

Crl.O.P.No.186 of 2015**P.DEVADASS, J.**

Petition for pre-arrest bail filed under Section 438 Cr.P.C.

2. Offence alleged under Section 302 of IPC.

3. Petitioner is A-1 in this case.

4. According to Mr.R.Gandhi, learned Senior Counsel for the petitioner as between the petitioner and the deceased, there is inter party rivalry. To wreak vengeance, when he recently returned from China, petitioner has been included in this case.

5. The learned Senior Counsel further submitted that except the confessional statement of co-accused, no material to implicate the petitioner in this case. Such confessional statement is inadmissible and is legally impermissible to proceed against the petitioner.

6. The learned Senior Counsel further contended that the petitioner has not been named in the FIR. Due to the prior motive at the behest of the son of the deceased, petitioner has been included in this case. The honour of the petitioner is at stake. It is an attempt to humiliate him. He is ready to co-operate with the Investigation Agency. In circumstances, also his arrest is uncalled for. It is the view of the Hon'ble Supreme Court also in **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others {(2011) 1 SCC 694}**. Further, the petitioner is aged and a sick man.

7. The learned Public Prosecutor filed counter. He also submitted that the petitioner has been actuated by two motives viz., (i) love affair between petitioner's daughter and the son of the deceased; and (ii) inter party

political rivalry between the petitioner and the deceased. In the circumstances, petitioner has been very much upset.

8. The learned Public Prosecutor further submitted that in the circumstances, through his brother's son Balachandiran, petitioner set up hirelings to finish the deceased. Petitioner financed the killing. He also verified that his arch rival has been eliminated. In this case, the petitioner is the bow and the others are just his arrows. That is how, in this case, petitioner has been ranked. There are very many incriminating materials as against the petitioner, which includes confessional statement of the co-accused also. They need to be verified. In the facts and circumstances, petitioner's custodial interrogation is very much essential.

9. The learned Public Prosecutor also submitted that the petitioner wields lot of influence, has political clout, commands lot of men and materials. If he is given anticipatory bail, there is every possibility that he will interfere with the investigation, he will threaten the witnesses, he will create fear in the mind of the witnesses and he will also flee away from justice.

10. I have given my anxious consideration to the rival submissions, perused averments in the petition for Anticipatory Bail and the counter filed by the prosecution and also perused the case-diary and the decision in *Siddharam Satlingappa Mhetre* {(2011) 1 SCC 694}.

11. Liberty of the individual is sacrosanct. It cannot be taken away lightly except by procedure established by law (see Article 21, Constitution of India). In this country, the power of arrest has been statutorily conferred

upon the police (see Section 41 Cr.P.C.). Indiscriminate use of it against innocent people, at the behest of their rivals, political enemies is not an uncommon event. Putting innocent people behind the bars leads to great humiliation and disgrace. Therefore, to protect the innocent people from being so arrested, harassed in the New Code of Criminal Procedure, 1973, Section 438 Cr.P.C., providing for grant of 'bail before jail', 'pre-arrest bail', 'advance bail', 'anticipatory bail' has been incorporated. But, it cannot be a paradise for criminals. It is not a coverage for wicked. The Court has to weigh the consideration of individual liberty and also the interest of the State. The Court must protect the liberty of the individual, but at the same time, the Court is also bound to consider the interest of the State.

12. In the circumstances, a Constitution Bench of the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia vs. State of Punjab {1980 (2) SCC 565}**, laid down that the Court has to evaluate the averments and the accusations available on record as against the accused and shall see the nature of the allegations made and when there is no basis or material available and there is no scope for custodial interrogation, the Court has to give protection under Section 438 Cr.P.C. This principle also has been restated in *(2011) 1 SCC 694* (supra).

13. Chittappu @ Subramani, who belongs to DMK Party, is residing in Anuppar Palayam, in Tiruppur. He used to have his morning walk and have tea in the nearby Vijayalakshmi Bakkery. As usual, on 5.1.2015, at about 5.15 P.M., he stepped out of his house. That was the time lastly he was seen alive. Shortly thereafter Nagesh, a colleague of Subramani tapped the door

of Muthukumar and told him that in front of Palaniandavar Machine Works in Veeramaruthi Street, Anuppar Palayam bus-stop, his father is laying with multiple cut injuries. Muthukumar and his mother Rukmani, went there and seen him with several cut injuries. The wounded was rushed to the hospital. He was declared dead.

14. Muthukumar reported the incident to Velampalayam Police. This case has been registered. Then the assailants were not known. The case proceeded as a blind case.

15. Muthukumar and Rukmani have stated in their statement that in connection with the love affair between Muthukumar and petitioner's daughter, Dhana Priya, petitioner was very much aggrieved, Dhana Priya, was married to some other person. They have also stated that the deceased and the petitioner belongs to same political party, subsequently, the deceased switched over his allegiance to one Selvaraj, who is a staunch enemy of the petitioner. In the circumstances, petitioner avenged to kill the deceased and once the petitioner's driver Balaji also criminally intimidated Muthukumar. The statement of Kuppusamy, Appu are also on similar lines. They indicates that there was no love lost between the deceased and the petitioner.

16. Anand and Nandakumar, who are the ocular witnesses, have stated to police that while assaulting the deceased, the assailants have uttered that they are doing so because he is spoiling S.P.Mani's (petitioner) family. They have also mentioned the names of Thoufic, Seeni and others.

17. This clue has led to the arrest of the other accused including

Balachandiran. Balachandiran is petitioner's brother's son. Balachandiran had stated to police that the petitioner was very much upset by the activities of the deceased, requested him to arrange killers to finish the deceased and also instructed to see that before he arrives from China, his enemy should be finished. It is seen from Balachandiran's statement that he had arranged the hired killers, who are the co-accused and thereafter the assassination took place in Anuppar Palayam.

18. From the statement of the co-accused Mariappan @ Srinivasan, Ajmir Kaja @ Kaja, Thoufic, Asslam Mohamed Hakkeem @ Hakeem, Zahir Hussain, Ponraj, Prakash, Hazaruddin, it is seen that to settle scores with his rival, Chittappu @ Subramani, through his brother's son Balachandiran, petitioner had arranged the killers and the assassins have executed the deceased for money.

19. In this connection, apart from the incriminating materials, in the statement of Muthukumar, Rukmani, Kuppusamy, Appu, there are confessional statement of the co-accused linking the petitioner with this case.

20. A combined reading of Sections 24, 25, 26 and 27 of the Evidence Act would show that confession made to police is inadmissible except to the extent of leading to the discovery/recovery of a distinct fact. This prohibition is intended to use police confession against a person to record conviction.

21. During investigation (collection of evidence), police collects incriminating information, which is of various forms, which includes confessional statement from the accused or from the co-accused. It also

supplies information concerning the accused, it makes the police to pursue the lead in prosecution of the crime reported. In such circumstances, the need of the accused for investigation is the test and not the permissibility or legality of such materials in evidence, which will come only at a later point of time viz., at the trial stage.

22. In the facts and circumstances, as rightly submitted by the learned Public Prosecutor, the custodial interrogation of the petitioner becomes very much necessary.

23. All these days, petitioner is dodging. The investigation could not be completed. Very serious allegations have been made as against the petitioner. The possibility of his tampering the witnesses, using his money, muscle power to upset the ongoing investigation and his fleeing away from justice cannot be ruled out.

24. In the facts and circumstances, it is not a fit case for grant of relief under Section 438 Cr.P.C.,

25. Thus, this petition is dismissed.

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