

CRL.A(MD).No.601 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.601 of 2023

Muthuraja @ Muthupandi

... Appellant

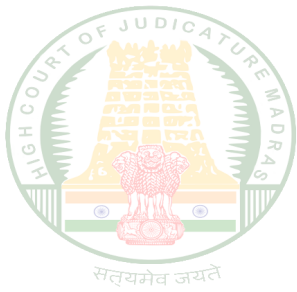
Vs.

1.The Deputy Superintendent of Police,
Tuticorin Town,
SIPCOT Police Station,
Thoothukudi District.
(Crime No.48 of 2023)

2.P.K.Ramkumar

... Respondents

Prayer : This Criminal Appeal is filed under Section14-A(2) of SC/ST Act, to set aside the order passed in Cr.M.P.No.637 of 2023 dated 11.07.2023, on the file of the learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Tuticorin, Tuticorin District and enlarge the appellant on bail.



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For Appellant : Mrs.R.Shalini Priyanka

For Respondents : Mr.T.Senthil Kumar (for R1)
Additional Public Prosecutor

Mr.A.Robinson (for R2)

JUDGMENT

The appellant who is arrayed as A7 in Crime No.48 of 2023, filed this appeal to challenging the order passed in Cr.M.P.No.637 of 2023, dated 11.07.2023, by the learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Tuticorin, Tuticorin District and set aside the same and enlarge the appellant on bail.

2.The case of the prosecution.

According to the prosecution, the deceased was a practising Advocate in Thoothukudi and Tirunelveli Bar Associations. The *defacto* complainant in the above crime number has two brothers. One of his brother's name is P.K.Shivakumar and another brother's name is P.K.Muthukumar. The said P.K.Shivakumar was murdered by a mob in front of the Court campus, in the presence of the deceased P.K.Muthukumar and the *defacto* complainant. Hence, the police official



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Thoothukudi South police station, had registered a case in Crime No.533 of 2019. In the said case, one of the accused is Rajesh.

3.In the said case, the deceased Advocate P.K.Muthukumar and the *defacto* complainant, herein, were continuously objecting the bail by intervening in the bail application filed by all the accused. The same infuriated and provoked the accused in Crime No.553 of 2019 and they hatched a plan to eliminate the said deceased/P.K.Muthukumar as he was a hinderance to get bail. Therefore, the accused in jail conspired with this appellant and other accused, murdered the said P.K.Muthukumar on 22.02.2023 at about 12.15 pm., near P.K.Gold Loan at Thoothukudi Soreeshpuram Madhapur Road. Hence, the *defacto* complainant has given a complaint before the respondent police. On the basis of the complaint given by the *defacto* complainant, the respondent police, registered a case in Crime No.533 of 2019, for the offences punishable under Sections 147, 148, 449, 302 and 109 of IPC r/w 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

4.Thereafter, the investigating agency arrested the accused and other accused and filed a final report and the same was taken on file in S.C.No.

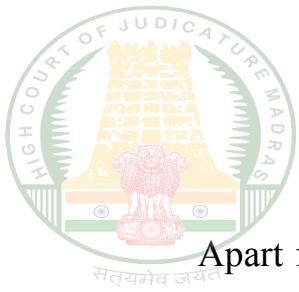


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25 of 2023. The appellant filed bail application and the *defacto* complainant appeared and filed a detailed counter. The learned Additional Public Prosecutor also filed a detailed counter. After considering all the material and the documentary evidence, the learned trial Judge dismissed the bail petition, vide impugned order dated 11.07.2023. Challenging the same, the appellant filed this Criminal Appeal before this Court.

5.The learned counsel for the appellant would submit that the appellant was treated as conspirator to commit crime and there is no material available against him to prove his complicity and hence he seeks for bail. She would also submit that the appellat was inside the prison from 24.03.2023. He voluntarily surrendered before the learned Judicial Magistrate and he was in judicial custody from 24.03.2023. In view of the completion of the investigation, he is entitled for bail.

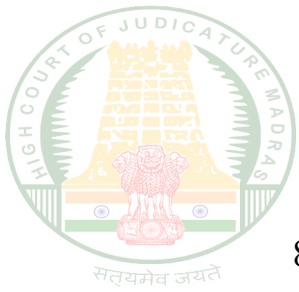
6.The learned Additional Public Prosecutor filed a detailed counter and also submitted that the appellant had contacted one of the main accused Rajesh in jail and conspired to murder the deceased as he was the hindrance to obtain bail. The Investigating agency collected lot of incriminating materials to prove his active participation in the conspiracy.



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WEB COPY Apart from that, the accused has number of previous antecedents. He also reiterated the counter filed before the Court below and the same was extracted in the main judgment in paragraph No.5. According to the learned Additional Public Prosecutor, the above material substantiates the involvement of the appellant and also the accused are intimidating the remaining witnesses and hence, he seeks for dismissal of the bail petition.

7.The learned counsel for the *defacto* complainant filed a detailed counter and also relied on number of precedents. In addition to that he submitted that this Court dismissed the bail petition filed by the co-accused in CrI.A.(MD).No.494 of 2023, on the ground that there was threat to the witnesses and this Court elaborately considered all the aspects and dismissed the bail petition of the co-accused. In the considered opinion of this Court, this accused also stands on the same footing as he is involved in the conspiracy. More particularly, he engaged hooligans to murder the deceased and the investigating officer collected lot of materials and also there was continuous threat to the witnesses. Hence, he seeks to confirm the dismissal order passed by the learned trial Judge.



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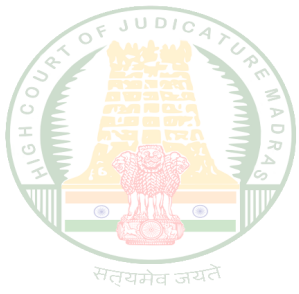
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8.This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the first respondent and also the learned counsel appearing for the *defacto* complainant and perused the materials available on record.

9.As rightly pointed out by the learned Additional Public Prosecutor and the learned counsel for the *defacto* complainant, there are number of incriminating materials available on record as stated in the counter affidavit filed by the respondent police before the Court below. The said material circumstances are as follows:

This petitioner has met the accused Rajesh (A1 in Crime No.533 of 2019) in jail for several occasion in between 2019-2022 ad also lastly met the accused Rajesh prior two days of occurrence (ie) 20.02.2023. At that time accused Rajesh told that the deceased Muthukumar objecting bail petition continuously as well as Muthukumar also get speedy tril order from the High Court so we have to kill him.

December 2022 sutherson (A15) has transferred monet to this petitioner/accused No.7,



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namely, Muthuraja @ Muthupandi for making arrangements to eliminate the deceased Muthukumar.

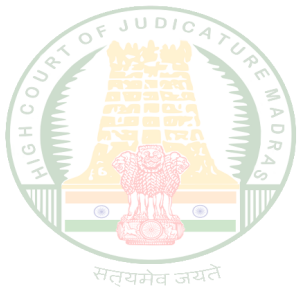
Accused Jeya prakash (A1), Dinesh (A8) and this petitioner/accused No.7 had spoken in conference call as to murder with the help of the Sriram who has deposed this statement in the course of the investigation in order to elimiate the deceased.

The petitioner/accused No.7 to gain popularity in his caste and to show that he is supporter to the Rajesh, printed the calendar of year 2023 with Rajesh photo as “Rajesh Nadar Ilaghar Ezhuchi Peravai” and south Indian Tiger Rajesh Nadar Council State President “Srivai Muthupandian”. The petitioner/accused No.7 circulated the calendar to the area of Coimbatore, Korrapallam and Srivaikundam.

The accused No.15, namely, Sutherson had voluntarily states in his confession that send Rs. 10,000/- to this petitioner/accused No.7 through Gpay 9655715556.

After that this petitioner/accused No.7 instructed Basker (A6) to arrange hooligans A2 to A5 and one Juvenile to murder the deceased Muthukumar. They have executed.

After that, this petitioner/accused No.7 instructed Basker (A6) to arrrange hooligans A2 to



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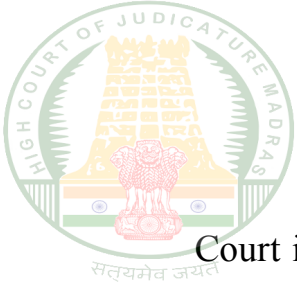


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*A5 and one Juvenile to murder the deceased
Muthukumar.*

*They have executed the murder as planned by
Rajesh, Peter, Murugesan, Dinesh, Jeyaprakash,
Petitioner/accused No.7 and others.*

10. Apart from that, he has previous antecedents and there is threat to the other witnesses and the *defacto* complainant. This Court as rightly submitted by the learned counsel for the *defacto* complainant this Court made a detailed discussion about the threat to the witnesses in Crl.A. (MD).No.494 of 2023 and considered all the materials and dismissed the bail petition with direction to conduct the trial in the jail premises and the said judgment also was confirmed by the Hon'ble Supreme Court in S.L.P. (Crl).No.422 of 2024. In the said criminal appeal in Crl.A.(MD).No.494 of 2023, this Court after considering the material adduced by both the investigating agency and the *defacto* complainant, dismissed the bail petition on the basis of the analysis finding that “all witnesses are under trauma because of the threat”. This Court further found that the majority of the accused are hirelings and their antecedents are very bad. This appellant also has one previous case. There is a serious allegation against him as stated in the paragraph No.9 of the order. At the cost of the repetition, this



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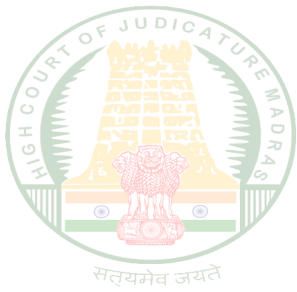
Court is duty bound to extract the following portion of the contents of the FIR in Crime No.48 of 2023, which had been lodged by the second respondent regarding the threat:

“எனது அண்ணன் படுகொலைக்கு மேற்படி ரமேஷ், முருகேசன் மற்றும் அவர்களின் மைத்துனரான பெரியதுரை ஆகியோர்கள் மற்றும் தேன்ராஜ், மந்திரம் துரண்டுதலின் பேரிலே எனது அண்ணன் பி.கே.முத்துக்குமார் கொலை செய்யப்பட்டார். மேற்படி நபர்களால் நானும் என் குடும்பத்தினரும் மிகுந்த உயிர் அச்சத்தில் உள்ளோம். மேற்படி நபர்களின் மீது வழக்கு பதிவு செய்து உரிய நடவடிக்கை எடுக்குமாறு கேட்டுக்கொள்கிறேன்.

11. Section 15A SC/ST(POA) Act clearly mandates to give the protection to the witnesses and also Section 10 gives power to remove the person likely to commit offence. In this case, two gruesome murder had been committed and the witnesses to the said murder case are under the continuous threat and hence, in view of the threat to the witnesses, this Court is not inclined to grant bail.

12. The Hon'ble Supreme Court in the case of *Chaman Lal v. State of Uttarpradesh* reported in *2004(7)SCC 525*, has held that while granting bail, following parameters are to be considered.

(i). *Nature of the accusation and severity of the*



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punishment in the case of conviction and nature of the supporting evidence.

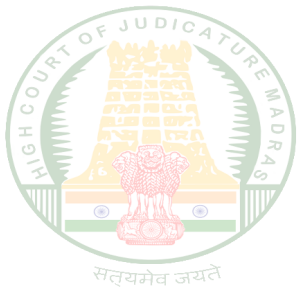
(ii). Reasonable apprehension of tampering with witness or apprehension of threat to the complainant.

(iii). Prima satisfaction of Court in support of the charge.

13. In this case, from the above discussion, all the above parameters are made out and hence, the appellant is not entitled to bail.

14. Even though the appellant is confined in jail for a long period, in the peculiar circumstances of this case, the same is not a ground to grant the relief of bail to the appellant. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court in the case of ***Jaibunisha v. Meharban*** reported in ***(2022) 5 SCC 465***:

“21.6. Another factor which should guide the courts' decision in deciding a bail application is the period of custody. However, as noted in Ash Mohammad v. Shiv Raj Singh [(2012) 9 SCC 446] the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern



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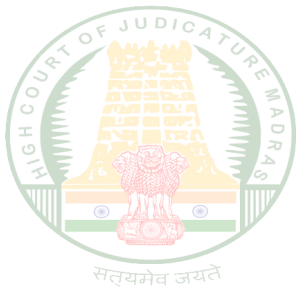
involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.”

15. This Court is not inclined to grant bail on the sole ground that the final report is filed when there is a reasonable apprehension of potential threat to the witnesses. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court in the case of ***Naveen Singh v. State of U.P.*** reported in ***(2021) 6 SCC 191***:

“12.5. Merely because the charge-sheet is filed is no ground to release the accused on bail.”

16. From the submission of the learned Additional Public Prosecutor and the learned counsel appearing for the *defacto* complainant and comparative position of the accused and the victim, this Court prima facie finds that the apprehension of the safety of the victim and other witnesses is well founded. In this aspect, it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana*** reported in ***(2021) 6 SCC 230***:

“This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a



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civil proceeding. The proper enforcement of criminal law is a matter of public interest.”

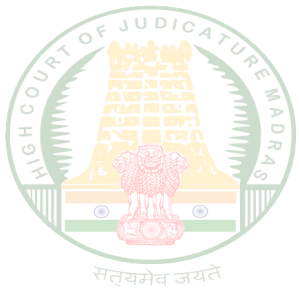
17. In the case of ***Sudha Singh v. State of U.P.***, reported in (2021) 4

SCC, the Hon'ble Supreme Court has held as follows:

“7. We find in this case that the High Court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.”

18. In the case of ***Brijmani Devi v. Pappu Kumar***, reported in (2022) 4 SCC 497 the Hon'ble Supreme Court has held as follows:

35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious



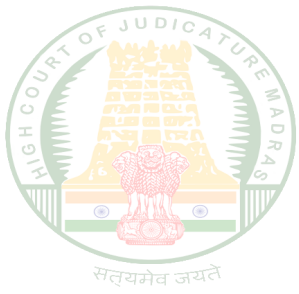
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in nature but are supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.

36. We have extracted the relevant portions of the impugned orders [Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856] , above. At the outset, we observe that the extracted portions are the only portions forming part of the “reasoning” of the High Court while granting bail. As noted from the aforecited judgments, it is not necessary for a court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. At the same time, a balance would have to be struck between the nature of the allegations made



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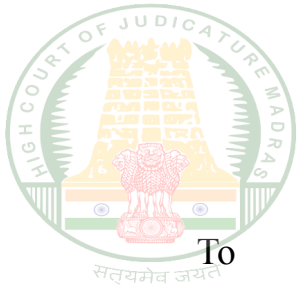
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against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the court in support of the charge against the accused.”

19. Applying the above principle, this Court is not inclined to grant bail. Accordingly, this Criminal Appeal stands dismissed and the order passed in Cr.M.P.No.637 of 2023 dated 11.07.2023, on the file of the learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Tuticorin, Tuticoring District, is hereby confirmed.

09.02.2024

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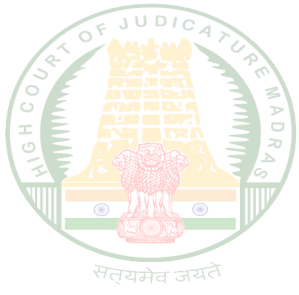


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To

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Special Court for trial of cases under SC/ST (POA) Act,
Tuticorin,
Tuticorin District.
- 2.The Deputy Superintendent of Police,
Tuticorin Town,
SIPCOT Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

vsg/sbn

Pre-delivery order made in
CRL.A(MD).No.601 of 2023

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