



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

Thursday, the Twenty First day of July Two Thousand Sixteen

PRESENT

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

CRL OP(MD) No.10462 of 2016

V.P.PANDI @ ATTACK PANDI

... PETITIONER/ACCUSED NO.1

Vs

STATE REP BY

THE INSPECTOR OF POLICE

SUBRAMANIAPURAM POLICE STATION,

MADURAI,

MADURAI DISTRICT.

(IN CRIME NO. 68 OF 2013)

AT PRESENT CRIME NO.11 OF 2015 IN C.B.C.I.D., MADURAI

... RESPONDENT/ COMPLAINANT

For Petitioner : M/S.R.GANDHI, Advocate for

M/S. N.ILANGO Advocate

For Respondent : M/S.SHANMUGAVELAYUTHAM,

State Public Prosecutor

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

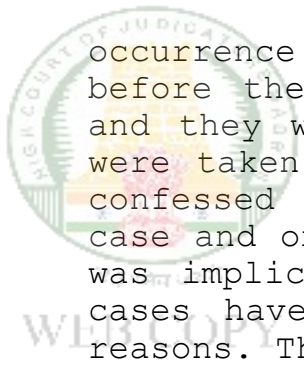
The petitioner/Accused No.1, who was arrested on 21.09.2015 and remanded to judicial custody on 22.09.2015, for the alleged offences punishable under Sections 147, 148, 341, 342, 212, 216, 302, 120(b) and 109 read with Sections 149 and 34 IPC, and Section 3(1) of TNPPDL Act, in Crime No.68 of 2013 on the file of the respondent police altered as Crime No.11 of 2015, on the file of the C.B.C.I.D, seeks bail.

2. The case of the prosecution is that the petitioner conspired at Madurai along with other accused and in furtherance of such conspiracy, committed a murder on 31.01.2013. On complaint, a case has been registered for the offences stated above.

3. The case of the petitioner is that he is an innocent and he has not committed any offence as alleged by the prosecution.

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

4. The learned Senior Counsel appearing for the petitioner submitted that the petitioner was not in Madurai at the time of



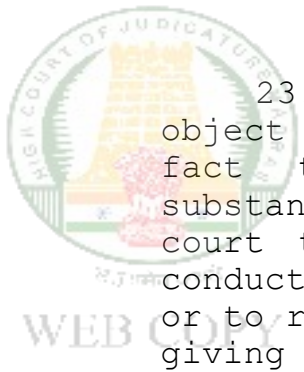
occurrence and one Saba @ Sabarathinam and 6 others surrendered before the learned Judicial Magistrate, Natham, Dindigul District and they were remanded to judicial custody and subsequently, they were taken for police enquiry on 05.02.2013 and at that time, they confessed about the alleged involvement of the petitioner in the case and on the basis of their confession statement, the petitioner was implicated as an accused in this case. Further, a number of cases have been foisted against the petitioner due to political reasons. The petitioner was not absconding. He has filed a petition for anticipatory bail before this Court and his mother has also filed a Habeas Corpus Petition. He has not conspired to murder the deceased. He was branded as 'Goonda' in the year 2011 and this Court on hearing the H.C.P., quashed the detention order. Further, the learned Senior Counsel submitted that it was the deceased, who involved in a murder case and several land grabbing cases, thereby, had many enemies. According to him, the police officials developed vengeance against the petitioner and by foisting false cases against him, they tried even to eliminate him by fake encounter, thus, the petitioner did not reside at Madurai. He was arrested on 21.09.2015 and remanded to judicial custody on 22.09.2015 and seven days police custody was granted and he was interrogated by the respondent police. The occurrence took place on 31.01.2013, thus, custodial interrogation of the petitioner at this juncture is not necessary. Hence, the learned Senior Counsel prayed for grant of bail to the petitioner.

5. In support of his submissions, the learned Senior Counsel appearing for the petitioner relied on the following Judgments:

(i) **Sanjay Chandra Vs. Central Bureau of Investigation [2012 (1) SCC 40]**, wherein in paragraphs 21 to 23, 25, 32, 36, 40 and 42 to 44, it has been held as follows:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.



23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

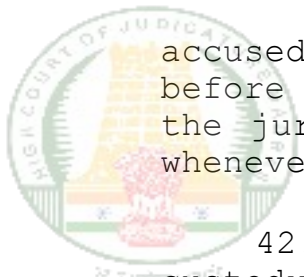
25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

32. In **Moti Ram vs. State of M.P. [1978 (4) SCC 47]**, this Court, while discussing pretrial detention, held: (SCC p. 52, para 14)

"14. The consequences of pretrial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."

36. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. (See **Babba v. State of Maharashtra [2005 (11) SCC 569]**, **Vivek Kumar v. State of U.P. [2000 (9) SCC 443]** and **Mahesh Kumar Bhawsinghka v. State of Delhi [2000 (9) SCC 383]**)

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the



accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.

43. There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

44. This Court, in **State of Kerala v. Raneef [2011 (1) SCC 787]** has stated: (SCC p. 789, para 15)

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dickens's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille.""

(ii) **Dipak Shubhashchandra Mehta Vs. Central Bureau of Investigation and another [2012 (4) SCC 134]**, wherein in paragraphs 31 to 35, it has been held as follows:



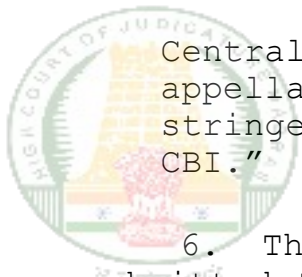
"31. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. (**Vide Babba v. State of Maharashtra [2005 (11) SCC 569] and Vivek Kumar v. State of U.P. [2000 (9) SCC 443]**) But the same should not be applied to all cases mechanically.

32. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.

33. Considering the present scenario and that there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31-3-2010, except the period of interim bail i.e. from 15-9-2011 to 30-11-2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated.

34. As posed in **Sanjay Chandra Vs. CBI [2012 (1) SCC 40]** we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above.

35. As observed earlier, we are conscious of the fact that the present appellant along with others is charged with economic offences of huge magnitude. At the same time, we cannot lose sight of the fact that though the investigating agency has completed the investigation and submitted the charge-sheet including additional charge-sheet, the fact remains that the necessary charges have not been framed, therefore, the presence of the appellant in custody may not be necessary for further investigation. In view of the same, considering the health condition as supported by the documents including the certificate of the Medical Officer,

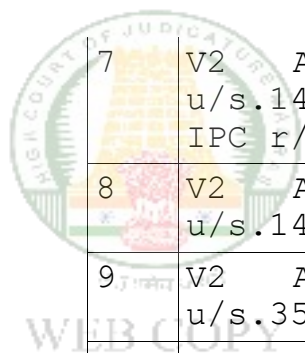


Central Jail Dispensary, we are of the view that the appellant is entitled to an order of bail pending trial on stringent conditions in order to safeguard the interest of CBI."

6. The learned Public Prosecutor appearing for the State submitted that the petitioner is the main accused. He only planned to murder the deceased and deposited the money in the bank account of A10. The petitioner is involved in 20 cases and he was absconding. Non-bailable Warrant was issued against him on 10.09.2013. The petitioner was declared as a proclaimed offender under Section 82 Cr.P.C., and his property was attached on 10.09.2013. The petitioner and the deceased were having previous enmity. At the instigation of the deceased, the petitioner was removed from the post held by him and at the instance of the deceased, a case was registered against the petitioner in Crime No.1991 of 2009. The petitioner and other accused persons went to Mumbai and stayed at Krishna Hotel, in Room No.101 and conspired to murder the deceased. In pursuance of the conspiracy, other accused persons came to Madurai and stayed at Golden Tower Hotel. The accused persons distributed the work among themselves to murder the deceased. The money was distributed from the account of A10. The ATM Card of A10 was seized from the petitioner/A1 at the time of arrest. The same ATM Card was used by the petitioner in Mumbai. Further, one of the witnesses viz., L.W.44 was threatened and attacked by one of the accused, against which, a separate case has been registered in Crime No.1017 of 2015. Some of the accused, who were enlarged on bail are not attending the committal proceedings and therefore, the committal proceedings could not be proceeded with. The accused persons are threatening the witnesses and trying to tamper the evidence. The petitioner absconded for 2 years and 7 months. The learned Public Prosecutor further submitted that the petitioner was terrorising the people of Madurai, while he was staying at Madurai. Further, the conduct of the petitioner is detrimental to the law and order in Madurai City. He engaged hirelings. The following cases are registered against the petitioner:

Madurai City Cases:

1	B1 Vilakkuthoon P.S. 721/01, u/s.307 IPC r/w 25(1)(B)(a) Arms Act, 1952 and 5 of Explosive Substances Act	Acquittal
2	Madurai City, CCB, Cr.No.78/09, u/s.406, 420 IPC case transferred to EOW Madurai	Pending Trial
3	B3 Teppakulam P.S., Cr.No.1991/09, u/s. 147, 148, 342, 324, 364, 397, 307, 506 (ii) IPC	Pending Trial
4	Madurai City, CCB, Cr.No.53/11, u/s.406, 420, 427, 448, 468, 471, 506(i) IPC	Pending Trial
5	Madurai City, CCB, Cr.No.57/11, u/s.406, 420, 448, 387, 506(ii) IPC	Pending Trial
6	V2 Avaniapuram P.S., Cr.No.436/12, u/s.294(b), 506(ii) IPC	Under Investigation



7	V2 Avaniapuram P.S., Cr.No.339/11, u/s.147, 148, 294(b), 323, 406, 506(ii) IPC r/w. 407 Women Harassment Act	Under Investigation
8	V2 Avaniapuram P.S., Cr.No.639/12, u/s.147, 294(b), 506(ii) IPC	Under Investigation
9	V2 Avaniapuram P.S., Cr.No.672/12, u/s.353, 506(i) IPC	Under Investigation
10	V2 Avaniapuram P.S., Cr.No.747/12, u/s.147, 148, 294(b), 323, 506(ii) IPC	Under Investigation
11	B4 Keerathurai P.S., Cr.No.42/13, u/s.147, 148, 435, 506(ii) IPC r/w.3(1) of TNPPDL Act	Pending Trial
12	C2 Subramaniyapuram P.S., Cr.No.68/13, u/s.147, 148, 341, 342, 212, 216, 302, 120(B), 109 r/w.149, 34 IPC and 3(1) of TNPPDL Act	Pending Trial
13	E1 K.Pudhur P.S., Cr.No.1017/2015, u/s.341, 294(b), 307 r/w.109 IPC	Under Investigation

Madurai District Cases:

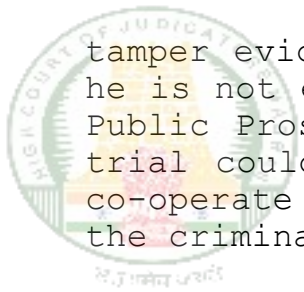
14	Madurai District, Othakadai P.S., Cr.No.226/07, u/s.147, 148, 449, 436, 302, 307, 332, 120(b) IPC and 4 and 5 of I.E. Act and 4 of TNPPDL Act	Acquittal (Appealed by CBI pending in High Court)
15	Madurai District, District Crime Branch, Cr.No.30/12, u/s.120(B), 468, 471, 420 IPC	Not taken on File
16	Madurai District (DCB), Cr.No.67/12, u/s.147, 148, 341, 406, 420, 307, 506(ii) IPC	Pending Trial
17	Madurai District, DCB, Cr.No.88/12, u/s.120(b), 406, 468, 420, 506(i) IPC	Not taken on File
18	Perungudi P.S., Cr.No.5/13, u/s.447, 379, 294(b), 506(i) IPC, r/w.21 and 23 of Mines and Minerals Development and Regulation Act	Under Investigation

Tuticorin District Case:

19	Tuticorin District, Kulasekarapattinam P.S., Transferred to Athur P.S., dt.13.08.2012, Cr.No.283/09, u/s.147, 148, 324, 307 IPC and 3 of TNPPDL Act	Under Investigation
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Virudhunagar District Case:

20	Virudhunagar District, Aruppukottai P.S., Cr.No.332/10, u/s.3 r/w.25(i) (B) (a) Arms Act and 120(b) IPC	Pending Trial
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tamper evidence and hamper the course of investigation. Therefore, he is not entitled for any indulgence from this Court. The learned Public Prosecutor also submitted that the case can be spilt up and trial could be expedited provided the petitioner and other accused co-operate with the conduct of the trial and prayed for dismissal of the criminal original petition.

8. I have considered the rival submissions advanced on either side.

9. The petitioner has indulged in a number of criminal activities of serious nature and 20 cases are registered against him and even now, 18 cases are pending against him and serious allegations are made against the petitioner that he engaged hirelings and terrorised the people of Madurai. Due to enmity, he meticulously planned and murdered the deceased. He was absconding and declared as proclaimed offender. His properties were attached. The learned Public Prosecutor submitted that already L.W.44 was threatened and attacked and the people are afraid to give evidence against the petitioner. The committal proceedings could not be proceeded with, due to absence of some of the accused enlarged on bail.

10. Considering the above contentions of the learned Public Prosecutor that the petitioner had involved in various criminal cases and there are prospects that he may abscond and threaten the witnesses and tamper the evidence and also the fact that he was a proclaimed offender, this Court is not inclined to enlarge him on bail. Hence, this criminal original petition is dismissed.

sd/-
21/07/2016

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

TO

1. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
2. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI
3. THE INSPECTOR OF POLICE
SUBRAMANIAPURAM POLICE STATION, MADURAI, MADURAI DISTRICT.
AT PRESENT CRIME NO.11 OF 2015 IN C.B.C.I.D., MADURAI

+1. CC to M/S N.ILANGO Advocate SR.No.38475
RL/5C/8P/NGM/MP/SARI/27/7/2016

ORDER
IN
CRL OP (MD) No.10462 of 2016
Date : 21/07/2016