



CRL OP(MD). No.7426 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 11/06/2021

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.7426 of 2021

P.G.Sam Infant Jones
S/o.Gilbert ... Petitioner/Accused

Vs.

State rep.by the Inspector of Police,
Thallakulam AWPS,
Madurai.
Cr No.27/2021. ... Respondent/Complainant

For Petitioner : Mr.Venkateshwaran.R.

For Respondent : Mr.T.Senthilkumar,
Government Advocate (CrI.Side)

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

PRAYER :-For Anticipatory Bail in Crime no. 27 of 2021 on the
file of the respondent Police.



ORDER : The Court made the following order :-

The petitioner is figuring as an accused in Crime No.27 of 2021 registered on the file of the Inspector of Police, AWPS-Thallakulam, Madurai City for the offences under Section 15(1) of Protection of Children From Sexual Offences Act, 2012 and Section 67 B of the Information Technology Act, 2000.

2.Since the petitioner apprehended arrest at the hands of the respondent, this petition for anticipatory bail has been filed.

3.The case of the prosecution is that on 27.06.2020 at 17.38:51 hours, the petitioner browsed, downloaded and transmitted child pornographic material by using Airtel Sim bearing No.9787973370 through his e-mail and Facebook Account.

4.The learned counsel for the petitioner would contend that during the relevant time, the petitioner was in hostel and that the material made available so far is not sufficient to show that it was the petitioner who had personally committed the acts in



question. There is also nothing to indicate that the offending content pertained to child pornography.

5. Viewing pornography privately will not constitute an offence. Offence is an act that is forbidden by law and made punishable. That is the definition found in Section 40 of IPC. As on date, there is no provision prohibiting such private acts. There are some who even elevate it as falling within one's right to free expression and privacy. But child pornography falls outside this circle of freedom. Section 67-B of the Information Technology Act, 2000 penalises every kind of act pertaining to child pornography. Whoever publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or



facilitates abusing children online, or records in any electronic form own abuse or that of others pertaining to sexually explicit act with children is liable to be punished. Therefore, even viewing child pornography constitutes an offence.

6.How come the offending activity that took place in a private place came to light ?. Last year, Indian Express carried a news report quoting a police officer warning citizens that they must understand that activities on cyber space are always monitored. There is an international NGO called NCMEC (National Center for Missing & Exploited Children) and it maintains a Cyber Tipline. There is a Memorandum of Understanding between National Crime Records Bureau (NCRB), India and NCMEC, USA and that provides access to the material available with NCMEC. One such Tipline report sent to the respondent police implicated the petitioner herein and that is how, the case came to be registered.

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7.When the matter was listed on 08.06.2021, the learned Government Counsel opposed the grant of anticipatory bail by contending that only seizure of the incriminating electronic



devices and their examination would reveal the actual content and that it is too early to assume in favour of the petitioner that what he watched was not child pornography.

8.The petitioner is a M.E degree holder and presently pursuing Ph.D. Even according to the prosecution, the occurrence took place almost one year back. It appears to be a one-off act. It is not the case of the prosecution that the possession or transmission was for commercial purposes. I therefore, directed the petitioner to appear before the respondent and hand over the mobile phone together with the sim card mentioned in the FIR and other devices involved in the offence. Liberty was given to the respondent to seize the same and send it for forensic examination. Accordingly, the petitioner appeared before the respondent and handed over the devices and materials in question.

9.I am therefore of the view that custodial interrogation of the petitioner is not warranted. I also bear in mind that we are in pandemic times and that unless necessary, arrest should be avoided. Of course, child pornography is a very serious issue



warranting a firm approach. But I would make a distinction between a one time consumer and those who transmit or propagate or display or distribute in digital domain. In the case on hand, the petitioner is said to have shared the offending material with his friend through Facebook messenger. Since the petitioner has not come under adverse notice after the occurrence and since he had also extended his fullest co-operation with the investigation, I am inclined to grant him anticipatory bail.

10.It is obvious that the moment one steps into digital space, one comes under the surveillance either of the State or those manning the social networking sites. If one is zealous about privacy, the only option is to stay outside such networks. Of course, in the current world, it is not a viable option.

11.Section 43 of POCSO Act, 2012 mandates the Central and State Governments to take measures to spread public awareness about the provisions of the statute. But this alone may not be sufficient. That the “Big Brother” is watching us may not deter those who are determined to indulge in such acts of



perversity. The system also may not be able to prosecute every offender. Therefore, it is only through moral education, there can be a way out. It is only the Bharatiya culture that can act as a bulwark. The menace of child pornography can be tackled only if all of us inculcate the right values. Nanjil Naadan, a well known writer, in his article “மன்னுபுகழ் கௌசலை தன் மணிவயிறு வாய்த்தவனே!”, while referring to the famous Kural,

“குழல் இனிது, யாழ் இனிது, என்பதம் மக்கள்
மழலைச் சொல் கௌதவர்.”

[“the pipe is sweet, the lute is sweet,” say those who have not heard the prattle of their own children.”] comes up with an expansive interpretation. According to him, the expression “children” need not be confined to one's own children. It should encompass all children. He emphatically states that we should be compassionate towards any child. We should ensure that no child is sexually exploited. The writer utters several such noble sentiments (from *விசும்பின் துளி* published by Vijaya Publications). I only wish the petitioner who ironically has been named as “Infant” reads the above essay and imbibes the sentiments expressed therein.



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12.The petitioner is ordered to be released on bail in the event of arrest by the respondent police on executing personal bonds for a sum of Rs.5,000/- [Rupees Five Thousand only] with two sureties each for a likesum to the satisfaction of the respondent police and on further condition that the petitioner shall appear before the learned Sessions Court/Special Court for trial of cases under POCSO Act, Madurai, and execute fresh personal bonds for a sum of Rs.5,000/- [Rupees Five Thousand only] with two sureties each for a likesum to the satisfaction of the Sessions Court/Special Court within a period of one month, from the date of resumption of regular work in subordinate Courts and on further conditions that the petitioner shall report before the respondent police as and when required for interrogation.

सत्यमेव जयते (G R S J)
11.06.2021

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

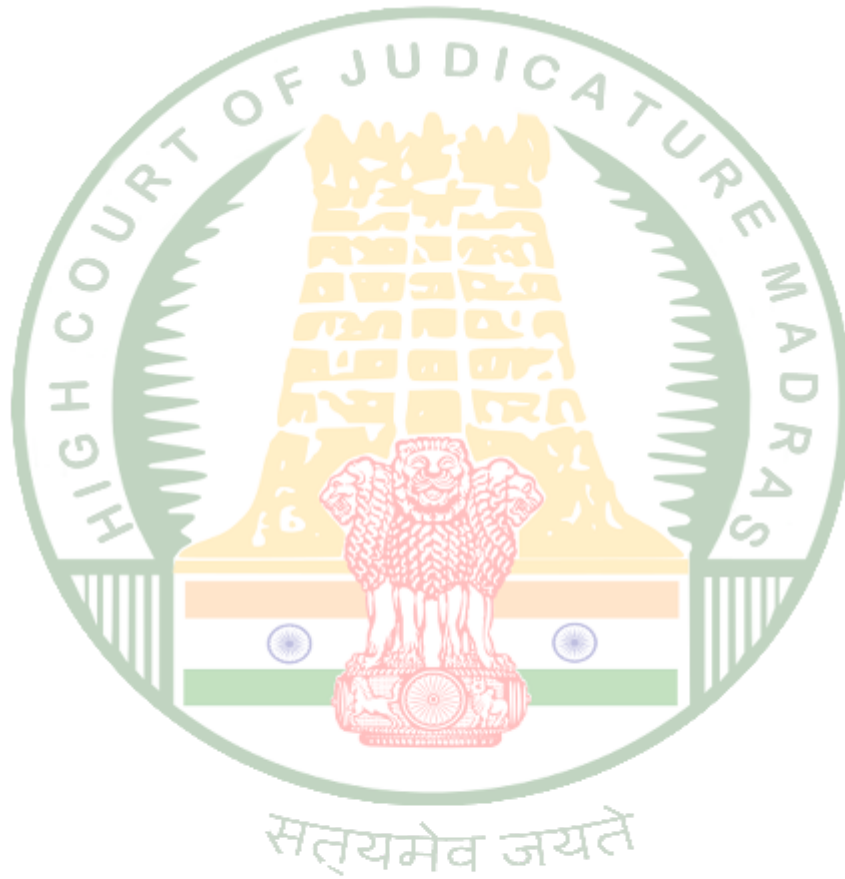
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1. The Inspector of Police,
Thallakulam AWPS, Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



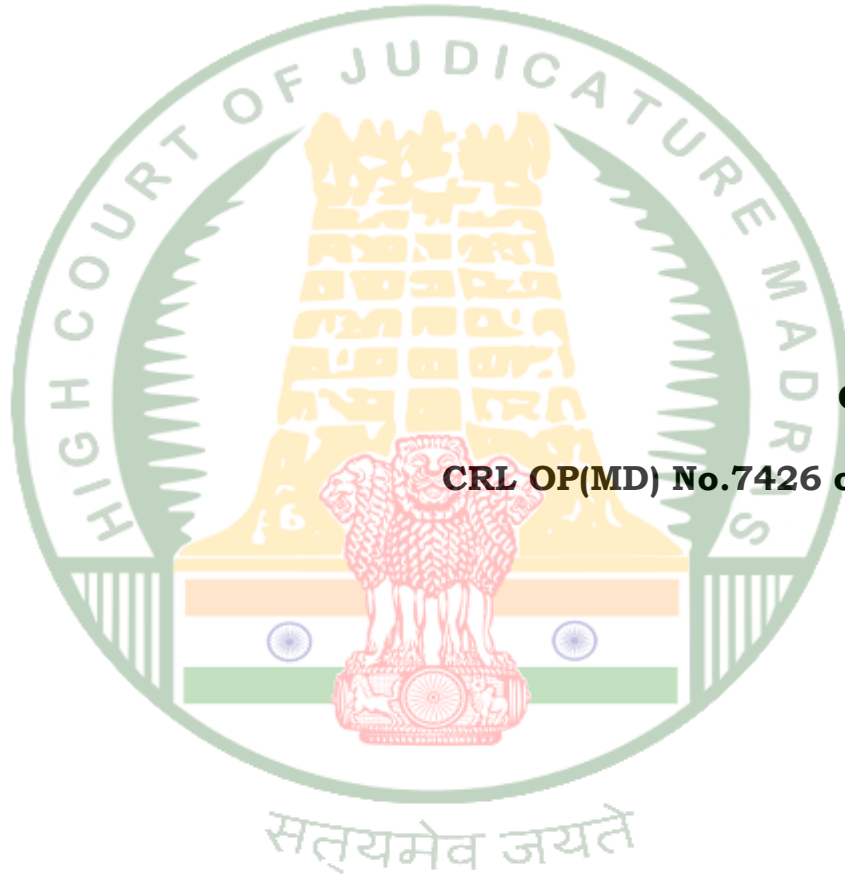
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**ORDER
IN
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