



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P(MD)No.13043 of 2017

and

CrI.MP(MD)Nos.8506 & 9044 of 2017

Kumar @ Home Guard Kumar

... Petitioner

vs.

State,
rep. by Sub-Inspector of Police,
Jaihindpuram Police Station,
Madurai City.
(Cr.No.1283/2011)

... Respondent

Prayer: Criminal Original Petition filed under Section 439 of Criminal Procedure Code, to enlarge the Petitioner/Accused on bail in S.C.No.182 of 2016 pending on the file of learned III Additional Subordinate Judge, Madurai.

For Petitioner : Mr.D.RameshKumar

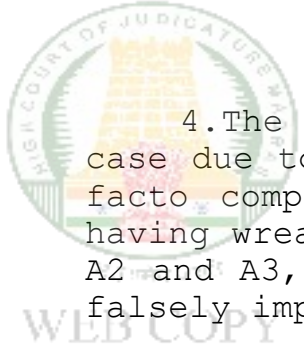
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor
Ms.K.M.Priscilla Jancy (for Intervener)

JUDGMENT

The petitioner has filed this petition for bail for the offences under Sections 341, 307, 506(ii) r/w. 34 of I.P.C.

2.The case of the petitioner is that on 26.11.2011, the petitioner's son A3 fired the crackers in a careless manner, when the same was questioned by one Madhan and Murali at that time, A3 called his parents A1 and A2 in this case. Due to the previous election motive between the petitioner and one Udayasuriyan, who is the close relative of the petitioner herein, A2 and A3 were caught hold the said Murali and A1 said to have assaulted him with Aruval and caused injury.

3.Subsequent to the injury caused by the A1, who is the petitioner herein, the injured was taken to the hospital. Therefore, the above case has been registered in Crime No.1283 of 2011 on the file of the 1st respondent police and arrested the petitioners on 11.07.2017 by way of Non-Bailable warrant issued by the learned Additional Subordinate Judge in S.C.No.182 of 2016, pending on the file of the learned IIIrd Additional Subordinate Judge, Madurai.



4.The further case of the petitioner is that this is a false case due to the political enmity between the parties namely the de-facto complainant Udayasuriyan who is the father of the deceased having wreak vengeance against the petitioner and his parents namely A2 and A3, he has given false complaint against the petitioner and falsely implicated in the above said criminal case.

5.Originally the petitioner was arrested and later on he was enlarge on statutory bail by the learned Principal District and Sessions Judge, Madurai in Crl.M.P.No.4198 of 2011.

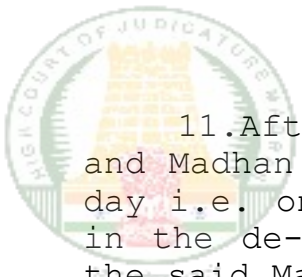
6.The petitioner further states that after granting bail, the defacto complainant Udayasuriyan, who is the father of the deceased Murali moved a cancellation bail petition in Crl.O.P.(MD)No.2843 of 2017, which was granted by the trial Court in Crl.M.P.No.4198 of 2017.

7.Considering the case of the de-facto complainant Udayasuriyan, this Court was allowed the said Crl.O.P.(MD)No.2843 of 2017 and cancelled the bail granted by the trial Court in Crl.M.P.4198 of 2017. Aggrieved against the said order, the petitioner moved before the Hon'ble Apex Court in SLP(Crl.)No.4265 of 2017, but the petition was dismissed. Therefore, after dismissal of the SLP(Crl.)No.4265 of 2017, the petitioner was arrested and remanded into judicial custody on 11.07.2017.

8.The petitioner also states that in this crime number the entire investigation was completed and charge sheet was also filed before the learned Judicial Magistrate, which was later on committed to the learned IIIrd Additional Subordinate Judge, Madurai and the same was taken on file in S.C.No.182 of 2016. In the meantime, the petitioner was detained under Act 14/1982 and later on the said detention order was revoked. Therefore, the petitioner praying this Court for granting bail, since he is in judicial custody from 11.07.2017.

9.The de-facto complainant Mr.Udayasuriyan has filed an Intervening Application in Crl.MP(MD)No.8506 of 2017 in Crl.OP(MD) No.11573 of 2017 and praying this Court not to grant bail to the petitioner/A1.

10.The case of the de-facto complainant is that the 1st respondent, who is the Kumar @ Home Guard Kumar the A1 in this case have made political enmity with the de-facto complainant and his family members and due to that on 26.10.2011 at about 13.00 hours, A1 and his wife Sundari and his son Sonai Muthu pickup quarrel with the de-facto complainant's son Murali and also the de-facto complainant brother's son Madhan. A1 and his wife Sundari and his son Sonai Muthu are attacked the de-facto complainant's son Murali and his brother's son namely Madhan with deadly weapon (Aruval) and caused serious head injuries to the said persons.



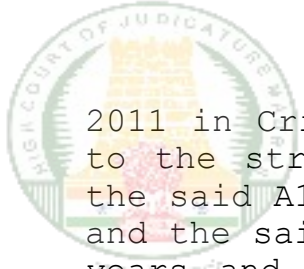
11. After the occurrence, the de-facto complainant's son Murali and Madhan were admitted at Meenakshi Mission Hospital, on the same day i.e. on 26.10.2011. Due to the grievous head injuries sustained in the de-facto complainant's son, he was admitted in the ICU and the said Madhan had given a criminal complaint before the respondent police on 26.10.2011, on the basis of the complaint, a criminal case has been registered by the respondent police under Sections 341, 324 and 506(ii) of IPC against the A1 Kumar and his wife Sundari and his son Sonai Muthu. At the time of register the said case, the de-facto complainant's son Murali was admitted in very serious condition in unconscious manner and had 27 switchers on the head. The head injuries are as follows:

- "(a) Lackration over left tempanoparictik region 17X3X2 cms
- (b) Lacrpation over left eyes 3X2X1 cms
- (c) Left parictal fipidural harmatoma
- (d) Pnivmocrphalus diffuse one
- (e) Communitied left high partial bone fracture
- (f) Fracture of left frontal bone"

12. Due to the above said incident, the de-facto complainant's son was taking treatment from 26.10.2011 to 04.11.2011 in the ICU and thereafter, the de-facto complainant's son Murali was shifted to normal ward and he was given a statement to the 2nd respondent police and due to the complaint and statement given by the de-facto complainant's son Murali, and the nature of the injuries, sustained by the de-facto complainant's son, the 2nd respondent police has altered the Section as 341, 324, 506(ii) and 307 of IPC on 03.11.2011. Thereafter, the other accused were released on bail and the main accused, who is the petitioner herein was arrested and he was moved on bail before the learned Principal District and Sessions Judge, Madurai in Crl.M.P.No.4198 of 2011 in Crime No.1283 of 2011 and the same was granted to the A1 on 17.11.2011.

13. It is the further case of the de-facto complainant that even after released on bail, A1 in this case, the 1st respondent having strong enmity with the de-facto complainant and his family members, since the said 1st respondent is a notorious criminal in the Madurai City and he is having strong bond with local rowdy elements. Due to the political motive, the 1st respondent has continuously threatened the de-facto complainant and his son Murali to withdraw the case in S.C.No.182 of 2016 which is pending under Sections 341, 324, 307 and 506(ii) IPC. Based on the threatening, again the de-facto complainant had given a complaint to the 2nd respondent police and secure C.S.R.No.25 of 2015, dated 02.02.2015. Later on, a statement was obtained from A1 and police was closed the C.S.R.No.25 of 2015. But, even thereafter, A1 is continuously threatening, but the de-facto complainant and his family members and other witnesses in S.C.No.182 of 2016 to withdraw the said criminal case, otherwise they will kill the de-facto complainant and his family members.

14. A1 is violate the bail order condition imposed by the learned Principal District and Sessions Judge, in Crl.M.P.No.4198 of



2011 in Crime No.1283 of 2011 dated 17.11.2011. While being so, due to the strong political motive, on 25.05.2016 at about 10.50 p.m. the said A1 Kumar was murdered the de-facto complainant's son Murali and the said A1 was having strong political motive for the past five years and finally he was committed brutal murder of the de-facto complainant's son. Therefore, a complaint has been given before the 2nd respondent police and a case was registered against the A1 Kumar in this case, was shown as a single accused in Crime No.592 of 2016 for the offences under Sections 294(b), 302 and 506(ii) IPC dated 26.05.2016.

15.The de-facto complainant further states that though the respondent police was filed the charge sheet in the year 2013 itself, but it is still pending. Taking into advantage of the bail in the said criminal case, A1 was continuously threatened the de-facto complainant and his family members and finally he was killed the de-facto complainant's son Murali, since if the case in S.C.No.182 of 2016 was taken by the learned IIIrd Additional Subordinate Judge, Madurai, definitely the said A1 was convicted by the said Court and then the de-facto complainant's son Murali life was saved.

16.The de-facto complainant further states that he is having two sons, one elder son was attacked with Polio and his movements are totally restricted and one younger son Murali, who is the only breadwinner was murdered by A1 Kumar. After the murder of the de-facto complainant's son Murali, after seven days of the murder, the 2nd son was born to deceased Murali, now the two kids were lost their father.

17.The de-facto complainant also filed a CrI.O.P.No.19921 of 2016 before this Court for speedy disposal of the sessions case in S.C.No.182 of 2016 and the same was ordered by this Court on 17.10.2016. The very same A1 who originally attacked the de-facto complainant's son with deadly weapons (Aruval) and committed offences under Section 307 IPC dated 26.05.2016, after registration of the criminal case, the very same A1 Kumar committed the brutal murder of the de-facto complainant's son Murali, which was registered in Cr.No.592 of 2016 for the offences under Sections 294 (b), 302 and 506(ii) IPC.

18.Since A1 Kumar has committed the offence and two cases are registered against him and the same is pending. He was brutally attacked the deceased Murali along with the A2 and A3 and hence the case was registered in Cr.No.1283 of 2011 for the offences under Sections 341, 324, 307 and 506(ii) IPC and charge sheet was filed in S.C.No.182 of 2016 and the same is pending on the file of the learned IIIrd Additional Subordinate Judge, Madurai. Later on, he committed murder of the very same person by namely the de-facto complainant's son Murali and later on a case was registered in Cr.No.592 of 2016 for the offences under Sections 294(b), 302, 506 (ii) IPC and final report also filed in this case and the same was



taken on file in S.C.No.373 of 2017 which is pending before the learned Ist Additional District Judge, Madurai.

19. Therefore, the de-facto complainant strongly objecting for granting bail, since this Court already granted bail in this case in S.C.No.182 of 2016 by the learned Sessions Judge, later on, this Court by order dated 10.04.2017 to cancelled the bail granted to this petitioner A1 and later on this petitioner A1 has moved the Hon'ble Apex Court by way of SLP(Crl.)No.4265 of 2017 and the same was dismissed by confirming the order of this Court in Crl.O.P.(MD) No.2843 of 2017. Therefore, this petitioner/A1 is not entitled for bail, since on the very same person having two criminal cases in S.C.No.182 of 2016 for the offences under Sections 341, 324, 307 and 506(ii) and another case for the offences under Sections 294(b), 302 and 506(ii) IPC and the case is pending in S.C.No.373 of 2017 pending before the learned Ist Additional District Judge, Madurai. Therefore, the de-facto complainant is praying this Court for dismiss the bail petition.

20. A counter affidavit has been filed by the respondent/police. The respondent/police has denied all the allegations set out in the petition. The respondent/police states that the petitioner/A1 Kumar is a history sheet rowdy in the respondent/police station. The petitioner having three more criminal cases are pending in the petitioner's name in Cr.No.592 of 2016 for the offences under Sections 294(b), 302 and 506(ii) IPC dated 26.05.2016 in Cr.No.4 of 2013 for the offences under Sections 427 and 506(i) IPC read with Section 3(1) of TNPPDL Act and one another criminal case in Cr.No.422 of 2016 under Section 107 of Cr.P.C. and all the criminal cases are pending.

21. The respondent/police further states that the petitioner was under the custody in Central Prison, Madurai under GOONDAS Act, Tamil Nadu Act 14/1982 and the said Act 14 of 1982 was quashed by this Court on 20.07.2016. Therefore, all the criminal cases were clearly established that the petitioner/A1 Kumar is a notorious criminal in Madurai City and he can do anything for his survival.

22. In this case, the petitioner/A1 is having political motive with one Udayasuriyan the de-facto complainant and with his family members, due to that on 26.10.2011 at about 13.00 hours, this petitioner and his wife Sundari and his son Sonai Muthu pickup quarrel with Udayasuriyan's son Murali and with his brother's son Madhan and they were attacked Udayasuriyan's son Murali and his brother's son namely Madhan with deadly weapon (Aruval) and caused grievous head injuries to the said persons and the case was registered in Cr.No.1283 of 2011, later on which was altered into Sections 341, 324, 506(ii) and 307 of IPC on 03.11.2011.

23. This petitioner/A1 was moved bail in Crl.M.P(MD)No.4198 of 2011 and the same was ordered on 17.11.2011 by this Court. Later on the petitioner/A1 has committed murder one of the injured witness



namely Murali, who is the de-facto complainant's son and the petitioner was strong motive for the past five years.

24. The respondent police filed a case and the same was taken on file in S.C.No.182 of 2016 and the same is pending on the file of the learned IIIrd Additional District and Sessions Judge, Madurai for trial. When the cancellation of bail filed by the de-facto complainant in CrI.O.P.No.2843 of 2017 in CrI.M.P.No.4198 of 2011 in Cr.No.1283 of 2011 under Sections 341, 323, 506(ii) and 307 of IPC, this Court by passing orders on 10.04.2017 as follows:

"The petitioner has placed on record that he is being intimidated by the 1st respondent. One of the victims by name, Murali had been murdered and the 1st respondent is sole accused in that case. Hence, the accused/1st respondent by killing the victim of his earlier crime, has literally obliterated one of the witness in that case, for which, he was granted bail. Therefore, there can be no more better reason to cancel the bail."

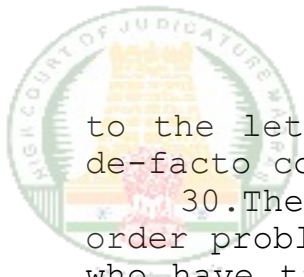
25. Later on, this petitioner/A1 has moved before the Hon'ble Apex Court in SLP(CrI.)No.4265 of 2017 and the same was dismissed on 23.05.2017, even after that the petitioner was not surrender. Therefore, the learned Sessions Judge issued Non-Bailable Warrant, thereafter he was arrested and remanded into the judicial custody. The murder case registered in Cr.No.592 of 2016 and the charge sheet was filed which was taken on file in S.C.No.373 of 2017 and the same is pending on the file of the learned Ist Additional District Judge, Madurai for trial. Therefore, the respondent/police strongly object for granting bail.

26. I heard Mr.D.RameshKumar, learned counsel appearing for the petitioner and Mr.C.Ramesh, learned Additional Public Prosecutor, appearing for the respondent and Ms.K.M.Priscilla Jancy, learned counsel appearing for the Intervener and perused the entire records.

27. It is a case of the brutal attack on a person by namely Murali by this petitioner, who is A1 along with two other persons namely A2 and A3 in the year 2011.

28. While pendency of the above case in Sessions Case in S.C.No.182 of 2016, he continuously threatened the deceased Murali for withdrawal of the complaint, to that effect, the de-facto complainant also given a complaint to the police, but the respondent police failed on their duty from taking any serious steps on the complaint given by the de-facto complainant in which C.S.R.No.25 of 2015, dated 02.02.2015 was also issued by the respondent/police.

29. When the de-facto complainant Udayasuriyan has given a complaint that this petitioner A1 has continuously threatened his son Murali and his family members, if the respondent police would have taken steps for the complaint of de-facto complainant Udayasuriyan, definitely this murder would not taken place, but due



to the lethargic manner and activity of the respondent/police, the de-facto complainant's son Murali was murdered in this case.

30. The person who was acting against the prejudice the law and order problem, the respondent/police who is the authority concerned, who have taken effective steps, cannot ignored the responsibilities and bounden duty. Due to the lethargic manner and activity of the respondent police, the de-facto complainant's son Murali was murdered in this case. Therefore, the 2nd respondent was registered the case against the A1 who is the sole accused in the said criminal case, which was registered in Crime No.592 of 2016 for the offences under Sections 294(b), 302 and 506(ii) IPC, which is pending in S.C.No.373 of 2017 on the file of the learned Ist Additional District Judge, Madurai.

31. In fact, this Court already directed the trial Court in Cr.No.1283 of 2016, dated 17.11.2016 to dispose the said sessions case expeditiously but even then it is pending. Therefore, the petitioner is not entitled for bail, since this petitioner is having one another case in S.C.No.373 of 2017 for the offences under Section 302 of IPC, pending on the file of the learned Ist Additional District Judge, Madurai.

32. Apart from this, the learned Sessions Judge had already granted bail to this petitioner / A1 and bail was cancelled since this petitioner, who is an accused in Crime No.1283 of 2011 had committed the brutal murder of the deceased Murali who is the injured in Crime No.1283 of 2011. Therefore, this petitioner / A1 is not entitle any bail from this Court, since the bail granted already to this petitioner/A1 was cancelled by this Court, which was also confirmed by the Hon'ble Supreme Court.

33. In the result, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional Subordinate Judge, Madurai.
2. The I Additional District Judge, Madurai.
3. The Sub-Inspector of Police,
Jaihindpuram Police Station, Madurai City.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

VSA/SKN

JS/KK/SAR.3/6.12.2017/7P-5C

Judgment made in

**CrI.O.P(MD)No.13043 of 2017
and**

**CrI.MP(MD)Nos.8506 & 9044 of 2017
22.11.2017**