

Crl.O.P.No.4090 of 2015

RESERVED ON: 02.09.2015

DELIVERED ON: 09.09.2015

P.N.PRAKASH, J.

This is second anticipatory bail application. Earlier, Crl.O.P.No.10589 of 2014 filed by the petitioner has been dismissed by this Court by a well considered order on 28.10.2014.

2 The police have filed two Status Reports strongly objecting to the grant of bail to the petitioner. The case of the prosecution as stated in paragraph 2 of the Status Report is as follows:

"2. It is submitted that the brief facts of the case are as follows:

The case of the prosecution is that the complainant- Tr.Vijayakumar has stated that on 09.01.2005 at about 2.15 a.m. some unknown persons were broken the complainant's door and trespassed to the complainant's house and attacked the complainant's brother Tr.Sasikumar, Sasikumar's wife Tmt.Geetha and his mother Tmt.Jayammal by deadly weapons and the accused brutally attacked the complainant's father Tr.Sudarsanam, Ex-MLA of Gummidipoondi by Country Gun and he was died on spot. Due to the noise of country gun,

the complainant came to spot, at that time the accused hold the complainant and locked inside the room and stolen the gold jewels 63 sovereigns.

Hence, the complainant lodged a complaint before the respondent police station, based on that a case was registered in Periyapalayam Police Station Crime No.10 of 2005 under Sections 395, 396, 397 IPC 25(1) of Indian Arms Act by the then Sub Inspector of Police on 09.01.2005 at 3.30 hours and the same was submitted before the then Inspector of Police for investigation."

3 Mr.R.Sankarasubbu, learned counsel for the petitioner submitted that the petitioner is charged under Section 396 IPC, for which, he can be punished for a period of 10 years or life imprisonment or death. Since the petitioner has already served 10 years in prison as an undertrial prisoner, there is every possibility that the trial Court would convict him only for 10 years and therefore, his further incarceration will be violative of Article 21 of the Constitution of India.

4 Learned counsel further submitted that earlier, this petitioner filed HCP No.91 of 2014 on health grounds and this Court obtained a report from the jail doctor which showed that, his health condition was stable. Now, almost one year has lapsed, on account of which the health condition of the petitioner has deteriorated. It is further contended that the petitioner's brother died while in custody and that fate should not befall the petitioner. In support of his contention, he relied upon the

following judgments:

- (1) Shaheen Welfare Association v. Union of India and others [(1996) 2 SCC 616]
- (2) Willie Mae Barker v. John W. Wingo [407 US 514]
- (3) Abdul Rehman Antulay v. R.S. Nayak and another [AIR 1992 SC 1701(1)]
- (4) Mohd. Hussain alias Julfikar Ali v. Stte (Govt. of NCT), Delhi [2012 CrL.J.1069]

5 This Court called for a report from the trial Court asking for the reasons for the delay in completion of the trial. The trial Judge has sent a report dated 09.03.2015, which will show that the trial is delayed only on account of the conduct of the petitioner.

“I submit that the sessions case was adjourned to several hearing for the production of all accused together and on 08.06.2009 the charges were framed against all the seven accused and adjourned to examine prosecution side witnesses.

I submit that 8th accused Ravi s/o Prem Singh was identified and decided as juvenile and the case against him was split up and forwarded to the Juvenile Justice Board (XII M.M.Court, Chennai) on 04.06.2010.

I submit that subsequently A4 to A6 in the present Sessions case were absconded for a long time and as against them the case was split up on 23.08.2012 as S.C.299/2012 and Non-bailable warrant is pending against them. Now S.C.426/2008 is pending against four accused namely Jagadish (1) Rakesh @ Guddu (2) Asok @ Laxman (3) are under judicial custody and accused Jaildar singh is on bail.

I further submit that on 28.11.2012 on the side of prosecution LW1 to 3, 5 and 7 were examined as PW1 to PW5 and Ex.P1 marked. All the PW1 to PW5 were not cross examined by the defence side and on petition cross examination was deferred. On that day A4 filed a petition praying to issue Hindi translated copy for PW1 to PW5 evidences and the petition was dismissed. The properties remanded before Judicial Magistrate Court No.I, Ponneri was called for and the higher police official were addressed to produce the witnesses."

6. The respondent police in their counter in paragraph 5 has stated as follows:

".....During the course of pending trial, the accused [A4 to A6] obtained bail and they are still absconding. Hence, the learned Additional Sessions Judge issued Non-bailable warrant against the accused [A4 to A6] and the same is pending. Hence the case was split from S.C.No.426/2008 and assigned new S.C.No.299/2014. Further, A1, A2,, A3 and A7 accused in S.C.No.426/2008 and A8 accused in JC No.5/2013 on the file of Juvenile Court, Thiruvallur and the Juvenile Court issued Non-bailable warrant against A8 and the same is pending.

During the trial period, the defence counsel asked Hindi copies of charge sheet and other relevant documents and the same was given by the learned Judicial Magistrate Court, Ponneri on 04.08.2008.

Again, on 2.7.2015 the prosecution witnesses No.10 to 16 were produced before the learned Additional Sessions Judge, Chennai for examination, at that time the defence counsel asked Tamil copies of charge sheet and other relevant documents."

7. That apart, there are several cases against the petitioner, which are as follows:

"9. I submit that apart from this case, the petitioner/accused Jagadeesh [A3] is involved in the following cases:

<i>Sl.No.</i>	<i>Police Stations & Crime Nos.</i>	<i>Section of Law</i>	<i>Stage of case</i>
1	Vellore Dt. PS Thiruvalam Cr.No.311/2004	U/s 394 IPC	Pending trial
2	Vellore Dt.Natrampalli PS Cr.No.485/2003	U/s 392, 394, 302 r/w 25 Indian Arms Act	Pending Trial [Non Bailable warrant issued against the petitioner/ accused]
3	Thiruvallur Dt. PS Vellavedu Cr.No.451/2004	U/s 395, 397 IPC r/w 27 (2) Indian Arms Act	Pending trial
4	Chennai, Thiruverkadu PS. Cr.No.132/2004	U/s 395, 396, 302 IPC	Pending trial

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P.N. PRAKASH, J.

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In the light of the above, there is no change in fact situation. Hence, the petition is devoid of merits and the same is dismissed.

09.09.2015

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Pre-delivery order in

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