



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

Thursday, the Twenty Second day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.2857 of 2018

1 KALIYAPPAN
2 VASIMALAI
3 KULANTHAIVEL
4 PONNUSAMY
5 TAMILARASAN

... PETITIONERS / ACCUSED Nos.4,7,8,9 & 10

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
ELUMALAI POLICE STATION,
MADURAI DISTRICT ,
CR.NO.535/2017

... RESPONDENT / COMPLAINANT

For Petitioners : Mr.A.MITHUNCHAKRAVARTHI Advocate

For Respondent : Mr.SUYAMBULINGA BHARATHI
Govt. Advocate (Crl. Side)

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

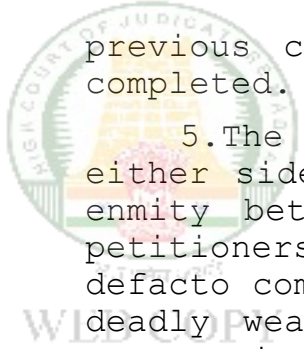
ORDER : The Court Made the following order :-

The petitioners/A4, A7, A8, A9 & A10, who apprehend arrest at the hands of the respondent Police for the offence punishable under Sections 147, 148, 294(b), 323, 324, 307 and 506(ii) I.P.C., in Crime No.535 of 2017, seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant and the petitioners are neighbours. Due to previous enmity between the petitioners and the defacto complainant, the petitioners assaulted the defacto complainant and his father, thereby they sustained injuries. Hence, a case has been registered for the above said offences.

3.The learned counsel appearing for the petitioners submitted that the petitioners are innocent persons, they have been falsely implicated in this case. He further submitted that the petitioners have not committed any offence as alleged by the prosecution, and pleads for grant of anticipatory bail to the petitioners.

4.The learned Government Advocate (Crl.side) submitted that totally there are 25 accused in this case. The petitioners herein are arrayed as A4, A7, A8, A9 and A10 respectively. He further submitted that A7 is having 6 previous cases, A4 is having one previous case, A8 is having 3 previous cases and A10 is having 4



previous cases. According to him, part of the investigation is completed.

5. The submissions made by the learned counsel appearing on either side are considered. It is alleged that due to the previous enmity between the petitioners and the defacto complainant, the petitioners and other 20 members formed a gang, assaulted the defacto complainant and his family members by using stones and other deadly weapons like Aruval, iron rod and knife. According to prosecution, as of now, part of the investigation is completed. Moreover, some of the accused in this case were granted anticipatory bail. So, considering the facts and circumstances of the case custodial interrogation of the petitioners may not be necessary for completing the investigation. However, the submissions made by the learned Government Advocate (Crl.Side) that the second petitioner is having the following 6 previous cases;

- (i) Crime No.181 of 2014, U/s.294(b), 323, 342 and 506
- (ii) I.P.C.,
- (ii) Crime No.139 of 2012
- (iii) Crime No.12 of 2016, U/s.147, 148, 294(b), 323, 324 and 307 I.P.C.,
- (iv) Crime No.13 of 2016, U/s.147, 294(b), 452, 323, 427 and Section 4 of TNPWH Act.
- (v) Crime No.269 of 2017, U/s. 341, 294(b), 323, 324 and 506(ii) I.P.C.,
- (vi) Crime No.322 of 2017 U/s/. 147, 148, 294(b), 323, 324 and 506(ii) I.P.C.,

The third petitioner is having the following three previous cases;

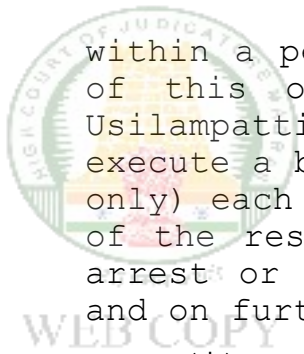
- (i) Crime No.122 of 2016 U/s. 379 I.P.C.,
- (ii) Crime No.12 of 2016 U/s. 147, 148, 294(b), 323, 324 and 307 I.P.C.,
- (iii) Crime No.13 of 2016, U/s. 147, 294(b), 452, 323 and 427 and Section 4 of TNPWH Act.

The fifth petitioner is having the following four previous cases;

- (i). Crime No.13 of 2016
- (ii) Crime No.269 fo 2017
- (iii) Crime No.322 of 2017
- (iv) Crime No.351 of 2017

So, considering the previous antecedents of the petitioners/ A7, A8 and A10, it shows that they are the habitual offenders. If this type of petitioners are granted anticipatory bail, they may tamper the witness and hamper the investigation. Hence, this Court is not inclined to grant anticipatory bail to the petitioners/ A7, A8 and A10. Accordingly, this Criminal Original Petition is dismissed, in respect of petitioners/ A7, A8 and A10.

6. This Court is inclined to grant anticipatory bail in respect of petitioners/A4 and A9. Accordingly, they are ordered to be released on bail in the event of arrest or on their appearance,



within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.II, Usilampatti, on condition that the petitioners/A4 and A9 shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(i) the petitioners/A4 and A9 shall report before the respondent police daily at 10.00 a.m for a period of three weeks, thereafter as and when required for interrogation.

(ii) the petitioners/A4 and A9 shall not tamper with evidence or witness either during investigation or trial.

(iii) petitioners/A4 and A9 shall not abscond either during investigation or trial.

(iv) On breach of any of the aforesaid conditions, the anticipatory bail granted to the petitioners/A4 and A9 shall stand automatically cancelled and the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners/A4 and A9 in accordance with law as if the conditions have been imposed and the petitioners/A4 and A9 released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

sd/-
22/02/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

1 THE JUDICIAL MAGISTRATE NO.II,
USILAMPATTI, MADURAI DISTRICT

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI

3 THE INSPECTOR OF POLICE
ELUMALAI POLICE STATION, MADURAI DISTRICT

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1. CC to M/S.A.MITHUNCHAKRAVARTHI Advocate SR.No.2884

msa

JAM/02/03/2018/ CM-VR / SAR 2 / 3p-6c