



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Eighth day of December Two Thousand Fifteen

PRESENT

The Hon`ble Ms.Justice V.M.VELUMANI

CRL OP (MD) No.21924 of 2015

INIGO

... PETITIONER/ACCUSED
RANK NOT KNOWN

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
KODANKULAM POLICE STATION,
RADHAPURAM TALUK,
TIRUNELVELI DISTRICT.
(CRIME NO. 171 OF 2015)

... RESPONDENT/COMPLAINANT

FOR PETITIONER : M/S S.R.ANBARASU ADVOCATE
FOR RESPONDENT : MR.K.ANBARASAN, GOVERNMENT ADVOCATE (CRL. SIDE)

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

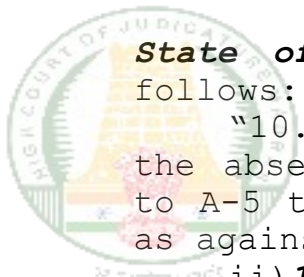
The petitioner, who is arrayed as accused No.3, apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 304 (A) of IPC altered into Section 120(b), 302 IPC, in Crime No.171 of 2015 on the file of the respondent police and hence, seeks anticipatory bail.

2.The case of the prosecution is that on 20.08.2015 when the father of the defacto complainant and one Velu were travelling in a two wheeler, one Tempo bearing registration No.TN 72 7087 dashed against their vehicle and caused injury and subsequently, the defacto complainant's father died. Initially, the case was registered under section 304(A) of IPC and subsequently, altered into 120(b) and 302 of IPC.

3.The case of the petitioner is that he is an innocent person and he has not committed any offence as alleged by the prosecution. There is no motive between the petitioner and the deceased. This petitioner name has not been mentioned in the FIR and only based on the confession given by the co-accused Arumugam, this petitioner is arrayed as an accused.

4.The learned counsel for the petitioner relied on the following judgments:-

I) **(2000) 10 Supreme Court Cases 360 (Sasi and another vs.**



State of Kerala) the relevant portion of the judgment is as follows:

"10..... It can only be used as a corroborative piece. In the absence of any reliable substantive evidence as against A-2 to A-5 the confessional statement cannot be used for any purpose as against the co-accused."

ii) **1993 Cri.L.J.1499 (Anant Kumar v. State of M.P)** the relevant portion of the judgement is as follows:

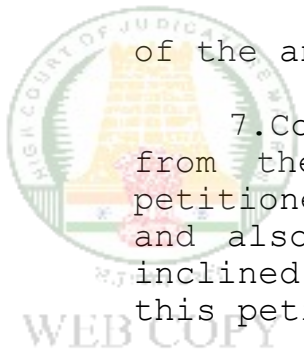
"6. There is no dispute on this point that the applicant is not named in the F.I.R., nor has he been named by any witness nor any property has been recovered from his possession and in this set of circumstances there appears force in the contention of the petitioner that it was a case of "no evidence" and the learned Sessions Judge has committed an error in framing the charges under Sections 395/397 I.P.C.,"

iii) **2015 SAR (Criminal) 1179 (Bhadresh Bipinbhai Sheth vs. State of Gujarat & another)** the relevant portion of the judgement is as follows:

"21. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in Section 438(1) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a "special case". The Court also remarked that a wise exercise of judicial power inevitably take care of the evil consequences which are likely to flow out of its intemperate use."

5. The respondent police has filed a counter affidavit stating that on 20.08.2015 the defacto complainant's father and one Velu were travelling in a two wheeler. At that time, a Tempo lorry bearing registration No.TN 72 Z-7087 dashed against the two wheeler in a rash and negligent manner. Therefore, the case has been registered under Section 304(A) of IPC for the above said offences. Three persons were arrested and gave confession statement. It reveals that one Velu S/o.Krishna Konar was murdered by Velu S/o.Madasamy Konar to take revenge. The accused Nos.1 & 2 approached the petitioner and all the accused have conspired together and purchased a TATA 407 Tempo and dashed against the two wheeler and due to which, the deceased died.

6. The learned Government Advocate (Crl.side) submitted that the investigation is pending and the custodial interrogation of the petitioner is necessary. If the petitioner is released on anticipatory bail, he will tamper the evidence and influence the witnesses and hamper the investigation and prayed for dismissal



of the anticipatory bail.

7. Considering the facts and circumstances of the case and from the materials it is seen that the involvement of the petitioner could be found out only in the custodial interrogation and also considering the seriousness of the charges, I am not inclined to grant anticipatory bail to the petitioner. Hence, this petition is dismissed.

sd/-
08/12/2015

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE INSPECTOR OF POLICE,
KODANKULAM POLICE STATION,
RADHAPURAM TALUK,
TIRUNELVELI DISTRICT.
2. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S S.R.ANBARASU Advocate SR.No. 70490

ORDER
IN
CRL OP(MD) No.21924 of 2015
Date :08/12/2015

AM

TE/AAL-MPA/SAR-I ; 16/12/2015 : 3P/4C