

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT (Criminal Jurisdiction) Tuesday, the Twenty Eighth day of November Two Thousand Seventeen PRESENT The Hon`ble Mr.Justice M.DHANDAPANI CRL OP(MD) No.15909 of 2017 PASTOR GIDEON JACOB, ... PETITIONER / ACCUSED Vs STATE OF TAMIL NADU REPRESENTED BY THE INSPECTOR OF POLICE, CBI, SCB, CHENNAI.

CRIME NO.RC 1(S)/2016. ... RESPONDENT/ COMPLAINANT For Petitioner : MR.ISAAC MOHAMED SENIOR COUNSEL MR.K.SAMIDURAI Advocate For Respondent : MR.S.JAYAKUMAR SPECIAL PUBLIC PROSECUTOR FOR CBI PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :- The petitioner/Accused, who was arrested and remanded to judicial custody on 28.10.2017 for the alleged offences punishable under Sections 120B r/w 361, 368, 201, 370 and 370 A of IPC, Section

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, in Crime No.RC I

(S) of 2016, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner was implicated under Sections 120B r/w 361, 368, 201, 370 and 370A of IPC, Section 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 and that the Sections 370 and 370(A) of IPC were added, at the time of arrest of the petitioner.

3.The learned Senior Counsel appearing for the petitioner would submit that the first accused had initially started a child care home in the year 1986 and thereafter, an orphanage, by name, M/s.Mose Ministries was opened in Trichy in the year 1994, thereby the abandoned children nearby Usilampatti area were taken to the orphanage and given a proper care to the particular children, who were not taken care of the initial stage, when they were born.

Thereafter, in the writ petitions in W.P.(MD)Nos.16273 and 20895 of <http://www.judis.nic.in> 2015 filed, as Public Interest Litigation, the Hon'ble Division Bench of this Court has issued a direction as early as on 20.01.2016, directing the Central Bureau of Investigation to investigate the function of the children's home and file a report before the Division Bench of this Court. Accordingly, they filed a report before the Division Bench of this Court. Ultimately, the Division Bench of this Court has passed an order on 30.11.2016. The operative portion of the said order reads as follows:- 32.From the facts narrated herein above and from various interim orders passed by this Court on several occasions, as enumerated hereinabove, as of now, there is no controversy over the fact that as on the date when the first interim order was passed by this Court, in W.P.(MD).No.20895 of 2015, there were 89 inmates in Mose Ministries Children's Home at Trichy. Out of these 89 children, already 82 have completed 18 years of age. Thus, they are no more children in need of care in terms of the provisions of the Juvenile Justice (Care and Protection of Children), Act of 2015.

They have got freedom to decide about their future. In order to ascertain the views of these children, who are now kept in the said Home, which is controlled and managed by the Governmental authorities, we directed the presiding Judge of the Children's Home at Trichy, to record the statements of these girls. She has recorded the statements of these girls and she has produced the same before this Court.

33.A perusal of the report would go to show that many of them have even crossed 20 years and one girl, by name Eunice is aged 27 years and 9 months. All of them have been almost educated and they have passed 12th standard successfully. Many of them know English, Hindi and Typewriting. In the statement made to the District Judge, they have stated that they are willing to continue to be under the care and custody in the Mose Ministries Children's Home. Regarding the wishes of these girls, we cannot express any view, because, being majors, they have got freedom to decide about their future. But, as per the interim order passed by this Court, they are now confined in the very same Home. This, in our considered view, is not only illegal, but against the rights of these girls to enjoy freedom. When we expressed this, the learned Senior Counsel appearing for the petitioner in W.P.(MD).No.16273 of 2015 and the learned Special Government Pleader, on instructions, submitted that the wishes of these inmates (girls) could be ascertained and they would be allowed to decide about their future according to their own wishes without any intervention whatsoever from any

quarters. The said statement is recorded. At this juncture, we need to look into Sub-Section (4) of Section 39 and Section 46 of the Act (2015) which reads as follows:

“39(4). The children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to re-integrate into the mainstream of the society.”

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46. After care of children leaving child care institution.-Any child leaving a child care institution on completion of eighteen years of age may be provided with financial support in order to facilitate child's re-integration into the mainstream of the society in the manner as may be prescribed.”

34. In view of these provisions, we direct that the wishes of these (inmates) girls who have completed 18 years of age shall be ascertained by the Director of Social Welfare Department, and if they want to leave the Home, the Government shall provide financial support, as stated in Section 46 of the Act and allow them to choose their abode according to their choice. If any such girl who has completed 18 years of age wishes to continue to have the protection, she may be kept in any Home for destitute run by the Government or any other recognized Home.

35. So far as the seven children are concerned, who have not completed 18 years of age, of course, they need care and protection, as provided under the Juvenile Justice (Care and Protection of Children) Act of 2015. At the same time, we cannot allow these children to be kept in Mose Ministries Children's Home, because, it has not been registered as provided under Section 41 of the Act, 2015. They need to be kept in a registered Home, either run by the Government or by any other organization.

36. The learned Senior Counsel Mr. Isaac Mohanlal submitted that considering the fact that these Children are studying in St. Joseph High Schools, they may be allowed to be in any recognized Home or registered Home near the said School, so that, they may not experience any inconvenience to get to the school. During the course of hearing, we were informed that there is one recognized children home, by name Nagammai Children's Home (Nagammai Kulanthaigal Illam) run by Thanthai Periyar Maniyammai Trust) at K.K.Nagar, Trichirappalli. The officials and the learned Special Government Pleader have got no objection for keeping all these seven children in the said Home. Therefore, we have no hesitation to issue a direction to the respondents to keep these seven children, namely Estelle, Fabienne, Chiara, Larissa, Loreen, Amelie and Navina, in Nagammai Children's Home at K.K.Nagar, Trichirappalli.

37. It is submitted by the learned Senior Counsel Mr. Isaac Mohanlal that the application made by the petitioner seeking registration of the Home as a Children's Home has been pending with the State Government from the year 2010 onwards. But the learned Special Government Pleader submitted that the District Social Welfare Officer had not recommended for the registration of the said Home, as the Home does not satisfy the legal requirements. But the fact remains that no order of rejection of the application made by the petitioner was made. The learned Senior Counsel Mr. Isaac Mohanlal would submit that if the defects noticed by the Director of Social Defence are intimated to the petitioner, he is prepared to rectify the same and thereafter, his application could be considered by the Director of Social Defence, who is the competent authority, as of now, to grant registration.

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55. Having highlighted the situation prevailing in this State, we are unable to restrain ourselves, without expressing our anguish and displeasure over the way in which the rights of these children have been dealt with by the officials of the Departments of Social Defence and Social Welfare and the Government of TamilNadu. We are only reminded of the words of Gabriel Mistral, the Nobel Laureate.

He said:

“We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot; right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answer 'tomorrow'.

His name is 'today'.”

4. After the disposal of this case, the Central Bureau of Investigation took up the investigation and investigated the matter afresh and registered First Information Report on 11.02.2016.

Thereafter, the orphanage of the first accused was taken over by the Child Welfare Committee on 07.12.2015. After that, the Central Bureau of Investigation took up investigation on 11.02.2016.

5. The learned Senior Counsel further submitted that the petitioner is a NRI, married a German woman and he is running the present home and few churches in Trichy area and he is being 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. Though in August 2017, the Central Bureau of Investigation issued a summon to the petitioner, after receipt of the summon, initially he was not able to appear before the respondent police subsequently appeared before the respondent and thereafter, the petitioner was arrested on 27.02.2017. Thereafter, the custodial interrogation was carried out by the respondent police for five days and continuously the petitioner is in judicial custody for 32 days. He would further submit that the petitioner is ready to co-operate with the respondent police for the investigation and he is also ready to surrender his passport and whatever the condition is imposed by this Court.

6. Per contra, the learned Additional Public Prosecutor appearing for CBI filed a detailed counter and he draw the attention of this Court :-

vii) It is submitted that the averment made in Para-7 is far from the actual facts and the same are misleading. In fact, the writ petition in W.P.No.8122/2017 was only about seeking directions to set the 89 in-mates at liberty and live according to their wishes, as they attained the age of majority and not otherwise as averred in the petition. On this context only, the in-mates were examined by the Honourable Mahila Judge, Trichy asking their willingness for their future settlement. However, the petitioner/accused -3 is trying to divert the context of the writ petition as if the in-mate children did not make any allegation on <http://www.judis.nic.in> him. Further, the report of the learned Mahila Judge, Trichy in this regard was submitted to this Honourable Court and the same is in the custody of this Honourable Court in the pending Writ Petition. The subject matter of the line of investigation of CBI is looking into the offences of abuse of children and trafficking as per the Orders of this Court. Moreover, the averment that there is no allegation made by 89 in-mates of the Home i.e. children against the petitioner/accused-3 is also the subject matter of investigation, as it is revealed that these 89 in-mates are practically under the control of the petitioner/accused-3 and his staff and associates, though Social Welfare Department is taking over the administration of M/s.Mose Ministries on regard. Moreover, this Court while hearing the Writ Petitions (MD) No.16273 of 2015 and 20895 of 2015, on 27.11.2015 directed the learned I Additional District Judge, Madurai to visit the Home i.e. M/s.Mose Ministries on 28 & 29.11.2015 and submit a report to this Honourable Court on the infrastructure, status of the girls, registers maintained, their academic records etc. The report was submitted by the learned I Additional District Judge wherein the Judge elaborately discussed the following vital disturbing features in the Home among the other features,

(i) the children have duties in kitchen, toilet, common area and other places and sometimes they are also sent to hostel when they refuse to do their duties,

(ii) the children were being sent to boarding schools and to Villupuram only in the form of punishment,

(iii) there were no watchmen or security available outside the premises during the nights and children remained un-monitored,

(iv) the girls take care of the facility including cleaning, mopping of floors, clearing of toilets, washing of clothes and cooking,

(v) In addition of taking care of themselves, the girls are made to clean the house of their Paster Gideon Jacob and cook for him and his family,

(vi) few children are being sent to the 5 Loaves, German Bakery since 2013, in the name of training and there is no specified course or duration prescribed and the administration calls it as on-job training and the children are not given any stipend and this is nothing but exploiting the labour of the girls under the custody of the administration,

(vii) the older girls totally lack General Knowledge and the girls confessed that they have never handled money.

(viii) the children was not aware of what happened outside world. The children have been made to think that their Paster Gideon Jacob is suffering for the sins committed by them and in spite of the fact that the was their Saviour, he is being troubled because of the sins of the girls.

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(ix) the children believe that the Welfare Officer and other person from the Government have come to take the joy away from their lives and therefore do not want to leave the institution which has sacrificed to save them.

(x) some children were taken to Germany and it is not known as to how they took the children out of the country without any intimation to the Child Welfare Committee.

(xi) the safety and security measures are inadequate and in fact non-existent. Hence, the safety and security of the 89 girls house in the institution is at peril.

(xii) the girls are made to work in other institution run by the Pastor, without giving them any salary and thus the labour of the girls are being exploited.

(xiii) most of the girls have lost the chance of formal education for one reason or the other.

(xiv) the institution has not taken any effort till date for rehabilitation or social integration of the girls in the home, which the prime objective of the Juvenile Justice (Care and Protection) Act, 2000.

(xv) the children are brought up in isolated conditions and are forced to be dependent on the Pastor for their needs.

Based on this report, it is clearly understood that the children were harboured for the purpose of servitude. This Court, vide orders dated 07.12.2015, discussed this comprehensive report of the learned I Additional District Judge which included the above pointers. In the same order, after discussing the exhaustive report of the learned I Additional District Judge, this Court observed that the children are virtually suffering a syndrome similar to Stockholm syndrome that made them believe very strongly that Paster Gideon Jacob is their only Saviour. This Court observed that the learned I Additional District Judge was under the opinion that any attempt to transfer/shift the inmates to other institutions may meet with stiff resistance, lead to violent reaction from the children or unpleasant and untoward incidents. The petitioner/accused-3 did not make any objections on these observations of the learned I Additional District Judge and this Court also discussed about this in the same order dated 07.12.2015. Further, the learned I Additional District Judge, Madurai also submitted a Confidential Report to this Court which under the custody of this Court.

7.The learned counsel for the petitioner draw the attention of this Court regarding IPC Sections implicated against the petitioner, which did not show any evidence implicating the petitioner within the purview of IPC crime and in respect of Sections 370 and 371(A), the petitioner got permission from the child welfare committee, for the purpose of giving education to the <http://www.judis.nic.in> abandon children. Hence, the implication of the penal provisions against the petitioner does not arise and that all the actions done by the petitioner is only in the absence of biological guardian to the abandon children at the infant stage. Hence, the implication of Sections 370 and 370(A) of IPC does not arise.

8.The learned Special Public Prosecutor appearing for the respondent would submit that though he narrated in the counter that the enquiry is in initial stage, the respondent/Law Enforcing Agency arrested the petitioner alone and the respondent has to carry out the investigation in order to find out whether these children were abducted and used for sexual harassment, all those things will found only after the completion of the full-fledged investigation. At this stage, granting bail would tamper the evidence and it will interfere with the investigation progresses. Accordingly, he prays for dismissal of the bail application.

9.Considering the rival submissions made by the learned counsel for the petitioner as well as the learned Special Public Prosecutor, since the allegation made against the petitioner is serious in nature and that the investigation is in initial stage and some more persons have to be arrested in this crime, at this stage, granting of bail to the petitioner, would interfere with the progress of investigation, I am not inclined to interfere with the investigation progress. Hence, the bail sought for by the petitioner is hereby rejected.

10.Accordingly, this criminal original petition is dismissed.

sd/-

28/11/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

Madurai Bench of Madras High Court,

Madurai - 625 023.

TO

1 THE 1ST ADDITIONAL DISTRICT JUDGE, MADURAI

2 THE INSPECTOR OF POLICE, CBI, SCB, CHENNAI.

3 THE SPECIAL PUBLIC PROSECUTOR FOR CBI

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

4 THE SUPERINTENDENT CENTRAL PRISON, TRICHY

+1. CC to M/S.M.SIDDHARTHAN Advocate SR.No.35275

ORDER

IN

CRL OP(MD) No.15909 of 2017

Date :28/11/2017

RMK

SH/CM/VR/SAR-I-7.12.2017-7P-6C