WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

CRL.O.P.No.10190 and 10389 of 2015

1.Raja ... Petitioner/Accused-1
2.V.M.Pandi @ Veeramuthupandi ... Petitioner/Accused-3

Vs.

1. The Deputy Superintendent of Police,
   Periyakulam,
   Theni District.

2. The Inspector of Police,
   Thenkarai Police Station, Thenkarai,
   Theni District.
   Crime No.571 of 2012. ... Respondents/Complainants in both petitions

3. N.Subburaj ... Intervenor in Crl.OP(MD)No.10190/2015

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the Principal District and Sessions Court (PCR Cases), Theni to consider the surrender and Bail application on the same day filed by the petitioners in Crime No.571 of 2012 registered and investigated by the respondent police and pass orders.

For Petitioner in Crl.OP(MD)No.10190/2015 : Mr.R.Gandhi
For Petitioner in Crl.OP(MD)No.10389/2015 : Mr.N.Dilipkumar
For Respondents 1 & 2 : Mrs.S.Prabha
Government Advocate,(Crl. Side)
For Intervenor : Mr.P.P.Rathinam
for M/s. R.Alagumani

O R D E R

This petition has been filed praying to direct the Principal District and Sessions Court (PCR Cases), Theni to consider the surrender and Bail application filed by the petitioner in Crime No. 571 of 2012 registered and investigated by the respondent police.

2. The petitioners are arrayed as Accused No.1 and Accused No.3 in Crime No. 571/2012. Originally the case has been registered under Section 306 of I.P.C., being the major offence the petitioners filed Crl.O.P.(MD).No.19191/2012 before this Hon'be Court, seeking anticipatory bail. After hearing the counsels for the Petitioners, the Additional Public Prosecutor and the Intervenor, the following order was passed on 18.12.2012 by this Hon'ble Court.

> "7.Heard the learned Additional Public Prosecutor on the submissions made by the learned counsel for the petitioners and the learned counsel for the defacto complainant.
>
> 8. Considering the facts and circumstances of the case and the nature of the offence alleged and the in-

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

action of the police informed as the cause in the suicide note, this Court is inclined to grant anticipatory bail to the petitioners.

9. Accordingly, the petitioners are ordered to be enlarged on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Periyakulam, subject to the following conditions:

(i) Each of the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for the like sum to the satisfaction of the arresting officer or to the satisfaction of the learned Magistrate concerned; and

(ii) The first petitioner shall appear before the respondent police every Saturday and Sunday daily at 10.30 a.m. For a period of four weeks, thereafter as and when required. Other petitioners shall appear before the respondent police daily at 10.30 a.m. for a period of two weeks, thereafter as and when required."

3. Thereafter the investigation was completed. In the final report the offence under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been added. Now the case is pending on the file of the Judicial Magistrate, Periyakulam in PRC.No.10 of 2015.

4. As the offence is under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the petitioners come forward to file this petition seeking the above prayer.

5. The counsel for the petitioners submitted that admittedly the investigation is over and the final report has been filed. The case is pending for committal before the court concerned. In the anticipatory bail application all the parties were heard for the major offence under Section 306 of I.P.C. What the petitioners seek are to hear the bail application on the same day. Number of similar orders have been passed by this court in this regard. The learned counsel further submitted that an order was passed by this Hon'ble Court in Crl.O.P.(MD).No.13005 of 2012 dated 15.10.2012 wherein a similar order has been passed in exercising the powers under Section 482 of Cr.P.C. while dealing with an offence under Section 306 of I.P.C and under Section 3(2)5(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. Mr.Rathinam, the learned counsel appearing for the intervening petitioner submitted that the object and rational of the enactment will have to be seen. Despite of the enactment having been introduced in the year 1989 and the Rules after five years, the atrocity is continuing. As the major offence under the act is life imprisonment, the request made cannot be granted. The learned counsel has made reliance upon the decision rendered in 1995 SUPP (4) SCC 469 and 1995 (3) SCC 221 to substantiate his submission that when serious offences are involved, the court should not come to the aid of the accused person.

7. What the petitioner seeks is only a direction to the jurisdictional court to decide the application on merits on the same day. The facts asnarrated are not in dispute. For the said reason, this court cannot go into the merits of the case and it is for the court concerned to decide after appreciating the relevant materials.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

8. Admittedly, investigation is over by filing the final report and the order passed by this court in Crl.O.P(MD).No.19191 of 2012 after hearing the parties has become final. Therefore considering the above, this court is of the view that the prayer sought for cannot be denied solely on the ground that the petitioners have been charged under Section 306 of I.P.C., Accordingly, the following direction is issued.

> "Considering the nature of offences alleged against the petitioner, the fact that anticipatory bail cannot be granted in respect of offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and that taking into custody of the petitioner pending consideration of his bail application could cause him irreparable hardship, this Court considers it appropriate to direct the Principal District and Sessions Court (PCR Cases), Theni, to consider the bail application of the petitioner on merits and pass appropriate order on the same day of his surrender."

9. The decisions relied upon by the counsel for the intervenor are not applicable to the case on hand. In any case, they are pertaining to the merits of the case.

10. It is made clear that the court below will have to decide the application on merits without being the observations made in this order on the same day of the petitioner's surrender. The petitioners shall surrender before the court below within three weeks from the date of the receipt of a copy of this order.

11. The counsel for the petitioner submitted that before surrendering and seeking bail on the very same day, the relevant papers would be served to the public prosecutor . Such copies will also be served in the same manner to the intervenor as well.

12. Recording the above said submissions, this petition is disposed of.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To
1. The Principal District and Sessions Judge (PCR Cases), Theni.
2. The Deputy Superintendent of Police, Periyakulam, Theni District.
3. The Inspector of Police, Thenkarai Police Station, Thenkarai, Theni District.
4. The Addl.Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Gandhi, Advocate in SR.No.30128
+1cc to Mr.N.Dilipkumar, Advocate in SR.No.30213
+1cc to Mr.R.Alagumani, Advocate in SR.No.29996

https://hcservices.ecourts.gov.in/hcservices/