

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

Friday, the Fifth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.17112 of 2017

PASTOR GIDEON JACOB ... PETITIONER/ACCUSED

Vs

STATE OF TAMILNADU REPRESENTED BY,
THE INSPECTOR OF POLICE,
CBI, SCB, CHENNAI.
CRIME NO.RC 1(S)/2016. ... RESPONDENT/COMPLAINANT

For Petitioner : M/S.ISAAC MOHANLAL, Senior Counsel

For Respondent : M/S.NAGENDRAN,
Special Public Prosecutor for CBI cases

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

This petition has been filed under Section 439 of Criminal Procedure Code, to enlarge the petitioner/accused on bail in Crime No.RC.1(S)/2016, on the file of the respondent police.

2.The learned Senior Counsel appearing for the petitioner submitted that the respondent has registered a case against the petitioner under Sections 120-B r/w 361, 368, 201, 370 and 370-A of IPC., Sections 34 r/w 33 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 20 r/w 6 of Tamilnadu Hostels and Homes for Women and Children (Regulation) Act, 2014. The petitioner was arrested and remanded to judicial custody from 28.10.2017. The allegation levelled against the petitioner is that the petitioner procured 125 female children from and around Usilampatti in Madurai District in the guise of preventing them from female infanticide. Out of the 125 girls so procured at various stages, only 89 are available now and the whereabouts of other 35 girls are not accounted properly to the District Social Welfare Officer and that these children were allegedly taken to German by the petitioner.

<http://www.judis.nic.in>

3.The learned Senior Counsel for the petitioner further

submitted that originally, a case has been registered under Sections 120-B r/w 361, 368 and 201 of IPC and Sections 34 r/w 33 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 20 r/w 6 of Tamilnadu Hostels and Homes for Women and Children (Regulation) Act, 2014 against the petitioner. Thereafter, at the time of arrest, Sections 370 and 370-A of IPC were added in the first information report. The bail application filed by the petitioner in Crl.O.P.(MD).No.15909 of 2017 was dismissed by this Court on 28.11.2017. This is the second bail application filed by the petitioner.

4.The learned Senior Counsel for the petitioner submitted that already Public Interest Litigation petitions were filed before this Court in W.P.No.16273 and 20895 of 2015 alleging that the petitioner run the Home without registration under Juvenile Justice Act and Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014. The Hon'ble Division Bench of this Court disposed of the petitions by order, dated 30.11.2016, with a direction to the Director of Social Defence to consider the applications for registration of Homes, which are pending with him and would pass final orders in all those applications strictly in accordance with law and after following the procedure established, within a period of four weeks from the date of order. Secondly, directed the CBI to expedite the investigation and to file a final report within nine months from the date of order and further directed the Director of CBI to transfer the investigation to an officer not below the rank of Deputy Superintendent of Police, who shall be a woman officer, since, as per the provisions of the Juvenile Justice(Care and Protection of Children) Act of 2015 as well as under the provisions of Protection of Children from Sexual Offences Act, 2012, the investigation is to be done by a woman officer and also directed the Investigating officer to hand over the case diary to the woman officer to whom investigation is transferred and the said officer shall expedite the investigation and file a final report to the jurisdictional Court.

5.The learned Senior Counsel for the petitioner submitted that the petitioner/accused is a NRI, married a German woman and he is running the present Home in Trichy and he is rendering immeasurable service to the general public by spending huge money, which were his own hard earned money, and the petitioner is nothing to do with the administration of the home. The Central Bureau of Investigation issued summons to the petitioner for enquiry to Trichy and thereafter he was arrested on 28.10.2017. The respondent police already filed a first information report in Crime No.548 of 2015 for the offences under Section 20(2) of Tamilnadu Hostel and Home for Women and Children Regulation Act, 2014 and Section 23 of Juvenile Justice Act, 2000. The petitioner filed a bail application in the crime number and he has been granted anticipatory bail by this Court in Crl.O.P.(MD).No.16570 of 2015, on 31.08.2015. Now for the same offences, the respondent police registered the present case in addition with Sections 370 and 370-A of IPC. He further submitted

that Rule 71 of the Juvenile Justice (Care and Protection of Children) Rules of 2007, which speaks of the registration under the Act, was brought into force with effect from 26.10.2007 and in compliance of the said Rule 71, the petitioner made an application to the State Government in the year 2010, which was forwarded by the Social Welfare Officer to the District Social Welfare Officer, Trichy, for further action in the matter on 22.04.2010 and there was neither registration granted nor the application rejected by the State Government as required under Rule 71. Pursuant to the orders passed on 07.12.2015 by this Court, the Committee constituted by this Court has taken over the Home.

6.He further submitted that there was not even an iota of allegation in the first information report regarding Sections 201 and 120-B of IPC. Further, he produced the letter issued by the District Social Welfare Officer, Trichy, dated 04.05.2010, to the Passport Officer, in which the District Social Welfare Officer stated that based on the records submitted by the petitioner institution, the petitioner is treated as Guardian of all the children of the above said Home. He also produced the Temporary Recognition Certificate issued by the District Collector of Trichy, dated 30.01.2008. Hence, he submitted that since the petitioner is treated as Guardian, offence under Sections 361 and 368 of IPC does not arise.

7.The learned Senior Counsel for the petitioner submitted that the Hon'ble Division Bench of this Court had given nine months period for completing the investigation, and the said period was already over, but the investigation is not completed till now. He further submitted that during the time, when the Home was established, there was no mandatory requirement for registration and the Rules were framed only in the year 2012 and his application for registration is pending before the State Government from the year 2010.

8.Per contra, the learned Special Public Prosecutor for CBI appearing for the respondent submitted that the petitioner obtained the temporary licence from the Social Welfare Department in the year 2008 by showing that all the inmate children are orphans. However, investigation revealed that the petitioner very well knew the parents of the children and he also obtained undertaking from them in Bond Papers. Moreover, permanent licence has to be obtained under Juvenile Justice Act, 2006, thereby the petitioner knowingly violated the formal and normal procedure. He obtained the temporary licence for the purpose of showing the same to the Passport Authority in order to obtain Passport to the in-mate children to take them to Germany in the year 2008-2010. The investigation revealed that the children were taken to Germany in the guardianship name of the petitioner, eventhough they have parents, thus the said action of the petitioner has shown the utter disregard to the provisions of the laws of land. Immediately after procured the children from their natural guardian, the petitioner shifted the Home from Usilampatti to Trichy without any proper intimation.

Hence, the offence under Section 361 was committed by the petitioner. The Hon'ble Division Bench of this Court directed the CBI to investigate whether trafficking as well as exploitation had made out against the inmates of the said Home and to file a report. He submitted that the CBI was *suo motu* impleaded by the Hon'ble Division Bench of this Court on 30.11.2016.

9.He further submitted that since the petitioner had not come up with proper explanation and appropriate answers for the questions put forth towards him by the Investigating Officer and tried to mislead the facts in the case and also suppress certain aspects, the petitioner was taken into police custody and examined in order to unearth the unrevealed facts and other aspects, which are especially in the exclusive knowledge of the petitioner. Since the petitioner did not co-operate to the investigation during police custody, he was produced before the learned Chief Judicial Magistrate(i/c.), Trichy, after completion of police custody, he has been remanded to judicial custody at Central Prison, Trichy.

10.He further submitted that as per the direction of the Hon'ble Division Bench of this Court, made in W.P.(MD).No.16273/2015 and 20895/2015, on 27.11.2015, the learned I-Additional District Judge, Madurai visited the Home and submitted a report regarding the infrastructure, status of the girls, registers maintained, their academic records etc., wherein she pointed out many points, especially, the safety and security of the 89 girls in the Home is at peril and they have lost the chance of formal education, etc.

11.He further submitted that the Hon'ble Division Bench of this Court, by order, dated 30.11.2016, directed the Director of CBI to transfer the investigation to a woman officer, not below the rank of Deputy Superintendent of Police and also directed the CBI to expedite and complete the investigation and to file final report within nine months. However, CBI had filed a Review Application(MD). No.13 of 2017, wherein it was prayed that there is no woman officer in the rank of Deputy Superintendent of Police and hence the investigation is to be given to a woman Inspector of Police. By order, dated 27.04.2017, in the review application, the Hon'ble Division Bench directed the CBI to entrust the investigation of the case to a woman Inspector of Police, wherein there was no mention about the time limit. Even taking the earlier time frame of nine months from the date of issuance of Order in the Review Application, dated 27.04.2017, the time limit already granted for the completion of investigation is still existed. Subsequently, he submitted that there is neither delay in the investigation nor requirement for seeking extension of time and he submitted that the interim report shall be filed in the month of February, 2018.

12.Heard the learned counsel for the petitioner and the learned Special Public Prosecutor appearing for CBI Cases and perused the materials available on record.

13. Before discussing the merits and de-merits of this application, we have to bear in mind that as per the orders passed by the Division Bench of this Court in W.P.(MD)Nos.16273 and 20895 of 2015, the investigation was transferred to Central Bureau of Investigation, Special Crimes Branch, Chennai. Admittedly, in the course of disposing the writ petitions, the Division Bench of this Court directed the learned I Additional District Judge, Trichy, to go to the Home, in which, the children are stayed and submit a report. Accordingly, the learned I Additional District Judge, Trichy, also went to the Home situated at Trichy and submitted his report. In the report, he categorically mentioned that some of the girl children stayed in the Home are not in a casual manner. Further, the petitioner/Accused No.3 is a non-resident Indian and he is having the passport of Germany.

14. In the above situation, at the time of submitting the case of the petitioner, he specifically mentioned that the offences punishable under Sections 370 and 370-A IPC came into effect on 03.02.2013. In the same way, the other offences punishable under Sections 31 and 34 of the Juvenile Justice (Care and Protection of Children) Act, 2015 came into force on 01.01.2016. Accordingly, he submitted that as per the notification date, the offences registered against the petitioner are not made out. It is true that the above offences came into existence only on the abovesaid dates. In the above situation, except those offences, the other offences punishable under Sections 361, 368, 201 and 120(b) IPC have also been registered against the petitioner. Since investigation is still pending, as of now, we cannot come to the conclusion that the offences mentioned in the FIR are made out or not. So, the arguments advanced by the learned counsel for the petitioner in respect of notification date, with regard to the above offences is not at all a ground for allowing this petition.

15. Further, without any reason, the petitioner changed the Home from Nilakottai to Trichy. The reason for changing the home has to be identified only by way of investigation. Further, as per the report submitted by the learned I Additional District Judge, Trichy, all the girls stayed in the Home are not in a condition to speak all the truth, for which, the Investigating Agency, are under the way for conducting Voice Spectrograph Test. So certainly the respondent is in a crucial stage of investigation.

16. Apart from that, this case is relating to welfare of 89 girls, they are all orphans. In the process of identifying the truth, i.e., whether the petitioner has acted in the welfare of the above orphans or not has to be identified only after the completion of the investigation. Opposing this application by saying, in order to identify whether any other persons are involved in the said racket, time is necessary, is a good reason for this petition. Further, considering the background of the petitioner, this Court is of the view that if the petitioner is released on bail, there may be a chance for tampering the witnesses and hampering the

investigation, particularly, for escaping from the clutches of law.

17. For the reasons stated above, this Court is not inclined to grant bail to the petitioner. Hence, this Criminal Original Petition is dismissed.

sd/-
05/01/2018

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

TO

- 1 THE I ADDITIONAL DISTRICT JUDGE, TRICHY
 - 2 THE INSPECTOR OF POLICE, CBI, SCB, CHENNAI.
 - 3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY
 - 4 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S.K.SAMIDURAI Advocate SR.No.237

ORDER
IN

CRL OP (MD) No.17112 of 2017
Date : 05/01/2018

PK/RR/SAR-1/09.01.2018 : 6P/6C

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