



CRL OP(MD). No.11898 of 2023

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

Date : 30/06/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.11898 of 2023

1. Ilayaraja
2. Vairamoorthi
3. Sureshkumar ... Petitioners / Accused No.1 to 3

Vs

State through
The Inspector of Police,
Kumbakonam East Police Station,
Thanjavur District.
(Crime No.167 of 2019). ... Respondent / Complainant

For Petitioner : Mr.C.Susi Kumar, Advocate
for M/s.R.Maheswaran, Advocate.

For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor

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

PRAYER :-

For Anticipatory Bail in Crime No.167 of 2019 on the file of the Respondent Police.

<https://www.mhc.tn.gov.in/judis> ORDER : The Court made the following order :-



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The petitioners/A1 to A3, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 176(1A)(i) of Cr.P.C. @ 166B, 217, 304(2) and 342 of I.P.C., in Crime No.167 of 2019 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the de-facto complainant is the Superintendent of Sub Jail, Kumbakonam. The deceased namely, Saravanan was kept in the jail as remand prisoner in connection with the case in Crime No.162 of 2019 for the offences under Sections 294(b), 427 and 506(ii) of IPC. The said Saravanan is a drug addict and frequently roaming here and there at night hours. On 07.06.2019, he was affected with epilepsy and immediately, he was admitted in the Government Hospital, Kumbakonam. Subsequently, he was referred to the Thanjavur Medical College Hospital, Thanjavur, where he was dead. Therefore, the learned Judicial Magistrate No.III, Thanjavur had conducted inquest under Section 176(2) of Cr.P.C. and given a findings that the deceased was died due to the assault made by the police. Thereafter, the offences has been altered under Sections 166B, 217, 304(2) and 342 of IPC against the petitioners. Hence, the case.



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3.The learned counsel for the petitioners would submit that all the petitioners were working in the Sub Jail, Kumbakonam, as 1st Grade Warden, Grade II Police and Assistant Jailer respectively. The deceased was remanded to judicial custody in pursuant to the registration of the FIR in Crime No.162 of 2019 on 03.06.2019. Thereafter, the deceased was suffering from epilepsy during night hours, immediately, he was admitted to the District Head Quarters Hospital at Kumbakonam and thereafter, he was referred to the Thanjavur Medical College Hospital, Thanjavur. Thereafter, the FIR has been registered for the offence under Section 176(1A)(i) of Cr.P.C. In fact, the petitioners while receiving the deceased to the judicial custody, they found some injuries, due to which, he suffered with epilepsy and died. The petitioners are nothing to do with the crime as alleged by the prosecution. He would further submit that the co-accused, who was also remanded along with the deceased, has clearly stated that the petitioners have nothing to do with the crime and he was attacked only by the Police Officers, who are incharge of the respondent police and due to which, he died. Therefore, he sought for anticipatory bail to the petitioners.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that though the case was registered for the offence under Section 176



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(1A)(i) of Cr.P.C., on receipt of the report from the learned Judicial Magistrate No.III, Thanjavur, the respondent police altered into the offence under Sections 166B, 217, 304(2) and 342 of IPC. In fact, as per the report, the Government also passed an order and awarded compensation of Rs.5,00,000/- to the deceased and the same was duly paid to the victim's family. Therefore, the custodial interrogation of the petitioners is very much required in this case and he vehemently opposed to grant of anticipatory bail to the petitioners.

5.A perusal of the records revealed that the deceased was arrested in pursuant to the registration of FIR in Crime No.162 of 2019 on the file of the respondent herein for the offences punishable under Sections 294(b), 427 and 506(ii) of IPC on 03.06.2019. Immediately, on 03.06.2019 itself, he was remanded to judicial custody.

6.On perusal of the Proforma For Health Screening of Prisoners Admission to Jail of the deceased, he was subjected for medical examination by the Medical Officer (Causality), Government of District Head Quarters Hospital, Kumbakonam, he opined that the deceased was normal and no injuries found on the body of the deceased. Therefore, he was taken to custody by the jail authorities, namely, the petitioners herein and the first petitioner was working as the 1st Grade Warden and



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the second petitioner was working as Grade II Police Constable and the third petitioner was working as an Assistant Jailer of the Kumbakonam Sub Jail.

Thereafter, they found that the deceased was suffering with epilepsy during night hours on 07.06.2019. Immediately, he was taken to District Head Quarters Hospital at Kumbakonam and again he was referred for better treatment at Thanjavur in Thanjavur Medical College Hospital, he was declared as brought dead. On his body, the autopsy was conducted and found the following Ante Mortem injuries:

"The Following Ante Mortem Injuries were Noted:

- 1) Reddish brown colour abrasions of size,
 - 2cm x 1cm over back of right elbow.
 - 2cm x 1cm over front of right knee.
 - 1cm x 0.5cm over front of upper 1/3rd of right leg.
 - 2cm x 1cm, 2cm x 0.5cm & 1cm x 0.5cm over front of left knee.
 - 1cm x 1cm and 1cm x 0.5cm over back of left elbow."

The Post-mortem Doctor also opined that the death was caused due to the injuries sustained by him on his stomach and all over body. There was blood clot in his stomach. It was happened only due to attack by these petitioners, while he was in their custody. Subsequently, the family members of the deceased also lodged



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complaint before the Human Rights Commission and the Human Rights

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Commission directed to take appropriate action as against the erred officials.

7. Therefore, the learned Judicial Magistrate No.III, Thanjavur conducted a detailed enquiry. While enquiry, he had examined all the family members of the deceased and they deposed that the deceased was arrested by the respondent police on 03.06.2019 at about 06.00 a.m. Even after arrest, he was enquired by the respondent and categorically deposed that he did not indulge any criminal activity as alleged in the complaint. In fact, he had smoked cigarette in front of the shop of the defacto complainant and as such, the complaint was lodged and no damage was caused by the petitioner to the shop. However, the family members were informed by the respondent that the FIR has been registered and as such, directed them to obtain bail to the deceased before the concerned Court. The Doctor, who had examined the deceased also deposed that he was unconscious at the time of bringing him to the hospital. Therefore, he was referred to Thanjavur Medical College Hospital for better treatment. Further, the petitioners reported to him that due to his drunkenness, his hands and legs were shivering and as such, he was brought to the hospital. Finally, the learned Magistrate opined as follows:



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“இறுதியாக,
(a)சிறைவாசி சரவணன் என்பவருக்கு அவரின் பிரேத பரிசோதனை அறிக்கையில் குறிப்பிடப்பட்டுள்ள 1 முதல் 5 வரையிலான பலதரப்பட்ட மழுங்கிய விசைக்காயங்களினால் ஏற்பட்ட இரத்த இழப்பு மற்றும் அதிர்ச்சியினால் இறந்திருக்கக் கூடும் என்று நான் கருதுகிறேன்.

(b)சிறைவாசி சரவணனின் பிரேத பரிசோதனை அறிக்கையில் குறிப்பிடப்பட்டுள்ள காயங்கள் சரவணனுக்கு ஏற்பட்ட வலிப்பினால் மட்டுமே ஏற்பட வாய்ப்பில்லை என்று கருதுகிறேன்.

(c)சிறைவாசி சரவணனின் பிரேத பரிசோதனை அறிக்கையில் குறிப்பிடப்பட்டுள்ள இறப்பிற்கு முன் ஏற்பட்ட 1 மற்றும் 5 வது காயங்களாக சிராய்ப்புக் காயங்கள் அவருக்கு வலிப்பு வந்து கை கால்கள் இழுத்து கொள்ளும் போது ஏற்பட வாய்ப்புண்டு என்று கருதுகிறேன். 2, 3 மற்றும் 4 ஆகிய காயங்கள் வலிப்பினால் ஏற்பட்டிருக்க வாய்ப்பில்லை என்று கருதுகிறேன்.

(d)சிறைவாசி சரவணனின் பிரேத பரிசோதனை அறிக்கையில் குறிப்பிடப்பட்டுள்ள தலையிலும், மார்பு பகுதியிலும், வயிற்றிலும் ஏற்பட்டிருந்த காயங்கள் அவருக்கு வந்த வலிப்பினால் மட்டும் ஏற்பட வாய்ப்பில்லை என்று கருதுகிறேன்.

(e)இறந்து போன சிறைவாசி சரவணனுக்கு இறப்பிற்கு முன்பு ஏற்பட்டிருந்த 2, 3 சிராய்ப்பு காயங்கள் 4வது காயமான உடல் உறுப்புகளின் உட்பகுதியில் ஏற்பட்டிருந்த காயங்கள், தலை, மார்பு கூடு, வயிற்று பகுதியில் ஏற்பட்டிருந்த காயங்கள் ஆகியவற்றை பார்க்கும் போது, மேற்படி காயங்கள் சரவணனுக்கு ஏற்பட்ட வலிப்பினால் மட்டும் ஏற்பட்டிருக்க வாய்ப்பில்லை என்றும், வலிப்பினால் காயம் ஏற்பட்டு சரவணனுக்கு இறப்பு ஏற்பட வாய்ப்பில்லை என்றும் நான் கருதுகிறேன்.



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(f)இறந்து போன சிறைவாசி சரவணன் என்பவருக்கு ஏற்பட்ட இறப்பு இயற்கைக்கு மாறானது என்று முடிவு செய்துள்ளதால், அவரின் இறப்பு குறித்து உரிய நடவடிக்கை எடுக்க வேண்டும் என்று பரிந்துரை செய்கிறேன்.”

On the strength of the said report, the Government also passed order in G.O.Ms.No.783, dated 15.09.2021 and directed to pay a sum of Rs.5,00,000/- to the victim's family and directed the officials concerned to take appropriate departmental action as well as criminal action as against the erred officials. Therefore, the learned Magistrate has submitted a report as early as on 20.08.2019 and on perusal of the report submitted by the learned Magistrate, the Government itself passed order on 15.09.2021 to take appropriate action as against the erred officials. Even after the receipt of the report submitted by the learned Magistrate, the respondent altered the offences only under Sections 166B, 217, 304(2) and 342 of IPC and filed the final report only on 19.04.2023. Even then the respondent did not take any steps to secure the petitioners sofar. They filed absconding charge sheet as against the petitioners. In fact they are still working as Warden and Constables of the Jail and they are very much available for custodial interrogation. It is very unfortunate to state that though there are specific allegations and evidences on record to alter the offence into Section 302 of IPC, the respondent failed to alter the offence under Section 302 IPC. The respondent acted in a clandestine manner and only to save the petitioners, the



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respondent alter the offence into Section 304(2) IPC only. Further, though the petitioners are very much available, the respondent also did not take any steps to secure them for any enquiry and they were shown as absconding accused and filed the final report. Therefore, the learned Magistrate refused to receive the absconding charge sheet, since the petitioners are very much available and working in their respective cadre. Further, the disciplinary authority also did not take any action against the erred officials. It is a fit case to alter the offence under Section 302 of IPC, since the deceased was multiple injuries all over his body and due to which, he died. Hence, this Court is not inclined to grant anticipatory bail to the petitioners, since their custodial interrogation is very much required in this case.

8. Accordingly, this Criminal Original Petition is dismissed with the following directions:

(i) The respondent is directed to alter the offence under Section 302 IPC and other offences if any and file a final report within a period of four weeks from the date of receipt of a copy of this order;

(ii) The Director of Inspector General of Prison, Trichy, is directed to initiate appropriate disciplinary proceedings as against the petitioners on the strength of the report submitted by the learned Magistrate No.III, Thanjavur, dated 20.08.2019 and



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the Government Order in G.O.Ms.No.783, dated 15.09.2021 forthwith;

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(iii) The Superintendent of Police, Thanjavur is directed to conduct detail enquiry as against the respondent and others, who were not taken appropriate action as against the petitioners as per the report submitted by the learned Judicial Magistrate No.III, Thanjavur, dated 20.08.2019 as well as the Government Order in G.O.Ms.No.783, dated 15.09.2021 and take appropriate action as against them;

(iv) After altering the offences, the respondent is directed to proceed as against the petitioners in accordance with law.

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

SJI

To

1.The Judicial Magistrate No.III,
Thanjavur.

2.Do through the Chief Judicial Magistrate,
Thanjavur District at Kumbakonam.

3.The Director of Inspector General of Prison,
Trichy.



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4.The Superintendent of Police,
Thanjavur District.

5.The Inspector of Police,
Kumbakonam East Police Station,
Thanjavur District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL OP(MD) No.11898 of 2023
Date :30/06/2023

ED/MMS/SAR- (21/07/2023) 11P / 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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