arunachalam. Petitioner's junior was arrested and based on his alleged confession, Petitioner was implicated in this case.	Pending Trail. I.O. stage



18	Tuticorin South P.S	Cr.No.140/2016 dt.26.02.2016 U/s. 341, 353, 506(ii) IPC and 4 of TNPHW Act	Complainant is a Sub-Inspector of Police.	Acquitted
19	Tuticorin South P.S	Cr.No.1193/2016 dt.20.10.2016 U/s. 147, 148, 294(b), 342, 323, 307, 506(ii) IPC	Present case	PRC.No.7/2017 dt.01.02.2017
20	Tuticorin South P.S	Cr.No.1422/2016 dt.28.12.2016 U/s. 341, 294 (B), 506(ii) and 109 of IPC	A wordy quarrel between advocates namely Jeyapal and Nagaraj. Complainant alleged that the said Nagaraj entered quarrel on the instigation of the Petitioner.	Under Investigation
21	Tuticorin North P.S	Cr.No.32/2017 dt.01.02.2017 U/s. 420, 294 (b), 506(i) IPC	Complainant is a client of the Petitioner. False complaint received against the petitioner, his wife, clerk and others in order to compel his surrender in the case in Cr.No.1193/2016	Under Investigation

4. The petitioner further stated that the offence has started with a motive of 34(1) Amendment brought in by this Court, in where as a President of the Tuticorin Bar Association, the petitioner have

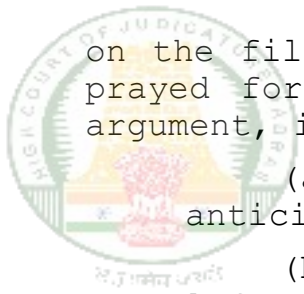


made proper representation in order to keep the said amendment in abeyance and requested the members of the Bar to attend the Court work. The so called victim raised voice against the petitioner's decision and instigated other members of the Bar to boycott the court proceedings. Therefore, the allegations contained in the complaint is false, frivolous, concocted vexatious and without any basis. He has further submitted that earlier the petitioner has filed first anticipatory bail application in CrI.O.P(MD)No.20608 of 2016 before this Court and on 10.11.2016 since the victim was not discharged from the Hospital, the counsel for petitioner sought for withdrawal, but this Court declined to permit for withdrawal and dismissed the same on merits. Later, the victim was discharged from the Private Hospital on 13.11.2016, immediately after the dismissal of the first anticipatory bail application. Further, the intervenor mislead this Court by stating 23 and more cases pending against the petitioner, listing only 18 cases including a case in crime NO.85/2010 under Section 147, 294(b), 506(ii) IPC on the file of the Authoor Police Station, Tuticorin District, in which the petitioner was not an accused. The intervenor's contention that the petitioner has bad antecedents is against law and natural justice. Since the petitioner was not convicted in any of the case against him, he is innocent in the eye of law, mere pendency of the cases as against the petitioner does not give any right to Intervenor to declare the petitioner as a criminal.

5.The petitioner also states that there was a History Sheet against the petitioner in H.S.No.722 of 2009 on the file of Tuticorin North Police Station opened on 19.05.2009 and the same was closed on 14.04.2012 itself. The respondent again reopened the History Sheet on 03.05.2014 without any notice to the petitioner and he was not complying any condition regarding the History Sheet. Hence, the Tuticorin North police have not followed the procedure in re-opening of the History Sheet and the petitioner has not knowledge of such History Sheet.

6.Though the respondent has filed their counter in CrI.O.P(MD) No.3183 of 2017 narrating the list of cases as against the petitioner, in which there were 20 cases only. In the said 20 cases, only 6 cases are pending for trial or under investigation and other cases were acquitted after trial, closed as Mistake of Fact or Action dropped. Therefore, how could a person be stamped as a criminal or habitual offender without a single conviction? moreover the petitioner was not a sole accused in any of the cases filed against him, in some way or other he was implicated by the police in such cases. Therefore, he sought anticipatory bail in CrI.O.P(MD) No.3183 of 2017 that the victim was discharged from the hospital and charge sheet also was laid in PRC No.7 of 2017 but the same is dismissed on 24.04.2017.

<https://hcservices.ecourts.gov.in/hcservices/> 7.The petitioner also states that this third application for anticipatory bail filed before this Court. Though the charge sheet has been filed and the same was taken on file as P.R.C.No.7 of 2017



on the file of the learned Judicial Magistrate No.1, Tuticorin, he prayed for anticipatory bail. The petitioner also filed written argument, in which, he has stated as follows:-

(a) The power conferred by section 438 to grant anticipatory bail is "not limited to the contingencies".

(b) The power to grant anticipatory bail ought to be left to the discretion of the Court concerned, depending on the facts and circumstances of each particular case.

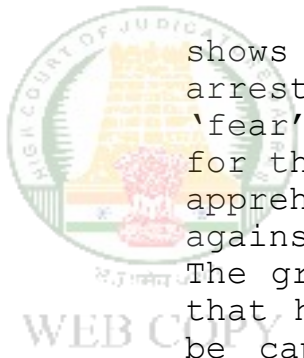
(c) Since the denial of bail amounts to deprivation of personal liberty, the courts should lean against the imposition of unnecessary restriction on the scope of Section 438, when no such restrictions are imposed by the legislature in the terms of that section.

(d) Section 438 is a procedural provision which is concerned with the personal liberty of an individual who has not been convicted of the offence in respect of which he seeks bail and who must be presumed to be innocent. The validity of that section must accordingly be examined by the test of fairness and which is implicit in Article 21. If the legislature itself were to impose an unreasonable restriction could have been struck down as being violative of Article 21. Therefore, while determining the scope of section 438, the court should not impose any unfair or unreasonable limitation on the individual's right to obtain an order of anticipatory bail. Imposition of an unfair or unreasonable limitation would be violative of Article 21 irrespective of whether it is imposed by legislation or by judicial decision.

(e) The society has a vital stake in both of these interests namely, personal liberty and the investigation power of the police, though their relative importance at any given time depends upon the complexion and restraints of political conditions. The court's task is how best to balance these interests while determining the scope of section 438 of the Code of Criminal Procedure, 1973.

(f) The High Court and the Court of Sessions are left to exercise their jurisdiction under section 438 by a wise and careful use of their discretion which by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognized over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application.

(g) Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe"

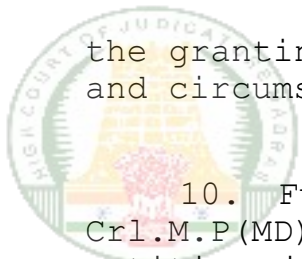


shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications of anticipatory bail will be at large, as at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kind of accusation, likely or unlikely.

(h) Secondly, if an application for anticipatory bail is made to the High Court or the Court of Sessions it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of section 438.

8. The petitioner also states that mere general allegations of mala fide in the complaint are inadequate, the complaint has allegations of mala fide are not substantial and the accusation appears to be false and groundless. Discretion, therefore, ought to be permitted to remain in the domain of discretion, to be exercised objectively and open to correction by this Court. The petitioner also stated that the petitioner will abide by any condition and undertake to cooperate with the police and to assure that he shall not tamper with the witnesses during and after the investigation. While granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation.

9. The petitioner also stated that the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting anticipatory bail. Where the granting of bail lies within the discretion of the court,



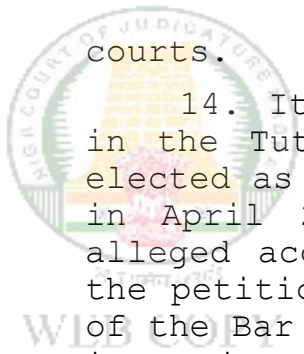
the granting or denial is regulated, to a large extent, by the facts and circumstance of each particular case.

10. Further, the petitioner stated that after dismissal of Cr1.M.P(MD)No.3183 of 2017, the petitioner filed special leave petition in S.L.P(Cri).No.3887 of 2017 and the same was dismissed and there was no order on merits. Mere apprehension of arrest is never for the petitioner to approach this Court at any point of time, there need not be any change in the circumstances of the case. Hence, change of circumstances is not necessary for granting anticipatory bail by this Court.

11. The petitioner also states that the contention raised by the intervenor is that the petitioner is a proclaimed offender and he cannot be granted the relief of Anticipatory bail, which is against law, this Court has to look into the circumstances of the order and legality of the order of proclamation if so issued by the concerned Magistrate, it is the domain of this Court to test the legal validity of the order of proclamation under Section 82 of Cr.P.C while granting the anticipatory bail. Legally there is no bar to this Court even though there is an order of proclamation as referred in the catena of decisions rendered by the Honourable Supreme Court of India.

12. The petitioner also stated that the learned Judicial Magistrate No.I, Tuticorin in Cr.M.P.No.3553 of 2017 is false and an attempt to mislead this Court. The said petition filed by the respondent police before the learned Judicial Magistrate No.I, Tuticorin in Cr.M.P.No.3553/2017 under Section 82 of Cr.P.C. is pending as on date and there is no order of declaring the petitioner as a proclaimed offender. Since the learned Judicial Magistrate No.I, Tuticorin summoned the petitioner for his appearance before this Court on 23.05.2017 at 10.30 a.m. If at all the petitioner fails to appear on the said date i.e., 23.05.2017, then only the learned Judicial Magistrate No.I, Tuticorin would declare the petitioner as a Proclaimed Offender. Mere pendency of a petition under Section 82 Cr.P.C before the concerned Magistrate does not bar this Court in deciding an application for grant of anticipatory bail for the petitioner.

13. The petitioner further stated that the intervenor himself victimized several other people in and around Tuticorin and in and around the legal fraternity. The intervenor is not a person to honour the true professionalism, he indulges the disrupting the court and bar proceedings and also acts in desecrating the dignity of the bar by consuming alcohol with his fellow lawyers and some outsiders within the Bar Association premises itself and a complaint to that effect is under consideration by the Bar Council of Tamil Nadu and Puducherry. Moreover there exists more complaints against the intervenor for professional misconduct before the Bar Council of Tamil Nadu and Puducherry and he was involved in conducting kangaroo



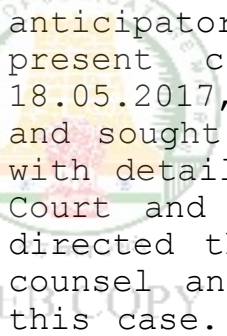
courts.

14. It is an acceptable fact that the petitioner holds a post in the Tuticorin Bar Association for the past 10 years. He was elected as the President of Tuticorin Bar Association as unanimously in April 2016. The purpose of intervenor in opposing all the alleged accused in the case in hand is to wreck vengeance against the petitioner with a misunderstanding that he was behind the order of the Bar Council of India in suspending some lawyers from practice in Tuticorin Bar Association. The additional motive for opposing the anticipatory bail petition filed by the petitioner is out of grudge emitted out of the order of Bar Council of Tamil Nadu and Puducherry in staying the election to the post of the President of Tuticorin Bar Association, since the post remains vacant because of the illegal resolution passed by some suspended lawyers from practice in Tuticorin Bar Association.

15. The petitioner is an innocent and he has not committed any offence as alleged by the prosecution and he falsely implicated in the present case. Hence, the petitioner is entitled to anticipatory bail and he is willing to abide any condition. The petitioner undertakes to cooperate with the police and to assure that he shall not tamper with the witnesses during and after the investigation.

16. The learned Additional Public Prosecutor, who appears for the first respondent police, submitted that this petitioner has involved in 22 cases including this case and he is a History Sheeted member and on 20.10.2016 at about 09.30 p.m, the petitioner along with other persons attacked the defacto complainant with deadly weapons with an intention to murder the defacto complainant and caused serious injuries. Therefore, the petitioner is a habitual offender and he is not entitled for anticipatory bail. In this case, entire investigation has been completed and the charge sheet has also been filed before the Judicial Magistrate No.I, Thoothukudi and the same was taken on file as C.C.No.7 of 2017 and the same is pending. The respondent also states that the prosecution has filed a petition under Section 82 of Cr.P.C on 25.04.2017 for declaring that the petitioner is a proclaimed offender and the same was declared by the learned Judicial Magistrate No.I, Thoothukudi. Therefore, the learned Additional Public Prosecutor prays dismissal of the anticipatory bail application, since the petitioner has already moved anticipatory bail application and the same is already dismissed on merits.

17. The second respondent, who is the intervenor/defacto complainant, earlier filed the impleading petition to implead him as a party respondent in this petition. On behalf of the intervenor, the counsel who appeared for him, argued before this Court. He submitted that the present criminal original petition in CrI.O.P(MD) No.6217 of 2017 is not maintainable, since it is third anticipatory bail application filed by a history sheeted proclaimed offender without any change in circumstances pursuant to the consecutive and elaborate dismissal orders passed by this Court and the Honourable Supreme Court. The victim in this case intervened in the previous



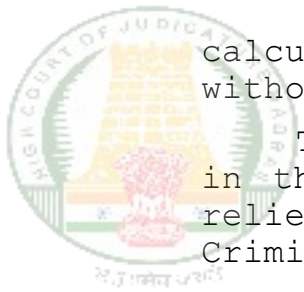
anticipatory bail applications filed by the petitioner. When the present criminal original petition came up for hearing on 18.05.2017, the counsel for the victim represented before the Court and sought for permission to file a proper intervening application with detailed circumstances of the case and previous orders of this Court and Honourable Supreme Court and at that time, this Court directed the counsel for the intervening victim, the petitioner's counsel and the public prosecutor to file written submissions in this case. Hence, he has filed the written submission before this Court.

18. The intervenor further submitted that the petitioner herein moved the present anticipatory bail application in order to enlarge him on bail in the event of his arrest in crime No.1193 of 2016 on the file of the respondent police. The present application is the third successive application by the petitioner as the earlier applications in CrI.O.P(MD)No.20608 of 2016 and CrI.O.P(MD)No.3183 of 2017 were dismissed on 10.11.2016 and 24.04.2017 respectively. This Court by an elaborate order was pleased to dismiss the above-said applications earlier. The following extract from the earlier orders of this Court would clearly elucidate the heinous crime committed by the petitioner on the fellow advocate. The relevant portion from the orders passed in CrI.O.P(MD)No.20608 of 2016 are as follows:-

"Accordingly, this criminal original petition is dismissed. The respondent police is directed to act in accordance with law and the commissioner of police, Tuticorin shall monitor the investigation and instruct the concerned officer to expeditiously file a charge sheet in this case"

19. It is further submitted by the intervenor that similarly the second anticipatory bail application moved by the petitioner in CrI.O.P(MD)No.3183 of 2017 was dismissed on 24.04.2017. At that time, the persecution represented by the learned State Public Prosecutor filed a status report in which, the entire bad antecedents of the petitioner was mentioned and the steps taken by the prosecution with regard to filing of application under Section 82 of Cr.P.C., as the petitioner is voluntarily concealing his whereabouts and evading his appearance before the court after filing of charge sheet in P.R.C.No.7 of 2017. The relevant portion from the orders passed in CrI.O.P(MD)No.3183 of 2017 are as follows:-

"The contention of the learned senior counsel appearing for the petitioner that the petitioner is a member of the Bar council of Tamil Nadu and is the petitioner of Tuticorin Bar Association cannot be a ground to grant anticipatory bail. Everyone is equal in the eye of law. Different yardsticks cannot be applied for the poor and rich and the meek and strong. It is disheartening that an advocate is said to have assaulted another advocate without having control over his actions. Whether the offence alleged against the petitioner is a



calculated crime or not is a matter for investigation without obstacles.

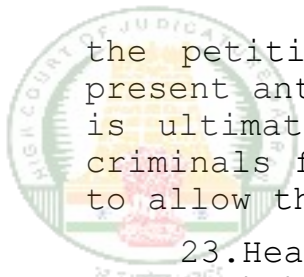
Thus, taking into account the seriousness involved in this case, this Court is not inclined to grant the relief sought by the petitioner. Accordingly, this Criminal Original Petition is dismissed.

Before parting with, this Court is of the view that it is open to the petitioner to surrender and seek bail from the jurisdictional court"

20.The intervenor further stated that there is no change of circumstances between 24.04.2017 and 18.05.2017 except passing of order by the learned Judicial Magistrate No.1, Tuticorin, in the petition moved by prosecution under Section 82 of Cr.P.C on 25.04.2017 that the petitioner is a proclaimed offender and the filing of SLP against the second dismissal order before the Honourable Apex Court in S.L.P.(Crl.)No.3887 of 2017 and the dismissal order passed by the Honourable Apex Court on 08.05.2017. The above said two incidents which took place after dismissal of 2nd Anticipatory Bail application would not constitute the material change for considering the present petition filed by the petitioner, rather it would disentitle the petitioner from maintaining the present anticipatory bail application in view of the judgment pronounced by the Honourable Apex Court reported in **2012(8) SCC 730 (Lavesh vs. State)**.

21.It is further stated by the intervenor that the reason assigned by the petitioner with regard to his implication in the present crime because of his role against in he statewide agitation of Advocates for the amendment in Section 34(1) of Advocates Act is concerned there is no iota of truth in it. In fact, he was the organizer in the Tuticorin Bar Association for the agitation in respect of Section 34(1) is concerned. He himself wrote the resolution of the Association minute's book for boycotting the courts and the minute's book is still in his custody. Therefore, the reasoning given in paragraph No.3 of the present anticipatory bail application is invented for the purpose of the petition which was not found in his anticipatory bail application.

22.It is further stated by the intervenor that there is no possibility for conducting a fair trial by keeping the petitioner on bail. The incident which took place subsequent to the crime through his associate within the court premises which is reported in crime No.1422 of 2016 on the file of the very same respondent police would indicate the influence of the petitioner on the investigation of a case as well as his involvement in the threatening of witnesses. The petitioner is having close nexus with the officers in the police department and getting information about movement of police well in advance from escaping the clutch of law through them. A person who is liable to hide himself for the past 7 months would equally do with anything for defeating the fair trial. Therefore, enlarging



the petitioner on anticipatory bail on the given reason in the present anticipatory bail would give a bonanza to the petitioner who is ultimately challenging this Court's commitment to do away the criminals from the legal profession. Therefore, he strongly opposed to allow this petition.

23. Heard Mr.V.Kathirvelu, learned Senior Counsel appearing for the petitioner, Mr.A.P.Balasubramanian, learned Government Advocate (crl.side) appearing for the State and Mr.L.Shaji Chellan, learned counsel appearing for the intervenor.

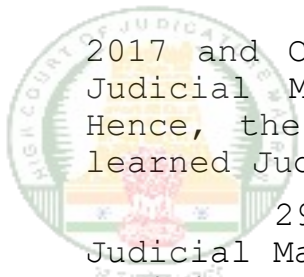
24. It is the case of the petitioner that he seeks anticipatory bail for the offence punishable under Sections 147, 148, 294(b), 323, 307 and 506(ii) of IPC in crime No.1193 of 2016 and P.R.C.No.7 of 2017 on the file of the Judicial Magistrate No.I, Tuticorin, seeks anticipatory bail.

25. The case of the prosecution is that the petitioner along with the other accused is alleged to have assaulted one Mr.Raguraman, Advocate, outside Tuticorin District Court Campus, with deadly weapons, due to which, the intestine of the victim was protruding. Therefore, a case has been registered against the petitioner and others. The prosecution and the defacto complainant have alleged that this petitioner is having 23 cases along with this case and the petitioner is a habitual offender.

26. This Court, on earlier occasion in CrI.O.P(MD)No.20608 of 2016, dismissed the anticipatory bail petition filed by the petitioner by passing a detailed order. In fact, in CrI.O.P(MD) No.3183 of 2017, dated 24.04.2017, by taking into account the seriousness involved in this case, this Court was not inclined to grant the relief sought by the petitioner and the same was dismissed. But this Court permitted the petitioner to surrender and seek bail from the jurisdictional court. Challenging the said order, the petitioner moved the Honourable Supreme Court and filed special leave petition in S.L.P.(Crl.)No.3887 of 2017, which was dismissed by the Honourable Apex Court.

27. Apart from this, the prosecution has also moved a petition under Section 82 of Cr.P.C on 12.04.2017 that the petitioner is a proclaimed offender, since the accused is absconding and his whereabouts was not known. Therefore, the petitioner file was taken on hearing on 12.04.2017 for trial.

28. A typed set of papers is filed by the intervenor/defacto complainant, in which, though the intervenor filed a petition under Section 82 Cr.P.C, there is no reason to show that the petitioner was a proclaimed offender. When the matter was posted for hearing on 18.05.2017 and summons was received, I perused the documents particularly, the documents filed by the intervenor/de-facto complainant and I found that the intervenor has filed documents, namely, petition filed under Section 82 Cr.P.C by the respondent police has been enclosed along with the typed set of papers returned by the Judicial Magistrate No.1, Thoothukudi. On verification, I found that whether the said copy of the documents filed in the typed set of papers by the defacto complainant in CrI.O.P(MD)No.25.09 of



2017 and CrI.O.P(MD)No.3183 of 2017 is properly obtained from the Judicial Magistrate No.1, by applying copy application or not. Hence, the Registry was directed to call for the report from the learned Judicial Magistrate No.1, Tuticorin.

29. Pursuant to the direction, on 22.05.2017, the learned Judicial Magistrate No.1, Tuticorin submitted his report stating the petition has been filed by the respondent police on 12.04.2017 under Section 82 of Cr.P.C seeking a declaration that the petitioner/A1 is the proclaimed offender. The learned Judicial Magistrate No.1, Tuticorin also stated that on 25.04.2017, he allowed the petition and ordered to issue proclamation under Section 82 Cr.P.C requiring the accused to appear before the court on 30.05.2017 at 10.30 a.m. Pursuant to the order passed by the learned Judicial Magistrate No.1, Thoothukudi, on 03.05.2017, the learned Additional Public Prosecutor has submitted a report that proclamation was effected properly under Section 82(2) Cr.P.C. The counsel for the defacto complainant filed a copy application with an affidavit in C.A.No.1148 of 2017 on 21.04.2017 seeking certified copies of applications filed by the police under Section 82 of Cr.P.C along with unexecutable warrant. Accordingly, the copy of the order was supplied by the learned Judicial Magistrate No.1, Thoothukudi. As per the statement of the learned Judicial Magistrate No.1, Thoothukudi, it came to know that the learned Judicial Magistrate has ordered the petition for proclaimed offender on 25.04.2017 and directed the accused to appear before the said court on 30.05.2017. When the petitioner declared as proclaimed offender, as per the order of the Honourable Apex Court, the petitioner is not entitled to get the anticipatory bail.

30. The Honourable Apex Court has held in the case of the **Lavesh vs. State** reported in 2012(8) SCC 730 that when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. When a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Cr.P.C, he is not entitled to the relief of Anticipatory bail.

31. Following the above said order, I am of the view that the petitioner has no right to seek anticipatory bail in this petition. However, the offence committed on 20.10.2016, the FIR was registered in FIR No.1193 of 2016 and later on the investigation was also completed and History Sheet was also filed and the same was taken on file in C.C.No.7 of 2017 by the learned Judicial Magistrate No.1, Thoothukudi. Thus being the case, it is made clear that the tampering of witness by the petitioner/A1 is not acceptable one and though this Court has dismissed the anticipatory bail applications on two occasions and the Honourable Apex Court has also dismissed the anticipatory bail application and the petitioner also proclaimed offenders, this Court is inclined to pass the following orders:

(a) the petitioner is directed to surrender before the Judicial Magistrate No.1, Thoothukudi within a period of one week from the date of receipt of a copy of this order and file a petition for recalling the NBW issued by the Judicial Magistrate No.1, Thoothukudi.



(b) the intervenor is permitted to file his objection petition for recalling the NBW and the same shall be considered by the Judicial Magistrate No.1, Thoothukudi, while considering the petition filed by the petitioner for recalling the warrant.

(c) the petitioner is hereby directed to serve the copy of the petition filed for recalling the warrant well in advance to enable the intervenor/defacto complainant to file his objection on the date of surrender and filing of petition for recall the warrant.

(d) the learned Judicial Magistrate No.1, Thoothukudi is hereby directed to consider the petitioner's surrender and filing the recalling NBW petition by considering the objection of the intervenor/defacto complainant and the respondent police and to pass orders on the same day.

This Criminal Original Petition is disposed of accordingly.

sd/-
30/05/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO.I, THOOTHUKUDI.
- 2 THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI.
- 3 THE INSPECTOR OF POLICE,
TUTICORIN SOUTH POLICE STATION, TUTICORIN DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

- +1. CC to M/S.G.BALAJI Advocate SR.No.23002
+2. CC to M/S.L.SHAJI CHELLAN, Advocate SR.No.22970

SKN
CSL/BS/SAR-I/09.06.2017 : 15P/8C

ORDER
IN
CRL OP(MD) No.6217 of 2017
Date :30/05/2017