

BAIL SLIP

That the Petitioners/Appellants namely D.Vaithyanathan, 2.V.Arivanbu, 3.S.Ezhilan, 4.S.Sundar, 5.A.Rajendran, 6.J.Subbravel, 7.R.Mohanraj, 8.M.Ramesh, 9.J.Premanathan, 10.K.Arulmani, 11.V.Arivukani, 12.P.Kennady were directed to be released on bail, as per Order dated 28.03.2013 made in MP.1/13 in CRL.A.No.203 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.A.No.203 of 2013

1.D.Vaithyanathan
S/o.Duraisamy

2.V.Arivanbu
S/o.Vaithyanathan

3.S.Ezhilan
S/o.Samidurai

4.S.Sundar
S/o.Samidurai

5.A.Rajendran
S/o.Arumugam

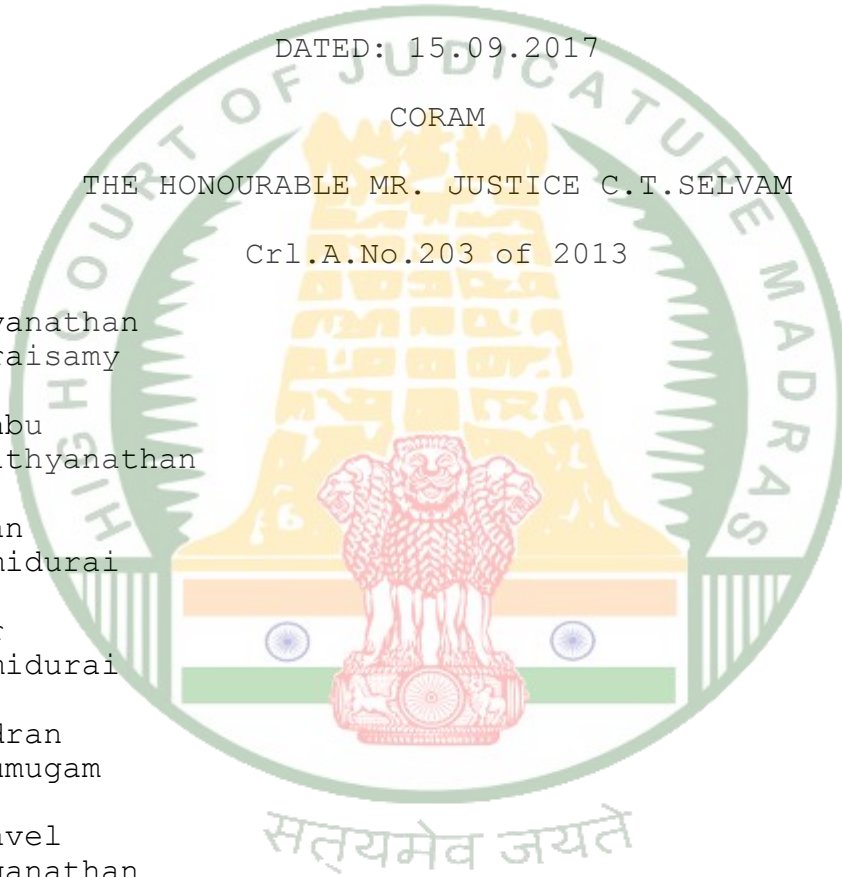
6.J.Subbravel
S/o.Jeganathan

7.R.Mohanraj
S/o.Renganathan

8.M.Ramesh
S/o.Mani

9.J.Premanathan
S/o.Jeganathan

10.K.Arulmani
S/o.Kuttiyandi



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11.V.Arivukani
S/o.Vaithyanathan

12.P.Kennady
S/o.Periyasamy

... Appellants

vs

State represented by
Inspector of Police,
Kattumannarkoil Police Station,
Chidambaram.
Crime No.477 of 2003

... Respondent

Criminal Appeals filed u/s.374(2) of the Code of Criminal Procedure against judgment of learned II Additional District and Sessions Judge, Chidambaram, passed in S.C.No.494 of 2007 on 28.02.2013.

For Appellants : Mr.S.Ashok Kumar, Senior Counsel
for Mr.P.Palani Nathan [A1, A2, A4, A5,
A8 to A12]
Mr.A.G.Rajan [A3]
Mr.T.Shanmugam [A6]
Mr.Karthikeyan [A7]

For Respondent : Mr.V.Arul, Additional Public Prosecutor

This appeal arises against judgment of learned II Additional District and Sessions Judge, Chidambaram, passed in S.C.No.494 of 2007 on 28.02.2013.

2. Prosecution case is that on 10.06.2003 when prosecution party went to Court at Kattumannarkoil towards complying with a condition of bail imposed on them, accused formed an unlawful assembly and planned to attack the prosecution party using country bombs and other weapons. PW-1 preferred Ex.P1, complaint to PW-11, Sub-Inspector of Police, who registered a case in Crime No.477 of 2003 on the file of respondent for offences u/s.147, 148, 120-B IPC, 4(b), 5 of the Explosives Substance Act, 1908, 9-B(i)(b) of the Explosive Act, 1884 and 25(1-B)(b), 27(1) of the Arms Act, 1959. Printed First Information Report is Ex.P12. PW-11 visited the scene of occurrence and arrested the accused. PW-11 recorded the voluntary confession of A2 in the

presence of PWs.6 and 10. PW-11 seized a Ambassador Car bearing registration No.TN-09-F-1122 under seizure mahazar. PW-11 seized MO-1 - aruval and MOs.3 to 4 - spears and 7 country bombs under seizure mahazar. PW-11 prepared Ex.P4 - observation mahazar and Ex.P13 - rough sketch. PW-11 examined PWs.1 to 4 and recorded their statements. PW-11 sent the accused to judicial custody. PW-11 examined PWs.5, 6, 7, 10 and another and recorded their statements. PW-12, Deputy Superintendent of Police, took up further investigation. PW-12 examined PWs.8 and 11 and recorded their statements. PW-12 examined PW-9, who had defused the country bombs and recorded his statement. PW-12 forwarded the country bombs for chemical analysis. PW-12, on completion of investigation filed a charge sheet informing commission of offences u/s.148 IPC, 4(1)(a) and 4(1)(b) of the Explosives Substance Act, 1908, r/w 149 IPC. On committal, the case was tried in S.C.No.494 of 2007 on the file of learned II Additional District and Sessions Judge, Chidambaram.

3. Before trial Court, prosecution examined 12 witnesses and marked 13 exhibits and 4 material objects. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 28.02.2013, convicted accused 1 to 7 and 10 to 14 for offences u/s.148 IPC and 4(1)(b) of the Explosives Substances Act r/w 149 IPC and sentenced each of them to 3 years R.I. and fine of Rs.1,000/- i/d 6 months R.I. for offence u/s.148 IPC and 7 years R.I. for offence u/s.4(1)(b) of the Explosives Substances Act r/w 149 IPC. Trial Court directed that sentences run concurrently. Against such finding, the present appeal has been preferred.

4. Heard learned senior counsel for appellants 1, 2, 4, 5, 8 to 12, learned counsel for appellants 3, 6 and 7 and learned Additional Public Prosecutor.

5. Learned senior counsel submitted that of 14 accused in the case, accused 8 and 9 died pending trial. Prosecution case was that appellants/accused were facing trial on the charge of having murdered the father of PW-1. Arising out of the same incident, prosecution party viz., PWs.1 to 4 were facing trial for offence u/s.307 IPC. PWs.1 to 4 having been granted bail, initially were required to comply with bail conditions before learned Judicial Magistrate, Villupuram and on relaxation, were required to appear before Virudhachalam Court and on further relaxation were required to comply before learned Judicial Magistrate, Kattumannarkoil. For such purpose, PWs.1 to 4 had gone to attend Judicial Magistrate Court, Kattumannarkoil, for the first time on the date of alleged occurrence. The case in Crime No.477 of 2003 on the file of respondent was registered on the complaint of PW-1. In the complaint, he has spoken to

personal knowledge of appellants/accused waiting with weapons towards attacking the prosecution party. Upon registration of the case, first respondent police had gone to the scene and allegedly found dangerous weapons stored in a Car. The Car had not been seized. According to Ex.P1, accused had been standing outside the Court Hall and none of them were armed. In Ex.P1, it was alleged that all the 14 named accused had assembled and that they had stated that only 4 of the prosecution party were present and other members thereof would also come to Court towards signing there before, that the accused may first effect compliance before Court and thereafter, after the prosecution party came out of the Court, the accused could use the explosives kept in the Car and then attack, towards committing murder. Quite contrary to the version in Ex.P1, PW-1, in his examination before Court, had spoken to having knowledge of accused persons waiting with weapons on information had from PW-4. In cross, PW-1 had admitted to being at Kattumannarkoil Court for the first time on the date of alleged occurrence. He had admitted that before preference of complaint, Ex.P1, he knew not what were the weapons kept inside the Car but claimed that he came to know thereof through PW-4. He had admitted that the accused were not armed. It was his further admission that none of the prosecution party had signed in compliance of bail conditions before Kattumannarkoil Court on 10.06.2003 i.e., the date of occurrence. PW-1 had admitted to involvement in very many cases and of his having been treated as a goonda. PW-2 had spoken to his paternal uncle PW-4 informing of the accused holding knives and being involved in secret utterances among themselves. As against PW-1 informing that the accused were standing outside the Court Hall, it was the evidence of PW-2 that the accused were inside the Car when police approached them. PW-2 in the course of chief-examination has stated that the accused were inside the Car when the police approached them whereas in cross he had informed that none were inside the Car on such occasion. There is absolutely no evidence of the accused having travelled in the Car which had not been seized. PW-11, Investigation Officer, had not even caused investigation on who the owner of the Car was. In such circumstances, the conviction for possession of arms u/s.148 IPC was ill-founded. Learned senior counsel submitted that the second charge against appellants/accused was most vague in that it merely informed of commission of offence under the Explosives Substance Act, 1908 r/w 149 IPC without specifying which sections of the said enactment stood attracted. Learned senior counsel further submitted that there was nothing to connect the accused with the Car which had not been seized nor its content of weapons. In cross, PW-6 has admitted to being involved in several cases including murder. Learned senior counsel submitted that the presence of such witness at the alleged scene ought not to be accepted.

6. Heard learned Additional Public Prosecutor on the above submissions.

7. Learned Additional Public Prosecutor submitted that the weapons had been seized on the confession of A2 and in the presence of PW-6 and given such circumstance, no occasion for interference with the finding of conviction by the trial Court arises.

8. This Court has considered the rival submissions.

9. This Court is of the view that given the case which prosecution wishes Court to believe, the failure to seize the Car wherein weapons allegedly were stored causes concern. PW-1 in Ex.P1 speaks to personal knowledge of the accused waiting with weapons but in Court informs of having gathered knowledge through PW-4. PW-1 has admitted that the accused were unarmed and were waiting outside the Court Hall. PW-2, in cross, has admitted that none were inside the Car when police approached. As rightly submitted by learned senior counsel for appellants there is nothing to connect the accused either with the Car which has not been seized or been proved to have been used by the accused towards travelling to Court at Kattumannarkoil nor the weapons allegedly seized in the presence of PW-6. PW-6 himself is a notorious element and can be seen only as an obliging witness. Court below has failed to appreciate the case in proper perspective and failed to realise that in all probability the case against accused was a foisted one.

For the aforesaid reasons, the Criminal Appeal shall stand allowed. The judgment of learned II Additional District and Sessions Judge, Chidambaram, passed in S.C.No.494 of 2007 on 28.02.2013, shall stand set aside. Appellants are acquitted in the case. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The District Munsif Cum,
Judicial Magistrate,
Kattumannarkoil.

2. Do Thro' The Chief Judicial Magistrate,
Cuddalore.
3. The II Additional District and Sessions Judge,
Chidambaram.
4. The Superintendent,
Central Prison,
Cuddalore
5. The Inspector of Police,
Kattumannarkoil Police Station,
Chidambaram.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.G.Rajan, Advocate, S.R.No.67371
+1cc to Mr.T.Shanmugam, Advocate, S.R.No.68314

Crl.A.No.203 of 2013

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