



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

Monday, the Twelfth day of June Two Thousand Seventeen

PRESENT

The Hon`ble Dr.Justice G.JAYACHANDRAN

CRL OP(MD) No.6816 & 6817 of 2017
AND CRL MP(MD)NO.4532 & 4533 OF 2017

V.P.PANDI @ ATTACK PANDI ... PETITIONER/PETITIONER/
ACCUSED NO.1
IN CRL OP(MD)NO.6816/2017
...PETITIONER/ACCUSED NO.7
IN CRL OP(MD)NO.6817/2017
Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
SUBRAMANIPURAM POLICE STATION,
MADURAI,MADURAI DISTRICT.
CRIME NO.68 OF 2016 AT
PRESENT CRIME NO.11 OF 2015
IN C.B.C.I.D.
MADURAI.

... RESPONDENT / COMPLAINANT
IN CRL OP(MD)NO.6816/2017

STATE REP.BY
THE INSPECTOR OF POLICE,
K.PUDUR POLICE STATION,
MADURAI,
IN CRIME NO.1017/2015

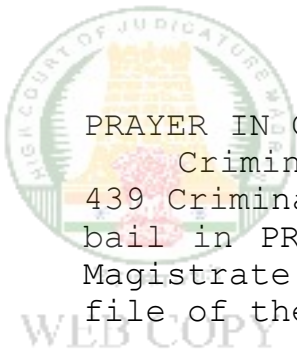
...RESPONDENT/COMPLAINANT
IN CRL OP(MD)NO.6817/2017

PRAYER IN CRL OP(MD)NO.6816/2017 :

Criminal Original Petition is filed Under Section under Section 439 Criminal Procedure Code, pleaded to enlarge the petitioner on bail in PRC.No.47/2015 pending on the file of the Learned Judicial Magistrate Court No.IV, Madurai in Crime No.11/2015 pending on the file of the Inspector of Police, CBCID, Madurai.

Prayer in CRL MP(MD). 4532/ 2017 IN CRL OP(MD)NO.6816/2017 :

To grant Interim bail to the petitioner for taking treatment at multispecialty private Hospital at Madurai pending disposal of the main bail application in PRC.NO.47/2015 pending on the file of the Learned Judicial Magistrate Court No.IV, Madurai in Crime No.11/2015 pending on the file of the Inspector of Police, CBCID, Madurai.



PRAYER IN CRL OP(MD)NO.6817/2017 :

Criminal Original Petition is filed Under Section under Section 439 Criminal Procedure Code, pleased to To enlarge the petitioner on bail in PRC.No.52/2016 pending on the file of the Learned Judicial Magistrate Court No.VI, Madurai in Crime NO.1017/2015 pending on the file of the Inspector of Police, K.Pudur Police Station, Madurai.

Prayer in CRL MP(MD). 4533/ 2017 IN CRL OP(MD)NO.6817/2017 ::

To grant Interim bail to the petitioner for taking treatment at multispecialty private Hospital at Madurai pending disposal of the main bail application in PRC.NO.52/2016 pending on the file of the Learned Judicial Magistrate Court No.IV, Madurai in Crime No.1017/2015 pending on the file of the Inspector of Police, K.Pudur Police Station, Madurai.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of MR.M.SUBASH BABBU Advocate for MR.N.ILANGO learned Counsel for the petitioner in all the petitions and MR.RAJARATHINAM learned public prosecutor for the state assisted by MR.R.RAMACHANDRAN, Additional public prosecutor for the Respondents in all the Petitions the court made the following order:-

The petitioner in Crl.O.P.No.6816/2017/1st accused in Crime No.68/2013 on the file of the respondent/Police later on transferred to CBCID vide Crime No.11/2015 for the offences under Sections 147, 148, 341, 342, 212, 216, 302, 120(b) and 109 r/w 149 & 34 IPC and Section 3(1) of TNPPDL Act culminated in PRC.No.47/2015 on the file of the learned Judicial Magistrate Court No.IV, Madurai, seeks bail. He has also filed Crl.M.P.No.4532/2017 seeking interim bail on medical grounds.

2.The petitioner in Crl.O.P.No.6817/2017/7th accused in Crime No.1017/2015 on the file of the respondent/Police for the offences under Sections 341, 294(b), 307, 120(b), 506(ii), 109 r/w 149 IPC culminated in PRC.No.52/2016 on the file of the learned Judicial Magistrate Court No.VI, Madurai, seeks bail. He has also filed Crl.M.P.No.4533/2017 seeking interim bail on medical grounds.

3.Heard Mr.Subash Babu for Mr.N.Ilango, learned counsel for the petitioner and Mr.Rajarathinam, learned Public Prosecutor appearing for the State.

4.The case of the prosecution in Crime No.11 of 2015 is that the petitioner herein and his associates murdered one Pottu Suresh waylaying his Car near Murugan Kovil road junction. The deceased Pottu Suresh was the associate of this petitioner/accused and later parted away and developed animosity leading to murder. After committing the murder of Pottu Suresh, this petitioner went underground and he was secured by the police after 2½ years and remanded to judicial custody. This petitioner has also been arrayed as accused in Crime No.1017/2015 in attempt to murder one



Ramakrishnan, who is also one of his old associates and also a listed witness in Crime No.11 of 2015. Crl.OP.No.6817/2017 has been filed seeking bail of this petitioner in the said case wherein, the petitioner has been arrayed as 7th accused.

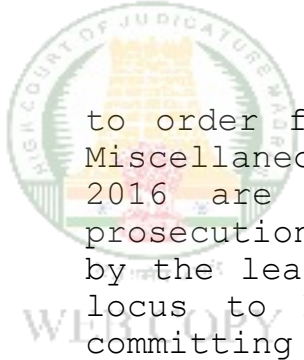
5.The entitlement of bail for this petitioner has been elaborately discussed by this Court in the earlier Crl.OP(MD) Nos.16789 and 17425 of 2016 and has been rejected by an order dated 22.09.2016 with a direction to the Committal Magistrate to split up the case against this petitioner and other accused and complete the committal proceedings at the earliest and upon committal, the Trial Court shall dispose of the case expeditiously in any event not later than six months from the date of committal.

6.Apart from canvassing the grounds for bail, the petitioner herein in his bail petitions has contended that in spite of specific direction by this Court in its order dated 22.09.2016, the Trial Court has not split up the case and committed the case for trial. Therefore, for non-compliance of the direction by this Court and failure to dispose of the case expeditiously, the right of the petitioner to seek bail enures on him. In addition, the petitioner herein has also based on his health condition, sought for interim bail to have better treatment for his ailment which he is deprived due to his incarceration.

7.Mr.Rajarathinam, learned Public Prosecutor, who appeared for the state has filed a detailed counter affidavit and opposed for granting bail or interim bail. According to the learned Public Prosecutor, the cause for delay in committing the case is wholly upon the accused and his associates, who are preventing the Committal Court to proceed further by absconding themselves one after another. In spite of specific direction by the Committal Court for appearance of all the accused, not even for one hearing, all the accused were present to receive the copies to enable the committal Court to proceed further. To substantiate his plea, learned State Public Prosecutor has relied upon the entries in the B-Diary Extracts of both the cases and submitted the abovesaid contention has been well proved through the same.

8.He further submitted that whenever the case is posted for appearance of the accused, at least one of the accused have remained absent. On most of the hearing dates, they have filed applications through their counsel under Section 317 Cr.P.C, to dispense with their personal appearance and at times, they have not even filed such applications to seek leave of the Court to dispense with their appearance.

9.Regarding the contention of delay in committal proceedings, the learned State Public Prosecutor submitted that the delay is solely on the petitioner and other accused. While the other accused abstained themselves from appearing before the Court in turns, on the part of this petitioner, he has filed three frivolous petitions



to order further investigation, to produce document etc and those Miscellaneous Petitions namely, CrI.MP.Nos.4501, 4502 and 4503 of 2016 are pending disposal in spite of counter filed by the prosecution as early as on 02.11.2016. Therefore, it is contended by the learned State Public Prosecutor that this petitioner has no locus to blame the prosecution or the Court for the delay in committing the case while he and his associates alone are the cause for the delay.

10.This Court finds from the record that on few occasions, even Non Bailable Warrant has been issued against some of the accused which has been re-called later. So, an orchestrated design to delay the committal proceedings is palpably seen from the attitude of the accused involved in this case. As directed by this Court, for the absconding accused the Committal Court has already split up the case to commit the case to the Trial Court. However, the accused are not prepared to appear and get the copies to allow the Court to proceed further. Therefore, this Court finds no merit in the point canvassed by the petitioner that there is a breach of direction given by this Court dated 22.09.2016. Neither the Committal Court nor the prosecution have delayed the committal process. It is the conduct of the accused involved in this case are causing delay. The Committal Court is helpless in this regard.

11.Regarding the merit of the bail petition is concerned, though the petitioner has canvassed the facts which are to be tested in the course of trial, whether the petitioner herein deserves bail and whether the petitioner will co-operate for completion of trial, if he is released on bail, are the points for consideration.

12.The records reveal that Pottu Suresh was found murdered on 31.01.2013, in which this petitioner is arrayed as the first accused. However, this petitioner was able to secure by the police in Bombay only on 21.09.2015, after a massive man hunt. Immediately after his arrest, there was murderous attack of one Ramakrishnan, who is a listed witness in the murder case of Pottu Suresh. Investigation reveals that this petitioner has instigated the said crime. The learned State Public Prosecutor has also in the counter affidavit listed out the cases pending against this petitioner. Perusal of the list indicates that nearly 20 cases of grave nature are pending against this petitioner in Madurai, Thoothukudi and Virudhunagar districts.

13.The Hon'ble Supreme Court in **Kalyan Chandra Sarkar vs. Rajesh Ranjan** reported in **(2004) 7 SCC 528 = 2004 SCC (Cri) 1977**, while considering the personal liberty of an individual and larger interest of the society has vividly held as under:-

"11.The law in regard to grant or refusal of bail is very well settled. 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



merit 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. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the 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.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.*)''

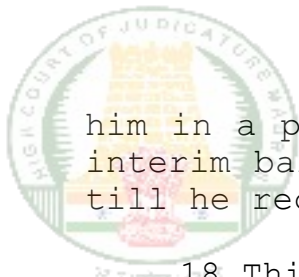
14. A careful perusal of the records, the antecedents of this petitioner in the light of the above judgment, the balance between the individual liberty and social interest weigh against this petitioner.

15. The Hon'ble Supreme Court in **Chandrakeshwar Prasad vs. State of Bihar** reported in (2016) 9 SCC 443, while dealing a case of similar nature has observed as under:-

''13. On a careful perusal of the records of the case and considering all the aspects of the matter in question and having regard to the proved charges in the cases concerned, and the charges pending adjudication against the respondent-accused and further balancing the considerations of individual liberty and societal interest as well as the prescriptions and the perception of law regarding bail, it appears to us that the High Court has erred in granting bail to the respondent-accused without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue.''

16. This Court on earlier occasion has gone in detail about the entitlement of bail to this petitioner and has rejected it. There is no extraordinary change in circumstances to review the same. Furthermore, as pointed out by the learned State Public Prosecutor, the accused in this case have not even co-operated for committal of the case for trial by the Court of Sessions. In the said circumstances, the petitions for bail by this petitioner deserve no merit.

17. The learned counsel for the petitioner made a fervent appeal to this Court that this petitioner is suffering from very serious ailment and he is not provided with adequate medical care in the Government Hospital. He requires super-speciality treatment which the Government Hospital cannot provide and it is necessary to admit



him in a private hospital for better treatment. Therefore, at least interim bail on medical grounds should be granted to the petitioner till he recovers from the ailment.

18. This Court to ascertain the health condition of the petitioner, directed the respondent/Police to furnish the medical records pertaining to the petitioner. Pursuant to the said direction, a detailed typed set of papers has been filed containing the relevant medical records of the petitioner.

19. On 08.06.2017, the Dean, Government Rajaji Hospital, Madurai, in which, the petitioner is treated, has given a report wherein, it has been stated that stone and sore diagnosed in the Gall Bladder of the petitioner. Necessary treatment is given to him and his health is improving. The report further reads that the petitioner refused to undergo MRI scan in spite of necessary fee paid by the Jail Superintendant on behalf of the petitioner. MRCP with OGD scopy is suggested for the patient/petitioner. After completion of the examination, decision regarding surgery will be taken. The report clearly indicates that the petitioner is totally recovered from Jaundice disease.

20. The learned State Public Prosecutor referring to the medical report issued by the Dean of Government Rajaji Hospital, Madurai, submitted that the hospital is equipped with all necessary facilities to treat the ailment of the petitioner and it is only a fake cry on behalf of the petitioner, as if he is terminally ill and it is also a false allegation to say that the Government Hospital is not adequately equipped to treat the ailment of the petitioner. Under the pretext of illness, the petitioner wants to come out from the Jail to abscond himself. The previous conduct of the petitioner makes him undeserve even for interim bail.

21. This Court is totally in agreement with the above submission made by the learned State Public Prosecutor.

22. When the petitioner complained about illness, he had been taken to Government Hospital, Tirunelveli on 27.05.2017 and admitted as inpatient. As per the medical advice, he had been shifted to Government Rajaji Hospital, Madurai, on 03.06.2017. At Madurai, he is taken care by the Doctors and that the medical report of the Dean, Government Rajaji Hospital, Madurai dated 08.06.2017 does not reveal any serious ailment to the petitioner which requires extraordinary treatment which could not be provided by the Government Hospital. Therefore, the request of the petitioner for interim bail also does not carry any merit.

23. Courts are always in favour of providing adequate and better treatment to any person more particularly, detainees. In this case also, to ensure whether the detainee is provided with adequate medical care, this Court has sought for the medical report from the Dean of Government Rajaji Hospital, Madurai, and this Court is



satisfied that the said hospital is providing utmost care and medical treatment to the petitioner/detenu. Hence the petitions for interim bail also do not deserve any merit.

Accordingly, Crl.OP(MD)Nos.6816 & 6817 of 2017 and Crl.MP(MD) Nos.4532 & 4533 of 2017 are dismissed.

sd/-
12/06/2017

/ TRUE COPY /

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

GK/MYR
TO

- 1 THE JUDICIAL MAGISTRATE NO.IV, MADURAI
 - 2 THE JUDICIAL MAGISTRATE NO.VI, MADURAI.
 - 2 THE CHIEF JUDICIAL MAGISTRATE, MADURAI
 - 3 THE INSPECTOR OF POLICE,
SUBRAMANIAPURAM POLICE STATION,
MADURAI, MADURAI DISTRICT.
 - 5 THE INSPECTOR OF POLICE, CBCID, MADURAI
 - 6 THE INSPECTOR OF POLICE
K.PUDUR POLICE STATION, MADURAI
 - 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
MADURAI.
 - 8 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI
- +4. CC to M/S.N.ILANGO Advocate SR.No.23992 , 23991
- GJM/KK/SAR-I-14.6.17-7P-13C

ORDER
IN
CRL OP(MD) No.6816 & 6817 of 2017
AND CRL MP(MD)NO.4532 & 4533 OF 2017
Date :12/06/2017