

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Ninth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice S. VAIDYANATHAN

CRIMINAL ORIGINAL PETITION No.14687 of 2018

IN

S.C.NO.78 OF 2016

(On the file of CBCID, Namakkal, Principal District Court,
Namakkal)

ARUN

[PETITIONER / ACCUSED]

Vs

STATE BY

[RESPONDENT]

THE INSPECTOR OF POLICE, CBCID,
NAMAKKAL. CR.NO.2 OF 2015.

For Petitioner : MR.V.AYYADURAI SENIOR COUNSEL FOR
M/S.KARAN AND UDAY Advocate

For Respondent : MR.R.RAVICHANDRAN, ADDITIONAL PUBLIC PROSECUTOR

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner has filed this petition seeking to enlarge him on bail in connection with the case in S.C.No.78 of 2016 on the file of CBCID, Namakkal, Principal District Namakkal.

2. Initially, proceedings under Section 174 Cr.P.C. were registered against the petitioner, but it was subsequently altered to the offence alleged to have been committed by the petitioner under Section 363 IPC read with Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Thereafter, the charge sheet was filed before the Chief Judicial Magistrate, Namakkal on 03.02.2016 in Crime No.2 of 2015, under Sections 120-B, 364, 34 read with 109, 384, 465, 468, 471 read with 468, 465, 302, 201, 212 and 216 IPC and Section 3(2)(v) of the said Act.

3. It is a case of honour killing. Al had the benefit of bail from this Court in CrI.O.P.No.8350 of 2016, dated 26.05.2016, against which, the prosecution has gone to the Supreme Court, and by order dated 10.10.2017 in CrI.A.No.1757 of 2017 (arising out of SLP (CrI).No.5998 of 2016), the Supreme Court set aside the said order of this Court and directed the accused to remain in custody as

a pre-trial prisoner till such time he is released by an order of a competent Court and further, the Supreme Court directed the trial Court to decide the matter on its own merits as expeditiously as possible, in any case, not later than 18 months from the date of the copy of this order produced before it.

4. The case of the petitioner is that the incident had happened on 24.06.2015 and that the petitioner/A2 was arrested on 11.10.2015 and this Court has already rejected the bail petition of the petitioner/A2 on 20.06.2017 in CrI.O.P.No.7464 of 2017. There is no change of circumstances. Even though it has been pointed out by the learned Senior Counsel appearing for the petitioner that the petitioner is in custody for long period and even though the charge sheet has also been filed, the charges are yet to be framed by the Court below.

5. Learned Additional Public Prosecutor appearing for the respondent, by filing objections, contended that under some pretext or the other, the petitioner/A2 is taking time to protract the proceedings before the Court below, and that the prosecution is not at all fault.

6. The contention of the learned Senior Counsel appearing for the petitioner that, keeping the petitioner/A2 under custody would offend Article 21 of the Constitution of India, may not be correct. This is a serious crime of committing murder and it is honour killing and that the contention that there is no chance of the petitioner tampering with the witness and there is no chance of committing any other offence, much less like the present one, cannot be accepted, and that this Court has already directed the trial Court to take up the matter and decide the same. That apart, the Apex Court, as discussed supra, also has directed the trial Court to decide the matter on its own merits, as expeditiously as possible, in any case, not later than 18 months from the date the copy of the Supreme Court's order is produced.

7. In the earlier round of litigation, this Court in CrI.O.P.No.14069 of 2016, dated 08.08.2016, being the bail petition filed by the very same petitioner, observed as follows:

"6. Learned Additional Advocate General appearing for the respondent submitted that the petitioner/A2 was involved in the alleged offence from the abduction till the murder of the said Gokulraj, as Gokulraj belonged to SC community and his girl friend Swathi belonged to their own Kongu Vellalar community.

7. Narrating the sequence of events, he further submitted that the deceased Gokulraj was abducted from Arthanareswarar Temple by the petitioner/Arun, Yuvaraj, Sivakumar @ Kumar, Sathishkumar, Raghu @ Sridhar, Ranjith, Selvaraj, Chandrasekaran and Jothimani,

assaulted and abused by them as to how he dared to fall in love with a girl belonging to Kongu Vellalar community. Also, with an intention to pose the murder of Gokulraj as if he committed suicide, the accused Yuvaraj threatened Gokulraj and asked him to speak as if he would commit suicide due to love failure and facing threat to life, Gokulraj did as directed by Yuvaraj and the same was videographed by Yuvaraj in his mobile. Thereafter, the accused Yuvaraj along with the petitioner/Arun went to one Annamar Rajkumar's house at Vadugapattu and got his Mahindra Jeep bearing Registration No.TN 33 K 2728 and threatened Gokulraj to write a suicide note as dictated by the accused Yuvaraj and put his signature. Around 8.00 p.m., they went to a Sticker Shop at Sankari and got the number plate with the Registration No.TN-30-X-6169 as instructed by Yuvaraj and affixed the same on Mahindra MM 540 Jeep. Pursuant thereto, they got down in between Cauvery Railway Station and Anangur Railway Station and Yuvaraj untied the kerchief covering Gokulraj's eyes and strangulated Gokulraj's neck with the same kerchief and took a 'Vettukathi' from his hip and cut the neck portion of Gokulraj several times and severed his head. In order to escape from the clutches of law and to create a scene as if Gokulraj had committed suicide, he placed the suicide note got written from Gokulraj, in his shirt pocket, placed the torso of Gokulraj along the track and damaged the head portion and kept the same outside the track.

8. It is the further submission of the learned Additional Advocate General that the petitioner/Arun was absconding since the occurrence of the crime, i.e. from 23.06.2015. Hence, Non-Bailable Warrant was obtained against him through Chief Judicial Magistrate, Namakkal on 01.10.2015 and he surrendered before the Judicial Magistrate No.I, Karur on 13.10.2015. Thereafter, he was produced before the Chief Judicial Magistrate, Namakkal and taken into police custody and he voluntarily confessed in front of two independent witnesses, explaining his involvement in the abduction and murder of Gokulraj. It is also his submission that the petitioner is a close conspirator of the prime accused and the case has been transferred to CBCID. Pointing out to the CCTV footage taken from Arthanareeswarar Temple, he submitted that the petitioner's involvement in the crime is crystal clear and hence pleaded dismissal of the

bail petition.

9. To substantiate his stand, learned Additional Advocate General has relied on the following decisions:

(i) State of Maharashtra vs. Sitaram Popat Vetal and another, (2004) 7 SCC 521:

"6. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are :

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

3. Prima facie satisfaction of the Court in support of the charge.

7. Any order de hors of such reasons suffers from non-application of mind as was noted by this Court, in [Ram Govind Upadhyay v. Sudarshan Singh and Ors.](#), [2002] 3 SCC 598, [Puran Etc. v. Rambilas and Anr. Etc.](#) [2000] 6 SCC 388 and in [Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.](#), JT (2004) 3 SC 442.

8. Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean

that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated.

9. The High Court has lightly brushed aside the factum of recovery of the weapons and identification at the test identification parade. Its conclusion that political rivalry has a double edged effect was based on surmises without any material before it to show that a false case had been foisted because of political rivalry. Further the antecedents of the present respondents though noticed were also lightly brushed aside on the ground that they were not of a recent past. Even though criminal antecedents are always not determinative of the question whether bail is to be granted yet their relevance cannot be totally ignored. It was submitted that the accused Sitaram Vetal is not appearing in Court on the date fixed. If that is really so, it is open to the trial Court to take such action as is available to be taken in law.

10. Looked at from the above angle, the grant of bail to the respondents does not appear to be in order. Accordingly, the order of the High Court granting bail to the respondents is set aside. The appeal is allowed. "

(ii) Lata Singh vs. State of U.P. and another, (2006) 5 SCC 475

"17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such

acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism.

19. In the circumstances, the writ petition is allowed. The proceedings in Sessions Trial No. 1201/2001 titled State of U.P. vs. Sangita Gupta & Ors. arising out of FIR No. 336/2000 registered at Police Station Sarojini Nagar, Lucknow and pending in the Fast Track Court V, Lucknow are quashed. The warrants against the accused are also quashed. The police at all the concerned places should ensure that neither the petitioner nor her husband nor any relatives of the

petitioner's husband are harassed or threatened nor any acts of violence are committed against them. If anybody is found doing so, he should be proceeded against sternly in accordance with law, by the authorities concerned. "

10. Heard the learned counsel on either side and perused the material documents available on record.

11. This is yet another case of honour killing. The deceased Gokulraj belongs to Scheduled Caste community and his lover, viz. Swathi belongs to Kongu Vellalar community. The accused involved in the alleged offence belong to the community of the girl. Admittedly, the offence committed in the case on hand is a heinous one. The deceased Gokulraj has been murdered brutally. The murder of the deceased Gokulraj is undoubtedly a planned one, as the accused have cleverly got the deceased write a suicide note and executed his murder near a Railway Track. The petitioner/Arun has confessed voluntarily in front of two independent witnesses about his involvement in the abduction and murder of Gokulraj. To strengthen his confession, the CCTV footage at Arthanareeswarar Temple shows that the petitioner/Arun has accompanied the deceased from the Temple while he was being abducted. Also, in the Identification Parade conducted on 05.11.2015 at Central Prison, Salem, Swathi, lover of the deceased Gokulraj rightly identified the petitioner/Arun as one of the accused involved in the offence. The contention of the learned Senior Counsel appearing for the petitioner that trial may go on for years together and that the prime accused Yuvaraj/Al had been released on bail, are not valid grounds to consider the bail petition of the petitioner herein. Also, the pendency of a S.L.P. before the Apex Court does not mean that the petitioner should be enlarged on bail.

In view of the above, this Court finds no merits in this case and accordingly, this Criminal Original Petition is dismissed."

8. In view of the above observations of this Court and the decisions of the Supreme extracted thereunder, and in the light of the above said order of the Apex Court in directing for completion of trial in this case, this Court expects the trial Court to take up

the matter on day-to-day basis without adjourning the matter beyond seven working days at any point of time and compete the trial and bring it to the logical conclusion.

9. Hence, for the foregoing reasons, this Crl.O.P. is dismissed.

10. Before parting with the case, it has to be observed that if any one of the accused is not going to appear before the Court under one pretext or the other, and that the Memo of Appearance of the counsel is withdrawn and that the accused is going to appear in person and thereafter filing the Memo of Appearance engaging another lawyer, shows the attitude of the accused involved in the case, and it is evident that the accused is interested in only protracting the proceedings, and this Court deprecates such kind of attitude of the accused. It is also to be noted that in the said backdrop, the accused is not interested in getting the final solution to the case and does not want the case to come to a logical conclusion. It is also in the interest of the accused, he remains in prison to avoid the counter attack.

-sd/-
09/07/2018

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 CBCID, NAMAKKAL,
PRINCIPAL DISTRICT COURT, NAMAKKAL.

2 THE SUPERINTENDENT,
CENTRAL PRISION, SALEM.

3 THE INSPECTOR OF POLICE,
CBCID, NAMAKKAL.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S.KARAN AND UDAY Advocate on payment of necessary charges

CRL OP.14687/2018

Date :09/07/2018

MLT-13/07/2018