



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

Friday, the Second day of December Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice S.VAIDYANATHAN

CRL OP (MD) Nos. 22668 & 22669 of 2016

SATHYA CHITHIRAI KUMAR ..PETITIONER/ACCUSED (RANK NOT KNOWN)
in CrI.OP (MD) No. 22668/2016
G.RAMALINGAM ..PETITIONER/ACCUSED (RANK NOT KNOWN)
in CrI.OP (MD) No. 22669/2016

Vs.

STATE REP. BY
THE INSPECTOR OF POLICE,
TISAYANVILLAI POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO. 276 OF 2016 RESPECTIVELY. ..RESPONDENT/COMPLAINANT
IN BOTH THE PETITIONS

S.SUGANTHI JASON ..INTERVENOR
IN BOTH THE PETITIONS

For Petitioner : M/S.KATHIRVELU, Senior Counsel for
Mr.K.PRABHU Advocate in both the petitions
For Respondent : Mr.P.PUGHALENTHI, Additional Advocate General
in both the petitions
For Intervenor : Mr.R.ANAND, Advocate for Mr.N.BALASUBRAMANIAN,
Advocate in both the petitions.

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

ORDER : The Court Made the following order :-

Reserved on	Pronounced on
30.11.2016	02.12.2016

S. VAIDYANATHAN, J. ,

The petitioners/accused, who were arrested and remanded to judicial custody on 16.10.2016 and 14.10.2016 respective for the alleged offences punishable under Sections 147, 148, 448, 506(ii), 120(b) IPC and Section 3 of TNPPDL Act in Crime No. 276 of 2016 on the file of the respondent police, seek bail.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (CrI. Side) appearing for the respondent police.

3. The case of the prosecution is that these petitioner along with other accused trespassed into the house of the defacto complainant, who is an Advocate by profession and ransacked the household articles kept in the house.



4. It is seen that these are 2nd bail petitions and this Court, by a detailed order dated 18.11.2016 dismissed the earlier bail petitions filed by these accused and the anticipatory bail petition of the co-accused, namely, Sasikala Pushpa.

5. Co-accused have been granted interim relief of not to arrest by the Hon'ble Supreme Court is the main and only point canvassed by the learned Senior Counsel appearing for the accused towards the change in fact-situation in these petitions.

6. Learned Additional Advocate General appearing for the State would strenuously object to the grant of bail to these petitioners, contending that the investigation of the case is the halfway through. He would specifically point out that the Parliament Session is going and the Hon'ble Supreme Court would have granted the interim relief solely with an object that an member of Parliament, viz., Sasikala Pushpa, should not be curtailed to carry out her democratic functions, for which, she was elected by the people at large and her Social status may also be one of the main concerns for the grant of relief. It was further contended that since these petitioners stand on differing footing, as their very presence at the place of occurrence was apparent and spoken to by several witnesses, they cannot be equated with the co-accused. Finally, it was contended that even now, the apprehension of the Court as well as respondent persists.

7. The Intervenor, though heard in the previous petitions, was not impleaded in it, as the impleading petitions filed by her was closed and therefore, Mr.Anand, learned counsel for the Intervenor, by filing impleading petitions, sought permission of this Court to advance his argument.

8. These petitions would have been dismissed even at the threshold for non joinder of the defacto complainant, but since the intervenor was not impleaded formally in the previous petitions and was just heard, this Court took up the matters for hearing. In these petitions, the Intervenor is impleaded as party to the proceedings. Once the Intervenor is impleaded as party in the earlier bail or anticipatory bail petition, the petitioner should show the Intervenor as a party in the cause title, notice to be given and heard before any decision is taken. If the Intervenor is not shown as a party, the petition filed by the petitioner has to be dismissed *in limine* or in the event of any order passed in the absence of the Intervenor and if the same is brought to this Court later by the Intervenor that he has not been shown as a party, it is a suffice ground to cancel the bail or anticipatory bail.

9. Learned counsel for the Intervenor would submit that change of investigation can be argued only based on the development of investigation and not on the basis of the subsequent order passed by the Higher Forum. In support of his submission, he has produced the following judgments of the Hon'ble Supreme Court:

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

1) Rajesh Ranjan Yadav @ Pappu Yadav, reported in (2007) 1 SCC



ii) State of M.P. vs. Kajad, reported in (2001) 7 SCC 673

10. Citing the above judgments, he would contend that liberal approach of the Court is unwarranted and the Bail can be granted only under exceptional circumstances arrived at on the basis of records produced before it, as personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and community.

11. I find much force in the contention raised by the State and the learned counsel for the Intervenor that it would be wholly inappropriate to grant bail when the investigation is not over and the allegations against the petitioners are serious in nature. It is to be noted that the law is no respecter of persons and is the same for every one and the Hon'ble Supreme Court has rightly stated in Pappu Yadav's case that "while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them."

12. Therefore, it is clear that it is the paramount duty of the Court to take into consideration the larger interest of the society and the apprehension of the respondent police with regard to tampering of the witnesses by the accused persons, cannot be completely disregarded.

13. Hence, finding no change in circumstance and the fact position, this Court is not inclined to grant bail to these petitioners. Accordingly, these petitions are dismissed.

sd/-

02/12/2016

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

TO

- 1 THE INSPECTOR OF POLICE, TISAYANVILLAI POLICE STATION,
TIRUNELVELI DISTRICT.
- 2 THE ADDL.PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

+1. CC to M/S.K.PRABHU Advocate SR.No.79068

ORDER IN

CRL OP (MD) Nos.22668 & 22669 of 2016

Date :02/12/2016

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