



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

Thursday, the First day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP (MD) No.1148 of 2018

KUMAR@ HOME GUARD KUMAR

... PETITIONER/ACCUSED NO.1

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
JAIHINDPURAM POLICE STATION,
MADURAI DISTRICT.
IN CR. NO. 1283/2011

... RESPONDENT / COMPLAINANT

P.UDHAYA SURIYAN

...PETITIONER/INTERVENER

For Petitioner : M/S.N.ANANTHAPADMANABHAN Advocate

For Respondent : MR.K.SUYAMBULINGA BHARATHI,
Government Advocate (Crl. Side)

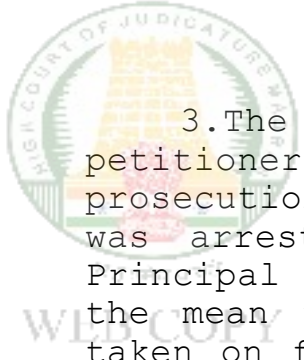
For Intervener : MR.S.THANGARAJ, Advocate

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner/Accused No.1, who was arrested and remanded to judicial custody on 11.07.2017 for the offences punishable under Sections 341, 324 and 506(ii) IPC and thereafter, the same were altered into Sections 341, 324, 307 and 506 (ii) IPC in S.C.No.182 of 2016, on the file of the III Additional Subordinate Court, Madurai, seeks bail.

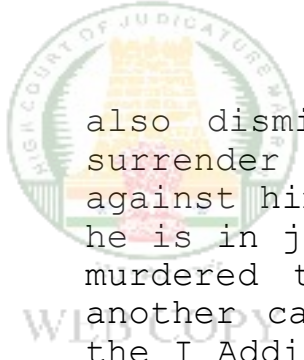
2.The case of the prosecution is that on 26.11.2011, the petitioner's son/A3 fired crackers in a careless manner. When the same was questioned by one Madhan and Murali, A3 called his parents viz., A1 and A2. Due to previous motive between the petitioner/A1 and one Udayasuriyan, who is the close relative of the petitioner herein, A2 and A3 caught hold the said Murali and the petitioner/A1 is said to have assaulted him with Aruval and caused injury which resulted in registration of the present case.



3.The learned counsel for the petitioner submitted that the petitioner has not committed any offence as alleged by the prosecution. He further submitted that initially the petitioner was arrested and released on statutory bail by the learned Principal Sessions Judge, Madurai, in Cr.M.P.No.4198 of 2011. In the mean time, charge sheet has been filed and case has been taken on file by the concerned Court. Thereafter, the de-facto complainant filed a petition in CrI.O.P.(MD)No.2843 of 2017 for cancellation bail before this Court and this Court allowed the said petition and cancelled the bail already granted to the petitioner, by observing that he threatened the de-facto complainant and other witnesses. Aggrieved over the same, the petitioner filed a petition in S.L.P.(CrI.)No.4265 of 2017 before the Hon'ble Apex Court and the same was also dismissed. He further submitted that after commencement of the trial, due to the absence of the petitioner NBW was issued by the learned Additional Sub-Judge, in S.C.No.182 of 2016 and the petitioner was arrested and remanded to judicial custody on 11.07.2017. He also submitted that as of now, 9 witnesses were examined on the side of the prosecution and hence, there is no scope for tampering the witnesses. Accordingly, he prayed for bail in favour of the petitioner.

4.The learned counsel for the Intervenor submitted that the petitioner was having previous political motive with the de-facto complainant and with his family members. Due to the said motive, the petitioner caused severe head injuries to the son of the de-facto complainant. He further submitted that the petitioner is a notorious criminal in the Madurai City and threatened the de-facto complainant and his family members. He further submitted that while the petitioner had been on bail, he committed the brutal murder of the de-facto complainant's son Murali on 26.05.2016, through which, he has created fear in the minds of the witnesses and the family members of the de-facto complainant and in the event of the petitioner being granted bail, there is a possibility that the witnesses hesitate to come into the witnesses box and depose the truth before the Trial Court. He also submitted that already the bail granted to the petitioner was cancelled on 10.04.2017, against which, he filed S.L.P.(CrI.) No.4265 of 2017 before the Hon'ble Apex Court and the same was also dismissed on 23.05.2017 and therefore, he prayed for dismissal of the Criminal Original Petition.

5.The learned Government Advocate (Criminal side) submitted that totally there are 3 accused in S.C.No.182 of 2016 and the petitioner herein is arrayed as A1. He further submitted that initially the petitioner was granted statutory bail by the learned Principal Sessions Judge, Madurai, in Cr.M.P.No.4198 of 2011 and subsequently, the same was cancelled by this Court. As against the order of cancellation of bail, the petitioner preferred S.L.P. before the Hon'ble Apex Court and the same was



also dismissed. Thereafter, since the petitioner failed to surrender before the respondent police or Court, NBW was issued against him and based on which, he was arrested on 11.07.2017 and he is in judicial custody. While he was on bail in this case, he murdered the de-facto complainant's son, in respect of which, another case in S.C.No.373 of 2017 is pending for trial before the I Additional District Court, Madurai. He also submitted that the petitioner is a history sheeted rowdy. As of now, 9 witnesses were examined on the side of the prosecution and if he is let out on bail, there is every possibility of the petitioner tampering the remaining witnesses/evidence and hampering the investigation.

6.The submissions made by the learned counsel on either side are considered. Previously, in this case, the learned Principal District and Sessions Judge, Madurai, granted bail to the petitioner on 17.11.2011 in Cr.M.P.No.4198 of 2011 and the same was cancelled by this Court, vide order dated 10.04.2017 in CrI.O.P.(MD)No.2843 of 2017. Subsequently, the said order was challenged before the Hon'ble Apex Court in Special Leave to Appeal (CrI.)No.4265 of 2017, in which, the Hon'ble Apex Court confirmed the order of cancelling the bail. Now, the only contention raised by the petitioner is that as of now, 9 witnesses were examined on the side of prosecution and hence, there is no scope for tampering the witnesses and therefore, he prayed for bail. On going through the order passed by this Court in CrI.O.P.(MD)No.2843 of 2017, this Court while allowing the petition observed that the petitioner herein threatened all the witnesses and cancelled the bail. Even though 9 witnesses were examined on the side of the prosecution, there may be a chance for tampering the remaining witnesses. Further, according to the Intervenor, the petitioner is a politically influenced person. Considering the status of the petitioner to the case on hand, it would be appropriate to dismiss this petition by following the judgments of the Hon'ble Apex Court in **Prakash Kadam and others Vs. Ramprasad Vishwanath Gupta and another** reported in 2011 (6) SCC 189 and **Ash Mohammed Vs. Shiv Raj Singh Alias Lalla Babu** reported in 2013 (1) TNLR 1 (SC). Hence, this Court is not inclined to grant bail to the petitioner.

Accordingly, this Criminal Original Petition is dismissed.

sd/-
01/02/2018

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



1 THE INSPECTOR OF POLICE
JAIHINDPURAM POLICE STATION, MADURAI DISTRICT.

2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI

GJM/PM/PN/SAR-4-1.2.18-4P-4C

ORDER

IN

CRL OP (MD) No.1148 of 2018

Date :01/02/2018