

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Ninth day of August Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL ORIGINAL PETITION No.5321 of 2017

JAGADESH

[PETITIONER / ACCUSED]

Vs

STATE REP. BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
PERIYAPALAYAM POLICE STATION,
TIRUVALLUR DISTRICT.
CR.NO.10 OF 2016

For Petitioner : M/S.R.SANKARASUBBU Advocate

For Respondent : M/S C.EMALIAS, ADDITIONAL PUBLIC PROSECUTOR

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The facts of the case have been set out vividly in the counter affidavit filed by M.Venkatachalam, the Inspector of Police, Periyapalayam Circle, which read as under:

"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 Gummodipoondi 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 the Indian Arms Act by the then Sub Inspector of Police on 09.01.2005 at 3.30 hours."

2. During the course of investigation, the police arrested one accused after the other and recovered various articles on their

confession. This petitioner was arrested on 14.08.2005 in the Hyderabad - Pune Highway, near Miyapure, but, he escaped from the police at Janapansathram junction and involved in another offence in the limit of Vellavedu Police Station, in connection with which, a case in Vellavedu Police Station Cr. No.426 of 2005 was registered and this petitioner was arrested by that police. Thereafter, he was shown formal arrest in this case on 18.08.2005 and was taken into police custody. The number of cases against this petitioner has been given in paragraph nos. 5 and 6 of the counter, which read as follows:

"5. It is submitted that apart from this case, the petitioner/accused Jagadesh [A-1] involved in the following cases:

Sl. No.	Police Stations Crime No.	Section of Law	Stage of the case
1	Thiruvallur District Sholavaram Police Station Crime No.66 of 2003	u/s 396, 397, 398 IPC	Pending trial
2	Thiruvallur District, Vellavedu Police Station Crime No.451 of 2004	u/s 395, 397 IPC	Pending trial - N.B.W. issued against the petitioner/accused
3	Chennai city Thiruverkadu Police Station Crime No.132 of 2004	u/s 302, 395, 396 IPC	Pending for committal
4	Kancheepuram District Sriperumbudhur Police Station Crime No.352 of 2004	u/s 302, 394, 397 IPC	Pending trial
5	Krishnagiri District Burgur Police Station Crime No.8 of 2005	u/s 398 IPC	Pending trial
6	Vellore District Thiruvalam Police Station Crime No.311 of 2004	u/s 394 IPC	Pending trial
7	Thiruvallur District, Sholavaram Police Station Crime No.431 of 2005	u/s 224, 332, 353 and 307 IPC	Pending trial

6. It is submitted that the petitioner/accused and other accused [Bawaria Gang] involved in the following cases:

Sl. No.	Police Stations Crime Nos.	Section of Law
1	Vellore District Walajapet Police Station Crime No.403 of 1995	u/s 396, 397 IPC
2	Vellore District Walajapet Police Station Crime No.56 of 1996	u/s 395, 397 IPC
3	Tiruppur District Avinasi Police Station Crime No.187 of 2001	u/s 397 IPC
4	Dharmapuri Town Police Station Crime No.594 of 2001	u/s 457, 511, 427, 506(ii) & 302 IPC
5	Salem District, Sankagiri Police Station Crime No.954 of 2001	u/s 457, 397 IPC
6	Salem District Valapadi Police Station Crime No.1141 of 2001	u/s 394 IPC
7	Tiruppur District, Avinashi Police Station Crime No.44 of 2002	u/s 397 IPC r/w 27 Arms Act
8	Erode District, Gangayam Police Station Crime No.27 of 2002	u/s 395 IPC
9	Thiruvallur District Gummidipoondi Police Station Crime No.56 of 2002	u/s 397 IPC
10	Salem District, Attur Police Station Crime No.326 of 2002	u/s 397 IPC
11	Krishnagiri District Kariamangalam Police Station Crime No.221 of 2002	u/s 397 IPC
12	Krishnagiri District Burgur Police Station Crime No.410 of 2002	u/s 307, 396, 302 IPC
13	Kancheepuram District Sriperumbudhur Police Station Crime No.411 of 2002	u/s 397 IPC
14	Salem City, Annathanapatti Police Station Crime No.575 of 2002	u/s 147, 148, 149, 323, 324, 395, 396, 397, 302, 307 IPC, Section 3 r/w 25 (1) (b) and 27 of I.A. Act r/w Section 5 of I.A. Act
15	Thiruvallur District Sholavaram Police Station Crime No.67 of 2003	u/s 394 IPC

Sl. No.	Police Stations Crime Nos.	Section of Law
16	Vellore District Walajapet Police Station Crime No.305 of 2003	u/s 449, 395, 396 IPC
17	Vellore District Nattrampalli Police Station Crime No.485 of 2003	u/s 302, 392, 394 IPC r/w 25(I) (A) IA Act
18	Thiruvallur District Periyapalayam Police Station Crime No.10 of 2005	u/s 394, 396, 397 IPC r/w 25(i) (a) I.A. Act

3. After completing the investigation, a charge sheet was filed against the petitioner and the co-accused for offences under Sections 395, 396, 397 read with 120-B and 109 IPC and 27(2) of the Indian Arms Act on 18.09.2006 before the Judicial Magistrate, Ponneri in P.R.C. No.6 of 2008 and the case was committed to the Court of Sessions and the same is now pending trial in S.C. No.426 of 2008 on the file of the Additional Sessions Court (Fast Track Court), Chennai. So far, the prosecution have examined 63 witnesses, but, the petitioner has not chosen to cross-examine even one witness.

4. In the present petition, the petitioner has stated that this is the first bail application that has been filed before this Court. However, in paragraph no.10 of the counter filed by the police, it is stated as follows:

"10. It is submitted that, during the course of pending trial, the petitioner/accused [A-3] already filed the bail petitions before the Honourable High Court, Madras in CrI.O.P.No.11487/2009, CrI.O.P.No.10589/ 2014, CrI.O.P.No.4090 of 2015 and 2523 of 2016 and the same was dismissed on 24.08.2009, 09.11.2014, 09.09.2015 and 08.09.2016 respectively. Even after dismissal of the above bail petitions, again he is filing this present bail petition before this Hon'ble Court as a 5th bail petition."

5. Thus, from the above, it is clear that 4 bail applications have been filed by the petitioner and they have been dismissed by this Court. Suppressing all that, the petitioner has filed the present bail application by misrepresenting that this is the first bail application. On this short score alone, this petition is liable to be dismissed.

6. Mr. R. Sankarasubbu, learned counsel for the petitioner placed strong reliance upon the following judgments of the Supreme Court to contend that the petitioner has got a right to speedy trial under Article 21 of the Constitution of India and that has been violated in this case, inasmuch as the petitioner has been kept in

custody since his arrest from the year 2005-2017:

1. Hussainara Khatoon and others v. Home Secretary, State of Bihar, Patna [AIR 1979 SC 1360(1)]
2. Kadra Pehadiya and others v. State of Bihar [AIR 1981 SC 939]
3. Abdul Rehman Antulay vs. R.S.Nayak and another [AIR 1992 SC 1701(1)]
4. Shaheen Welfare Association v. Union of India and others [(1996) 2 SCC 616]
5. Sanjay Chandra v. Central Bureau of Investigation [(2012) 1 SCC 40]
6. Hussain and another vs. Union of India [2017(2) CTC 562]

7. It is true that in the aforesaid judgments, the Supreme Court has emphasised the importance of speedy trial and also granted bail in some of the cases. However, in the 7 Judge Bench judgment of the Supreme Court in Abdul Rehman Antulay (supra) relied upon by the learned counsel for the petitioner, it has been held as under:

"54(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is – who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number

of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in *Barker* [33 L Ed 2d 101] "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in *U.S. v. Ewell* [15 L Ed 2d 627] in the following words:

'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case."

Therefore, this Court is constrained to see as to what are the reasons for the delay in disposal of the trial.

8. It is seen that the accused demanded that the trial Court should furnish to them translated Hindi copies of all the documents relied upon by the prosecution under Section 207 Cr.P.C. Therefore, the prosecution had to translate all the documents from Tamil to Hindi and they were supplied to the accused. Thereafter, the present petitioner is now demanding for a Tamil version of some documents. In other words, under Section 207 Cr.P.C., the petitioner was furnished with the charge sheet and all the documents like statements under Section 161 Cr.P.C., etc., which were obviously in Tamil, because Tamil is the official language in the State of Tamil Nadu.

9. It must be remembered that this is not a preventive detention where the accused is required to be forwarded with records in the language known to him about the grounds of preventive detention, whereas, this is a punitive detention where the witnesses will be examined in the presence of the accused and his counsel will have an opportunity to cross-examine the witnesses. Despite this being the

position, the prosecution succumbed to the pressure of the accused and translated the Tamil documents into Hindi and furnished the same to the accused. After having received the Hindi documents, the accused is now taking a stand that he has lost the original Tamil copies of the charge sheet and statements and is now demanding the same.

10. It is not necessary for the trial Court to concede to such improper demands of the accused. The prosecution have examined 63 witnesses, but, the accused has not cross examined even one of them. Thus, it is apparent that the accused has been adopting dilatory tactics and therefore, he cannot be heard to complain of delay in disposal of the trial.

In the result, this petition is dismissed as being devoid of merits.

-sd/-
09/08/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

2 THE INSPECTOR OF POLICE,
PERIYAPALAYAM POLICE STATION,
TIRUVALLUR DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S.R.SANKARASUBBU Advocate on payment of necessary charges

CRL OP.5321/2017

Date :09/08/2017

rvr 16/08/2017