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(1)CrI.OP(MD)No.16785 of 2023:-

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 09/11/2023

THE HON'BLE MR JUSTICE G.ILANGOVAN

CrI.OP(MD)Nos.16785 and 16786 of 2023

(1)CrI.OP(MD)No.16785 of 2023:-

Sureshkumar

... Petitioner/ Accused 3

Vs.

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

... Respondent/Complainant

For Petitioners : Mr.V.PRAKASH, Senior counsel
for M/s.JAYASUDHA, Advocate

For Respondent : Mr.R.M.ANBUNITHI
Additional Public Prosecutor

(2)CrI.OP(MD)No.16786 of 2023:-

1.Ilayaraja
2.Vairamoorhti

... Petitioners/ Accused 1 & 2

Vs.

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

... Respondent/Complainant



(1)CrI.OP(MD)No.16785 of 2023:-

WEB COPY

For Petitioners : Mr.K.NAVANEETHA RAJA, Advocate

For Respondent : Mr.R.M.ANBUNITHI
Additional Public Prosecutor

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

COMMON PRAYER:-For Anticipatory Bail in Crime No.167 of 2019 on the file of the Respondent Police.

COMMON ORDER: The Court made the following order:-

The petitioners, who are arrayed as A1 to A3 apprehend arrest at the hands of the respondent police for the offence punishable under section 176(1A)(i) of Cr.P.C @ 166B, 217, 304(2) and 342 IPC @ 166, 166B and 302 IPC, in Crime No.167 of 2019 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution, as mentioned in the final report is that A1 was working as Sub Jailer, Kumbakonam and also working as Superintendent in the Sub Jail. A2 is the Grade I Constable in the Prison Department. A3 is the Grade II Constable in the same Department. On 03/06/2019, the deceased namely Saravanan was remanded to judicial custody in Crime No.162 of 2019 by the Judicial Magistrate No.1, Kumbakonam. The order was passed, on 03/06/2019. Proper medical examination was taken before remanding him to the custody. It was ascertained that there was no injury. when he was kept in the prison, he did not take food proper and mentally stressed, he was making shouting and fell down in the bath room. On

<https://www.mhc.in.gov.in/judis>



(1)Crl.OP(MD)No.16785 of 2023:-

WEB COPY

07/06/2019 in the evening, A1 to A3 warned the deceased to calm down, but he did not oblige. So all the accused tied the hands of the deceased knowing fully well that if any assault is made he will die. They assaulted the deceased with sticks and hands. Because of the severe injuries suffered by the deceased, he was admitted in the hospital, on 07/06/2019, then to the Thanjavur Medical College Hospital. Later he died, because of the injuries made by the accused persons. Charging them for the offences under sections 166, 166B, 302 IPC, final report was filed.

3. Seeking anticipatory bail, A1 to A3 are before this court by filing these petitions.

4. Heard both sides.

5. While passing order in Crl.OP(MD)No.11898 of 2023, dated 30/06/2023, the following observation was made by this court:-

“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.



(1)CrI.OP(MD)No.16785 of 2023:-

WEB COPY

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 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



(1)Crl.OP(MD)No.16785 of 2023:-

WEB COPY

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 complaint before the Human Rights Commission and the Human Rights 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



(1)CrI.OP(MD)No.16785 of 2023:-

WEB COPY

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:

“இறுதியாக,

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



(1)CrI.OP(MD)No.16785 of 2023:-

(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.

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



(1)Crl.OP(MD)No.16785 of 2023:-

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



(1)CrI.OP(MD)No.16785 of 2023:-

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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 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 as 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.”

6.By recording the above said observation, the earlier applications were dismissed.



(1)Crl.OP(MD)No.16785 of 2023:-

WEB COPY

7. But later, petition filed to clarify the order stating that some factual mistake has been committed by this court. While passing the order in the above said clarification petition, this court granted liberty to the petitioner. The above said observation runs like this:-

“The petitioner filed this petition to clarify the order dated 30.06.2023 passed by this Court in Crl.OP(MD)No.11898 of 2023, thereby dismissing the application filed by him for anticipatory bail and also issued direction to the respondent to alter the offence under Section 302 of IPC and other others.

2. The learned Senior Counsel appearing for the petitioner submitted that while dismissing the anticipatory bail petition, the inquest report was not properly brought to the notice of the Court. The petitioner was at only additional charge of Kumbakonam Sub Jail and he was not in full in-charge. Further he was not present at the sub jail on the date of occurrence. He also produced the inquest report dated 20.09.2019 before this Court.

3. Considering the above submission, it is clarified that whatever the observation made by this Court did not prevent



(1)Crl.OP(MD)No.16785 of 2023:-

the petitioner to file the second anticipatory bail petition. It is also made clear that the observations made by this Court are not specific to the petitioner.

4.Accordingly, this Criminal Miscellaneous Petition stands disposed of.”

8.In pursuance of the above said liberty, this petition has been filed.

9.Now let us go to the argument advanced by the petitioners in the grounds. A1 and A2 in that petition stated that the deceased was suffering from epilepsy during night hours. He was admitted in the District Headquarters Hospital, Kumbakonam, later Medical College Hospital, Thanjavur. At the time of receiving the deceased to their custody, some injuries were found. The injuries alleged to have been caused by the police officers. In the remand report, the co-accused and the deceased also informed the court that they were assaulted by the police. So according to the petitioners 1 and 2, they were noway responsible for the death.

10.The learned counsel appearing for the petitioners 1 and 2 would submit that even as per the postmortem report, which is made available does not indicate the external injuries. He is referring to the ante-mortem injuries to sustain his argument that absolutely there was no possibility for the petitioners to have caused the assault.

11.So as as A3 namely Suresh Kumar is concerned, it is stated by him that it is



(1)CrI.OP(MD)No.16785 of 2023:-

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mentioned in the grounds that at the time of the alleged occurrence, he was working as Assistant Jailer holding Additional In-charge of Kumbakonam Sub Jail. He visited the Sub Jail, on 07/06/2019 at about 02.05 pm. At that time, the Duty Medical Officer advised him to admit the deceased in the Government Hospital for treatment. Since the deceased was suffering from Chronic alcohol addiction. So he directed A1 and A2 to take the deceased Saravanan to the Government Hospital. Thereafter, he left the prison at 02.00 pm, on 07.06.2019 after completing the work. The deceased was taken to the hospital at 04.10 pm through the Kumbakonam East Police Escort party. He was examined by the Duty Medical Officer and certified that his conditions were normal. He was taken to the Sub Jail back. He was admitted in the prison at 04.40 pm.

12.Again at 09.45 pm on the very same day, he received information that the deceased is shouting in an uncontrollable manner and suffering from epilepsy. So he again instructed A1 and A2 to take him to the Kumbakonam Government Hospital for medical treatment. At the time of remand, he was found in unconscious stage. He was referred to Thanjavur Medical College Hospital for further treatment, where he was declared to be brought dead. So according to A3, there was absolutely no possibility for any assault made by him. Departmental proceedings were initiated. Now charges also pending.



(1)Crl.OP(MD)No.16785 of 2023:-

WEB COPY
documents.

13.To show the entry, exit period and time, he would also rely upon the official

14.The Officials documents have also been called for and all the documents were produced before this court.

15.Now the question, which arises for consideration is whether the petitioners are entitled for anticipatory bail at this stage.

16.It is very unfortunate to note that during the process of investigation, no interrogation was made with these petitioners. But the final report was filed showing these petitioners are absconding accused. It makes wonder as to how such nature of investigation was made by the Investigating Officer, even now they are working in the service in the Prison Department. This shows the casual nature of the investigation.

17.So this is first aspect runs in the mind of the court. Why the accused assaulted is absolutely a matter for trial. A1 and A2 says that even at the time of custody of the deceased under him in the prison, injuries were found in the body of the deceased. They alleged to have been caused by the concerned police officials.

18.Per contra, it is contended by A3 that at the time of admission, absolutely there was no injuries. He entered into the prison and left the same, on 07/06/2019 in the evening itself. He is not responsible for the occurrence that alleged to have been



(1)CrI.OP(MD)No.16785 of 2023:-

taken place subsequent to that. So, they are contradictions between the stand taken by A3 and the rest of the accused. Which one is true is the matter for trial.

19.Simple case of the prosecution is that to control the uncontrollable behaviour of the deceased, these petitioners alleged to have caused assault with sticks and hands. Because of that only, death occurred. The postmortem details also indicated in the earlier portion of the order, by extracting the relevant portion from the earlier order. So I need not repeat the very same thing here.

20.Suffice to say that there are enough materials available to show that the death occurred by severe assault.

21.The contention on the part of A1 and A2 is that due to the epilepsy, the deceased sustained self injuries is not at all correct on record, on the face of the materials now available.

22.So this is totally wrong statement, which dis-entitles from claiming the anticipatory bail. More-over, to seek anticipatory bail, the petitioners must show a prima facie ground to exercise the discretionary power in their favour as noted above.

23.But as mentioned above, the investigation itself is not undertaken in a proper manner. The manner in which the above said occurrence said to have been committed disentitles the petitioners from claiming the discretionary relief. They have to surrender before the concerned court and seek regular bail. This is not a



(1)Crl.OP(MD)No.16785 of 2023:-

fittest case to exercise the discretionary power.

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24.Considering the gravity of the offence, these petitions deserve dismissal.

25.In the result, both criminal original petitions are dismissed.

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09/11/2023

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Sub-Assistant Registrar

(C.S. I / II / III / IV)

Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

TO

1 THE INSPECTOR OF POLICE,
KUMBAKONAM EAST POLICE STATION,
THANJAVUR DISTRICT.

2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER IN

Crl.OP(MD)Nos.16785 and 16786 of 2023

Date :09/11/2023

SA/VR/SAR. /08.01.2024/15P/3C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.