

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2021

PRONOUNCED ON : 07.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.11282 of 2021

Dr.M.Manikandan
S/o.Murugesan,
No.315, Vandikaran Street,
Ramanadhapuram District – 623 501. ... Petitioner

Versus

State Rep. by,
The Inspector of Police,
W-19, All Women Police Station,
Adyar.
Crime No.5/2021. ... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of the Code of Criminal Procedure, to enlarge the petitioner on bail in connection with Crime No.5/2021 on the file of the Inspector of Police, W-19 AWPS, Adyar, Chennai.

For Petitioner : Mr.K.S.Dinakaran, Senior Counsel
for Mr.Balaji Sankara Moorthy

For Respondent : Mr.E.Raj Thilak,
Government Advocate (CrI. Side)

For Intervenor : Mr.R.Jayaprakash

ORDER

The petitioner/A1, who was arrested and remanded to judicial custody on 20.06.2021 for the offence under Sections 417, 376, 313, 323 and 506(i) of IPC and Section 67-A of the Information Technology Act, 2000, in Crime No.5 of 2021, dated 29.05.2021, on the file of the respondent police, seeks bail.

2.The gist of the case is that the defacto complainant lodged a complaint to the Commissioner of Police, Vepery, Chennai on 28.05.2021 and the same was forwarded through official channel to the file of the respondent Police. On receipt of the same, the respondent Police registered a case in Crime No.5 of 2021 for offence under Sections 417, 376, 313, 323 and 506(i) of IPC and Section 67-A of the Information Technology Act, 2000 on 29.05.2021. The defacto complainant, a Malaysian Citizen was employed in the Malaysian Tourism Department and Corporation. Her job required is to make frequent visit to India. During the year 2017, she came in contact with the petitioner, who was the then Minister of Government of Tamil Nadu. On 03.05.2017, she met the petitioner, had discussion and both of them exchanged their contact numbers. The petitioner informed that he is interested

to start a business in Malaysia. From that day onwards, they were in regular touch with each other. Thereafter, the petitioner slowly let out his mind and informed the defacto complainant that she is a good looking lady and a person of such beauty and complexion would be better as his wife and also expressed his love towards her. Initially, the defacto complainant refused to accept the same and thereafter, she slowly gave into the petitioner on his representation that he is not happy with the present married life and soon to get divorce and promised to marry her. Thereafter, both of them lived in relationship as husband and wife. Whenever the defacto complainant was in Chennai, the vehicle of the petitioner bearing Registration Number TN 65 AL 4777 was at disposal for her use. All the neighbours in the flat knew that the petitioner and the defacto complainant were living as husband and wife. The defacto complainant accompanied the petitioner to Rameswaram, Puducherry, Tirunelveli and New Delhi. In New Delhi, they stayed in Tamil Nadu House.

3. During the year 2019, when the petitioner delivered his budget speech, the defacto complainant witnessed the same from Gallery, on a pass obtained as wife of the petitioner. Whenever the defacto complainant insisted for the marriage, the petitioner used to say that only after getting divorce from

his wife, he can marry her. The relationship is known to everybody, the domestic staffs and supporting staffs of the petitioner. Due to their relationship, the defacto complainant became pregnant thrice and the same was aborted. On three occasions, it was the petitioner's friend Dr.Arun from M/s.Lipemed Hospital, Gopalapuram made arrangement for abortion of the defacto complainant. During occasion, when she was pregnant in the year 2019, she went to the house of the petitioner and forced him to marry her. Otherwise she would commit self immolation by poring petrol. In the year 2019, Copper-T was also inserted in her body to avoid pregnancy. Due to which, the defacto complainant developed health complications. The petitioner used to behave in an inhuman manner and forcibly had physical relationship with the defacto complainant, despite her health condition did not permit and on her resistance. The petitioner promised that during the month of March 2020, he would marry the defacto complainant. Due to COVID-19 pandemic, the petitioner went to his native and thereafter, failed to return. During August 2020, the defacto complainant left to Malaysia to visit her father, who was ailing. During the month of December 2020, she came back to Chennai. The petitioner met the defacto complainant and informed that during the year 2021, he would marry her and till April 2015, they were living

together. Thereafter, the petitioner had gone to his native and started threatening the defacto complainant and forced her to leave India and go back to Malaysia, otherwise he would publish the obscene photographs of the defacto complainant available with him in Internet and other social media.

4. In the Telegram, the petitioner sent one such photo available with him. The defacto complainant pleaded with the petitioner to delete such photo. The screen shot of the photo sent to her is available in her phone. With the help of one Bharani, the friend of the petitioner through whom the defacto complainant came in contact with the petitioner was giving constant threat to her. Further, the petitioner claimed that he would portray the defacto complainant as though she is a character less lady and sent mails and he threatened to eliminate her by using rowdy elements.

5. Thus, the defacto complainant and the petitioner were having live in relationship as husband and wife for the past five years. During that period, the defacto complaint got pregnant thrice and the same was aborted and the petitioner failed to marry the defacto complainant and threatened her that he would publish her obscene photographs in social media. Hence, she lodged a

complaint.

6.Mr.K.S.Dinakaran, learned Senior Counsel appearing for the petitioner submitted that the petitioner is a respectful former cabinet Minister in the erstwhile Government. In order to spoil his reputation, a false complaint has been given by the defacto complainant with ulterior motive. On the allegations levelled against the petitioner in the complaint are taken as genuine, no offence is attracted against him as registered in the FIR. The defacto complainant admitted the alleged sexual intercourse is with her consent. The defacto complainant is aware about the fact that the petitioner is a married man and a public personality. The defacto complainant consented for physical relationship on promise of marry of the petitioner cannot be accepted. Further, the defacto complainant is aged about 37 years, a graduate and employed in Malaysian Tourism Department and Corporation and later, she acted in several Tamil and Malayalam movies. Hence, she is a matured person with intelligence and awareness about what she was doing with the petitioner. The defacto complainant's relationship with the petitioner is admitted to be around five years. The defacto complainant used to visit the petitioner at his residence and the petitioner visited her in her flat is the

admitted position. Till the defacto complainant lodging the complaint, there was no resistance in any manner.

7.The learned Senior Counsel further submitted that the defacto complainant for three abortions, she had gone to the hospital and aborted her pregnancy. The petitioner did not take her forcibly or accompany her at any point of time for aborting her pregnancy. It is seen from the complaint and the statement of the defacto complainant, no offence under Section 376 IPC is made. Similarly, the abortion was not by force, so the offence under Section 313 IPC is also not attracted. The other offences are minor offences. With regard to the offence under Section 67-A of the Information Technology Act, 2000, the petitioner sent nude photographs of the defacto complainant. In this case, there was no publish or transmission of the photos of the defacto complainant to any other persons and it was only a private communication between two persons who were intimately and closely having a live in relationship for the past five years. Hence, the offence under Section 67-A of the Information Technology Act, 2002 would not get attracted in this case. The petitioner was dropped from the Ministry on 08.08.2019. Thereafter, the petitioner being a surgeon, he resumed his medical practise in Leela Hospital,

Madurai. Admittedly, from the year 2019, the petitioner was not a Minister. The defacto complainant continued her relationship till April 2021 till the complaint came to be lodged. The petitioner is a public figure, a married man with children is known to one and all. The marriage of the petitioner was in subsistence. The petitioner was regularly visiting his family in Madurai and having good relationship with his wife and children which is known to one and all. Hence, the defacto complainant gave into the petitioner on misconception, is a false statement cannot be believed.

8.The learned Senior Counsel further submitted the petitioner earlier moved CrI.O.P.No.9824 of 2021 before this Court seeking Anticipatory Bail. During the pendency of the Anticipatory Bail, this Court granted interim protection from 03.06.2021 to 09.06.2021 and thereafter, the order was reserved on 09.06.2021 and this Court dismissed the Anticipatory Bail on 16.06.2021. In the Anticipatory Bail, the respondent Police filed counter detailing the investigation conducted, witnesses examined, collection of documents including medical records and recording of the statement under Section 164 Cr.P.C., of the defacto complainant on 08.06.2021. After dismissal of the Anticipatory Bail on 16.06.2021, the petitioner was arrested

and remanded to judicial custody on 20.06.2021 and on the same day, after arrest the confession of the petitioner recorded and two mobile phones were recovered from him. Since the substantial portion of the investigation completed, no petition for Police custody was filed immediately. Thereafter, as an after thought on 28.06.2021, a Police custody petition was filed in CrI.M.P.No.70 of 2021 which was rejected by the learned IX Metropolitan Magistrate, Saidapet, Chennai on 29.06.2021. The learned IX Metropolitan Magistrate, Saidapet, Chennai clearly mentions the investigation sofar conducted including seizure of electronic gadgets and the same produced before the Court for forensic examination. Challenging the order in CrI.M.P.No.70 of 2021, the respondent Police filed CrI.O.P.No.11499 of 2021 before this Court. This Court, by order, dated 02.07.2021 granted two days (03.07.2021 and 04.07.2021) Police custody. During that time, the petitioner was taken to Madurai, conducted search and a Samsung phone seized. The Police custody is over and the petitioner was returned back to the Judicial custody. In view of the petitioner's stature and deep social roots, he will not evade from justice and shall abide by any condition. The learned Senior Counsel reiterates that he shall cooperate with the investigation and will not flee from justice. The case is out of political vendetta.

9.The learned Senior Counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of “*Dr.Dhruvaram Murlidhar Sonar Versus the State of Maharashtra & Ors., reported in MANU/SC/1518/2018*”, wherein the distinction between the rape and consensual sex, the distinction between mere breach of a promise and not fulfilling a false promise and the consensual physical relationship between the parties are considered and held that it would not constitute an offence under Section 376 of the IPC.

10.Mr.E.Raj Thilak, learned Government Advocate (CrI. Side) appearing on behalf of the respondent Police strongly objected for grant of bail to the petitioner and submitted that the petitioner after dismissal of the Anticipatory Bail absconded himself. With great difficulty, he could be arrested on 20.06.2021 in Bangalore. The petitioner has got no reason to be at Bangalore and it was only to flee from the justice. The Anticipatory Bail application has been dismissed by this Court on 16.06.2021. This Court, while dismissing the same had passed detailed order and the points raised now were already argued and this Court thereafter only dismissed the Anticipatory Bail petition. He further submitted that the investigation is still under progress. The petitioner being an Ex-Minister and Ex-MLA, he has got

political clout with wide connection and hence, he would hamper the investigation and the witnesses would be threatened.

11.The learned Government Advocate further submitted that since the petitioner was holding high position, he ought to maintain absolute integrity and honesty. The integrity includes the moral integrity. In this case, the petitioner had illicit relationship with the defacto complainant by giving false promise that he would marry her, despite married and having three children. During the period of relationship, the petitioner took the defacto complainant to various places and also stayed at Tamil Nadu House in New Delhi projected, her as his wife took her to Assembly and thereby, gained confidence of the defacto complainant, continued her relationship. In the process, the defacto complainant became pregnant on three occasions. All the three occasions, the petitioner forced her to abort through his friend Dr.Arun and others. Whenever the defacto complainant was adamant and insisted the petitioner to marry her, the petitioner gave one reason or other and was evasive. On one occasion, the defacto complainant attempted to commit self immolation. The domestic staff and supporting staffs of the petitioner confirmed the relationship of the petitioner with the defacto complainant and

medical records were collected during investigation. The defacto complainant gave her statement under Section 164 Cr.P.C., in conformity with the complaint, narrating the sequence clearly. Taking advantage that the defacto complainant hails from Malaysia, the petitioner exploited her and used her as a commodity.

12.It is further submitted that the petitioner threatened the defacto complainant directly through his friend Bharani. Earlier, the petitioner filed an Anticipatory Bail before this Court in Crl.O.P.No.9824 of 2021. During the pendency of the Anticipatory Bail, this Court granted interim protection from 03.06.2021 to 09.06.2021 and thereafter, this Court dismissed the Anticipatory Bail on 16.06.2021. The petitioner was arrested on 20.06.2021 in Bangalore and on the same day, he was produced before the learned Magistrate for remand. Thereafter, a Police custody petition was filed in Crl.M.P.No.70 of 2021 which was rejected by the learned IX Metropolitan Magistrate, Saidapet, Chennai on 29.06.2021. Challenging the order in Crl.M.P.No.70 of 2021, the respondent Police filed Crl.O.P.No.11499 of 2021 before this Court. This Court, by order, dated 02.07.2021 granted two days (03.07.2021 and 04.07.2021) Police custody. During custody, the petitioner's house was

searched and a mobile phone was recovered. After the arrest, the petitioner gave confession, admitting the defacto complainant was given his contact number 98409 47777 through which they contacted. This mobile phone is yet to be recovered. When the petitioner was arrested in Bangalore, two mobile phones were recovered from him. It was ordinary phones, not smart phones. There is every possibility that if the petitioner is granted bail, he would threatened the witness, hamper the investigation and flee from justice. The investigation is at the crucial stage and prayed for dismissal of the bail application.

13.Mr.R.Jayaprakash, learned counsel appearing on behalf of the defacto complainant/Intervenor submitted that the defacto complainant is a B.Com. graduate, a Malaysian citizen presently residing at Besant Nagar, Chennai. During the year 2009-2010, she came to Chennai to act in Cinemas. She acted in some Tamil and Malayalam movies. During that time, she had come in contact with one Bharani. The said Barani introduced the petitioner during 2017. At that time, the petitioner had represented to her that he is interested in starting industry in Malaysia and the petitioner and the defacto complainant exchanged their mobile numbers. Both of them, exchanged their

communications and they were in regular touch. Slowly, the petitioner was sending lucid messages and also expressed his love towards her. The defacto complainant resisted the same and informed that the petitioner being a married men it is not possible to have such relationship. The petitioner at that time assured and gave undertaking that he would soon divorce his wife with whom he was not happy, not having good looks. Further, he promised that he would marry the defacto complainant at any cost. Believing the same, the defacto complainant had given herself to the petitioner and they were having physical relationship from the middle of the year 2017. The petitioner had called her at late night and had physical relationship. She was also taken to various places like Ramanathapuram, Puducherry, Tirunelveli and New Delhi. All the arrangements were made by the petitioner. The petitioner's personal staff escorted the defacto complainant in all these places. Thus, the defacto complainant gained confidence and completely believed him. Due to the relationship, the defacto complainant got pregnancy thrice and all time, it was aborted forcibly. On one occasion, when the defacto complainant resisted for abortion, she was forcibly beaten and thereafter, abortion was carried out.

14. One Dr. Arun from M/s. Lipemed Hospital, Gopalapuram, who is the friend of the petitioner used to facilitate and make arrangements for the abortion. Further, the defacto complainant was forced to have Copper-T which affected her health. The defacto complainant had undergone all the trauma and given herself with the fond hope that the petitioner would one day marry her. The petitioner had taken a flat in Madura Apartments for the defacto complainant and he used to visit regularly, stayed overnight with the defacto complainant. The petitioner later changed his colour and threatened the defacto complainant. The defacto complainant was threatened not to disclose the relationship and was asked to leave to Malaysia immediately. Otherwise, the petitioner would engage hire links from Ramanathapuram and would do away the defacto complainant. Further, he had sent some private photographs of the defacto complainant and informed that if she further stays back he would publish the other private photographs in Internet and social medias and he would brand her as a women of less virtue. Unable to bear any further, the defacto complainant approached his uncle and who referred her to an Advocate through that Advocate, she lodged a complaint to the Commissioner of Police, Vepery, Chennai. After lodging the complaint, the petitioner sent a person to get email password and other electronic particulars.

The defacto complainant refused to do so. The petitioner after registration of the case had absconded himself. During abscondness, he attempted to force the defacto complainant to withdraw the complaint. The petitioner being a Ex-Minister and Ex-MLA has got clout and connection. At this stage, if the petitioner is let out on bail, he would not only thwart the investigation and he would flee from the country.

15.The investigation is at the crucial stage. Hence, he prayed for dismissal of the bail application.

16.The learned counsel for the defacto complainant/Intervenor relied upon the following decisions:-

- Anurag Soni Versus State of Chhattisgarh reported in (2019) 13 SCC 1.
- State of Kerala Versus Mahesh reported in 2021 SCC OnLine SC 308.
- Neeharika Infrastructure Pvt. Ltd., Versus State of Maharashtra and Others reported in 2021 SCC OnLine SC 315.

17.This Court considered the rival submissions and perused the materials available on record.

18.The defacto complainant is a B.Com., graduate, a Malaysian citizen aged about 37 years. She had come to India in the year 2009-2010 to act in movies and she had also acted in some Tamil and Malayalam movies. During this period, she had come in contact with one Bharani. In the year 2017, the said Bharani had introduced the petitioner. During this period, she used to stay in a service apartment. Thereafter, the said Bharani had taken the defacto complainant to the house of the petitioner, informed her that he intends to start a business in Malaysia. Both the petitioner and the defacto complainant exchanged their mobile numbers and they were in touch with each other. Slowly, the petitioner started sending lucid messages. Though initially it was resisted, later the defacto complainant accepted the relationship on the promise that the petitioner would marry her. The petitioner is a public personality and his social and marital status is known to everyone. The defacto complainant is aware that the petitioner is married and having three children at Madurai. She had on occasions seen the petitioner and his wife. The petitioner informed that he is not interested with his present married life, since she is not to his expectations and not discharged her duties as a wife. Further, his Ministerial post restrained him to immediately go for divorce, since it would create a sensation, but their relationship continued. The

petitioner had even paid the advance for the flat in which the defacto complainant is residing, the petitioner used to visit there and stay overnight on many occasions. In fact on many occasions, she accompanied the petitioner to various places. Thus, the relationship between the petitioner and the defacto complainant continued from May 2017 to April 2021. This is not in dispute. There have been difference of opinion during three occasions when the defacto complainant became pregnant. The petitioner had made arrangements for abortion through his friend Dr.Arun and other Doctors against the wish of the defacto complainant. The petitioner also insisted her to have Copper-T which caused some health ailments. The defacto complainant a graduate and cini actor aged about 37 years was conscious and aware of her relationship with the petitioner and knowing that the petitioner was a married men and having wife and children. From the complaint and the materials so far collected, it is seen that though the defacto complainant claims that she was forced to go for abortion, in none of the occasion the petitioner had taken her forcibly or accompanied her during abortion. Further, the defacto complainant had enjoyed the wealth lifestyle of the petitioner and she had voluntary continued her relationship from year 2017 onwards. The defacto complainant is aware that from 08.08.2017, the petitioner lost his Ministership and

thereafter to, she continued her relationship and there was no obstacle for the defacto complainant to compel the petitioner to get married after the petitioner was dropped from the Ministry.

19. Thus, the defacto complainant continued her relationship irrespective of the petitioner being a minister or not, leading to inference the relationship was cordial and voluntary. The Hon'ble Apex Court in the case ***“Dr.Dhruvaram Murlidhar Sonar Versus the State of Maharashtra & Ors., reported in MANU/SC/1518/2018”*** in paragraph Nos.14 and 15 observed as follows:-

“14. Section 375 defines the offence of rape and enumerates six descriptions of the offence. The first clause operates where the woman is in possession of her senses and, therefore, capable of consenting but the act is done against her will and the second where it is done without her consent; the third, fourth and fifth when there is consent but it is not such a consent as excuses the offender, because it is obtained by putting her, or any person in whom she is interested, in fear of death or of hurt. The expression "against her 'will'" means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated

to be an act of rea- son coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.

15.Section 90 of the IPC defines "consent" known to be given under fear or misconception:-

"Section 90:

Consent known to be given under fear or misconception.—A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception"

Thus, Section 90 though does not define "consent", but describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances."

20.The defacto complainant was aware of the fact that the petitioner was a married man and the marriage proposal of the defacto complainant was bound to be seriously opposed by the family members of the petitioner. Further, the defacto complainant had sufficient intelligence to understand the significance of marriage quality of the act she was consenting and she continued her relationship in secret till lodging of the complaint. The defacto complainant had shown no resistance to the petitioner's overtures. Thus, freely exercised a choice between resistance and assent. The defacto complainant was well aware of the consequence that the marriage between her and the petitioner would not take place. Thus leading to the inference that she freely, voluntarily and consciously consented to have sexual intercourse with the petitioner and her consent was not in consequence of any misconception of fact and they were living together as man and wife.

21.Thus, there is a clear distinction between rape and consensual sex. Further, in this case, the petitioner was arrested and immediately remanded, confession of the petitioner was recorded and two mobile phones were seized. After eight days, police custody petition filed and two days police custody was granted by this Court. During the Police custody, one Samsung phone was

recovered from the house of the petitioner's residence at Madurai. Further, the mobile phones of the petitioner and the defacto complainant and other electronic gadgets produced before the trial Court for forensic examination.

22.The petitioner, a Ex-Minister having deep social root apart from that he is a Doctor after losing his Ministership, he is carrying on his profession at Leela Hospital, Madurai. Further, he has got a family. A2 in this case, who is said to have introduced the defacto complainant to the petitioner who travelled through the relationship of the petitioner and the defacto complainant from the year 2017 till the relationship broke, who exerted and threatened the defacto complainant not to speak against the petitioner is granted anticipatory bail by this Court on 25.06.2021 in CrI.O.P.No.10739 of 2021. The petitioner arrested and he is confinement.

23.In view of the above discussions, this Court is inclined to grant bail to the petitioner subject to the following conditions:-

(a)the petitioner is ordered to be released on bail on executing his own bond for a sum of Rs.10,000/- (Rupees ten thousand only) before the Superintendent of the concerned prison, in which the petitioner is confined;

(b)the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the learned IX Metropolitan Magistrate, Saidapet, Chennai within a period of 15 days from the date of lifting of lock down and commencement of regular functioning of Court below, failing which the bail granted by this Court shall stand dismissed automatically;

(c)the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(d)On release, the petitioner shall report before the respondent Police for a period of two weeks daily at 10.30 a.m., and thereafter, as and when required for interrogation;

(e)The petitioner shall surrender his passport while executing sureties before the learned IX Metropolitan Magistrate, Saidapet, Chennai. If no passport is available, the petitioner shall file an affidavit to that effect;

(f) the petitioner shall not commit any offences of similar nature;

(g) the petitioner shall not abscond either during investigation or trial;

(h) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(i) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***;

(j) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

07.07.2021

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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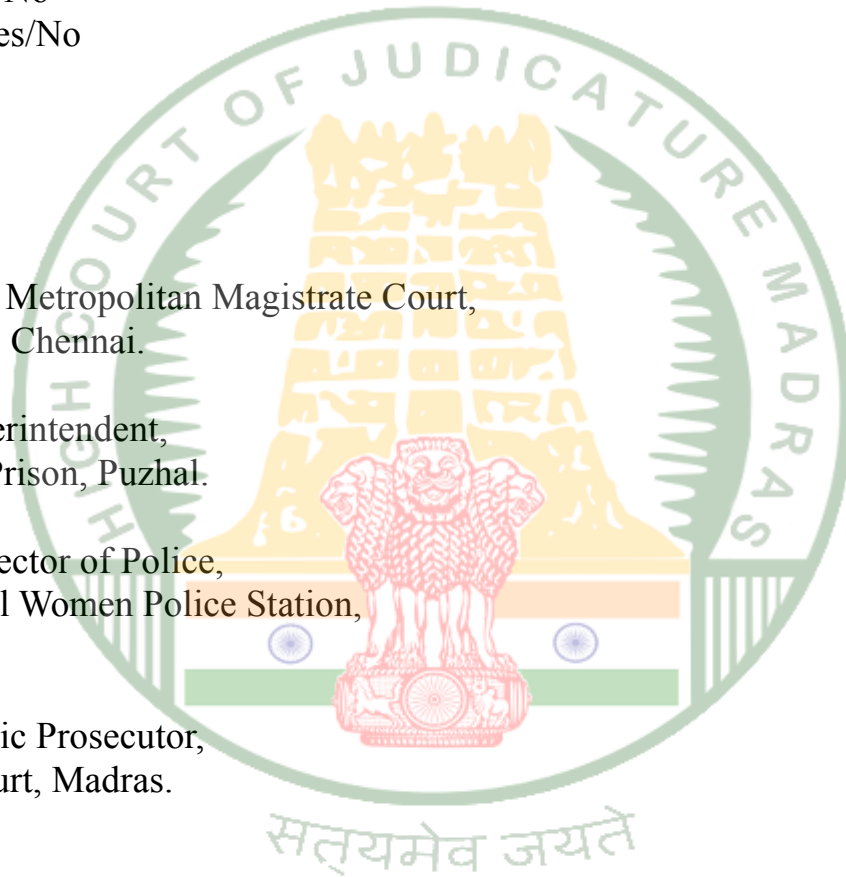
To

1.The XIV Metropolitan Magistrate Court,
Saidapet, Chennai.

2.The Superintendent,
Central Prison, Puzhal.

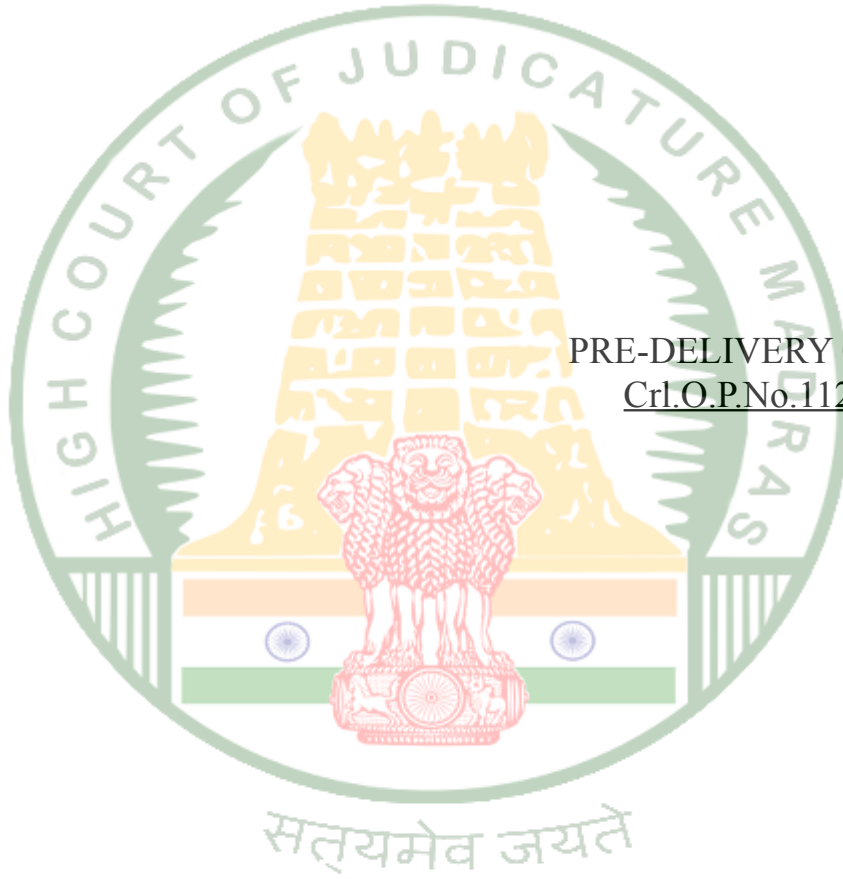
3.The Inspector of Police,
W-19, All Women Police Station,
Adyar.

4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.
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PRE-DELIVERY ORDER IN
Crl.O.P.No.11282 of 2021

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07.07.2021