



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

Tuesday, the Third day of April Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD) No.4204, 4446 & 4662 of 2018

S.SAKILAN	... PETITIONER/ACCUSED No.10 IN CRL OP(MD)No.4204/2018
HOHNSON @ SURA JOHNSON	... PETITIONER/ACCUSED RANK NOT KNOWN IN CRL OP(MD)No.4446/2018
SANTHOS	... PETITIONER/ACCUSED No.18 IN CRL OP(MD) 4662/2018

Vs

STATE REP.BY ITS,
THE INSPECTOR OF POLICE,
ERAL POLICE STATION,
TUTICORIN DISTRICT.
(CR.NO.332 OF 2017)

... RESPONDENT/ COMPLAINANT
IN ALL THE PETITIONS

For Petitioner : M/S.KA.RAAMAKRISHINAN, Advocate
IN CRL OP(MD)No.4204/2018

For Petitioner : M/S.R.J.KARTHICK, Advocate
IN CRL OP(MD)Nos.4446 & 4662/2018

For Respondent : MR.CHELLAPANDIAN, Additional Advocate General
Assisted for M/S.PRABU RAMACHANDRAN,
Government Advocate (Crl.Side) IN ALL THE PETITIONS

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

ORDER : The Court Made the following order :-

One Lenin was done to death on 22.10.2017. In this regard, Crime No.332 of 2017 was registered on the file of the Eral Police Station, Tuticorin District under Sections 302 of IPC. The name of one Ponseelan @ Singam itself was mentioned in the F.I.R itself. The Police took up investigation and implicated as many as 14 persons. Except A1, A6 and A14, the other accused were arrested. Except the petitioners before this Court, the other arrested accused were granted bail by the Principal Sessions Judge, Thoothukudi. However, in the case of the three petitioners who are shown as A5, A10 and A11, their respective bail applications were dismissed by the Principal Sessions Judge, Thoothukudi.



2. Contending that the principle of parity has been grossly violated, the learned counsel appearing for the petitioners submitted that the petitioners herein also deserve to be granted bail. It was contended in particular that the first accused was granted anticipatory bail by the Principal Sessions Judge, Thoothukudi. Expressing shock over the grant of anticipatory bail to the first accused, this Court called for report from the Superintendent of Police, Thoothukudi. This Court wanted to know if the order granting relief to the first accused was examined and whether any decision was taken to question the same.

3. A very evasive report which did not meet the question raised by this Court was submitted on 02.04.2018 by the Superintendent of Police. Therefore, expressing dissatisfaction over the contents of the report submitted by the Superintendent of Police, Thoothukudi, this Court called upon the Inspector General of Police, South Zone, Madurai to submit a fresh report. Today, i.e., 03.04.2018, the I.G.P., South Zone, Madurai submitted his status report.

4. The learned Additional Advocate General appearing for the respondent State submitted that all the three petitioners herein are history sheeters. All of them have quite a few cases to their credit. He further submitted that the murder was very brutal in nature and a pre-planned one. As many as 33 cut injuries were inflicted on the deceased. The petitioners herein had absolutely no personal motive against the deceased. They are hired killers. Therefore, he wanted this Court to view these bail applications very strictly. He strongly opposed the grant of bail in favour of the petitioners herein. He also pointed out that the principle of parity cannot be casually invoked in a criminal case. In any event, High Court cannot be swayed by grant of bail to a co-accused by the Sessions Court. That part investigation is yet to conclude.

5. Fully accepting the submissions of the learned Additional Advocate General for the respondents, this Court dismisses the bail petitions filed by these three petitioners.

6. The matter cannot rest there. The Investigation Officer is present before this Court. The learned Additional Advocate General after obtaining instructions from the Investigation Officer submitted that the investigation is very much pending. Till this moment i.e., 03.04.2018, the principal accused namely A1, was not even interrogated or enquired. One accused has already absconded. He is alleged to have gone abroad. Another accused, namely, A14 Kottalamuthu is yet to be arrested.

7. In these circumstances, the investigation cannot be said to be even half way completed. The Investigation Officer affirmed before this Court that he did not authorize or instruct the District Public Prosecutor who appeared before the Principal Sessions Court, Thoothukudi to submit before the Sessions Court that most part of the investigation has been completed.



8. In this case, the Principal Sessions Judge, Thoothukudi has granted anticipatory bail to the first accused for the following reasons :

1. Concession by the District Public Prosecutor that most part of the investigation has been completed.
2. Some of the co-accused have been granted bail.
3. Even though earlier applications filed by the first accused were dismissed, the police have not taken any steps to apprehend the said principal accused for two months and this shows that the custodial interrogation of A1 was not necessary.

9. None of these reasons are sustainable in law. As already pointed out, the concession made by the Public Prosecutor was not authorised by the Investigation Officer. He appears to have suo motu and arbitrarily made such statement before the Principal Sessions Court, Thoothukudi. Granting of bail to the co-accused can never be a ground for granting anticipatory bail. More than anything else, it was already brought on record that the said first accused filed Criminal OP(MD)No.15423 of 2017 before this Court. The said application was dismissed on merit on 13.11.2017.

10. It is true that the High Court as well as Sessions Court have concurrent jurisdiction to grant anticipatory bail. A learned Judge of this Court (Mrs. Justice J. Nisha Banu) by order dated 05.09.2017, held that an accused cannot move application for anticipatory bail before the Sessions Court when once the anticipatory bail application was dismissed by the High Court. Such a proposition of law was laid down after framing the question as to whether the Sessions Court would be competent to grant anticipatory bail to the accused under Section 438 of Cr.PC ignoring the earlier rejection order of the High Court.

11. In this case, the Sessions Court having full knowledge of the fact that the High Court has declined to grant anticipatory bail to the said A1, has chosen to grant relief to the first accused. This is judicial indiscipline. That apart, as already pointed out by the learned Additional Advocate General for the respondent State that CR.MP.No.396 of 2018 was not the first anticipatory bail filed by the said A1 before the PSJ. Before that he moved the very same Court by filing CR.MP.No.3770 of 2017 which was dismissed on 08.12.2017 and another CR.MP.No.2 of 2018, which was dismissed on 04.01.2018. The learned Additional Advocate General informs the Court that one more anticipatory bail application was filed by the very same first accused in CrI.OP No.632 of 2018 before this Court and the same was dismissed on 22.01.2018. In this background, anticipatory bail to the first accused has been granted by the PSJ, Thoothukudi.

12. The Hon'ble Supreme Court in the decision reported in (2012) 4 SCC 379 (Jai Prakash Singh vs. The State of Bihar & Anr), held that anticipatory bail cannot be granted as a matter of rule and that judicial discretion conferred upon the Court has to be properly



exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. Anticipatory bail can be granted in a serious offence only in exceptional circumstances when the Court is prima facie of the view that the applicant has been falsely roped in the crime and would not misuse his liberty.

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13. The learned Additional Advocate General for the respondent now submits that steps are being taken for challenging the said order dated 31.01.2018 in Cr.MP.No.396 of 2018. He would further submit that even after securing an anticipatory bail from the Sessions Court, the first accused has not even chosen to comply with the conditions imposed by the court below. It also appears that the said A1 is having a number of previous cases to his credit. The details are not quite clear at this point of time. But the Investigation Officer informs the Court that one of the previous case pending against the first accused is under Section 302 of IPC. That renders the order of the Principal Sessions Judge, Thoothukudi all the more strange and shocking.

14. With these observations, all the three Criminal Original Petitions are dismissed.

sd/-

03/04/2018

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

TO

- 1 THE PRINCIPAL SESSIONS JUDGE, TUTICORIN.
- 2 THE INSPECTOR OF POLICE,
ERAL POLICE STATION, TUTICORIN DISTRICT.
- 3 THE SUPERINTENDENT ,
CENTRAL PRISON, PERURANI, TUTICORIN.
- 4 THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.KA.RAAMAKRISHINAN Advocate SR.No.5228

+1. CC to M/S.R.J.KARTHICK Advocate SR.No.5445

ORDER IN

CRL OP (MD) No.4204, 4446 & 4662 of 2018

Date : 03/04/2018