



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.04.2018

CORAM :

WEB COPY

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

Crl.O.P(MD)No.5390 of 2018

State by  
The Inspector of Police,  
Eral Police Station,  
Thoothukudi District.  
Crime No.332 of 2017

... Petitioner /Complainant

Vs.

E.Ponseelan @ Singam

... Respondent/ Accused No.1

**PRAYER** : Petition filed under Section 439(2) of Code of Criminal Procedure, to cancel the anticipatory bail granted to the respondent/Accused No.1 Ponseelan @ Singam by the Principal Sessions Judge, Thoothukudi in Crl.M.P.No.396 of 2018 dated 31.01.2018.

For Petitioner : Mr.ChellaPandian  
Additional Advocate General  
Assisted by Mr.Ohm Chaima Prabhu

For Respondent : Mr.Niranjan S.Kumar

**ORDER**

Mr.Niranjan S.Kumar, learned counsel appearing for the respondent seeks time. Considering the extraordinary facts and circumstances of this case, the request for adjournment is rejected.

2.The respondent herein is figuring as the first accused in Cr.No.332 of 2017 on the file of the Inspector of Police, Eral Police Station. The victim viz., Lenin was done to death in a most brutal manner. On 23.10.2017, the First Information Report was lodged by one Marimuthu. In the First Information Report itself, the petitioner's name is specifically referred to as a person, who had motive against the deceased. There are as many as 14 accused in this case. The deceased suffered 33 cut injuries on his person.

3.The respondent herein, apprehending arrest at the hands of the police, filed a petition in Crl.O.P(MD).No.15423 of 2017 before this Court. The said petition was dismissed on 13.11.2017. Thereafter, the petitioner renewed his application for anticipatory bail by filing one more petition. The second petition (Crl.O.P(MD).No.632 of 2018) was also dismissed on 22.01.2018 as withdrawn. In the meanwhile, the petitioner had filed Crl.M.P.(MD).No.3770 of 2017



before the Principal Sessions Court and the same was dismissed on 08.12.2017. The second petition before the Principal Sessions Court, Thoothukudi, in CrI.M.P(MD).No.2 of 2018, was also dismissed on 14.01.2018. He moved one more application before the Sessions Court in CrI.M.P(MD).No.3792 of 2017. That was also not pressed. Thus, the petitioner made two attempts before this Court and three attempts before the Principal Sessions Court. All the five attempts made by the first accused/respondent herein were in vain. But the next attempt before the Sessions Court was successful. It is relevant to mention herein that during the relevant time, the co-accused were in jail. Infact some of their bail petitions were also dismissed. But strangely, the Principal Sessions Judge, Thoothukudi, granted anticipatory bail on 31.01.2018 in CrI.M.P(MD).No.396 of 2018. The said order is sought to be cancelled, at the instance of the prosecution in this criminal original petition.

4.The learned Additional Advocate General appearing for the State would point out that anticipatory bail can be granted in a murder case only under truly extraordinary circumstances. There must be sufficient material before this Court to show that the applicant has been falsely roped in and that he would not misuse his liberty and only under such exceptional circumstances, this Court or any Court would be justified in granting anticipatory bail in murder case.

5.In the present case, the very application for granting of anticipatory bail before the Sessions Court was not maintainable. This Court had held in CrI.O.P(MD).No.26819 of 2008 dated 11.11.2008 as follows:-

"8.The full Bench of the Rajasthan High Court has already held that all "under no circumstances the second or successive anticipatory bail application shall be entertained by the Sessions Judge/Additional Sessions Judge." reported in 2005 CrI.L.J.2086 (Ganesh Raj V. State of Rajasthan and others).

9.This Court already followed the above said decision of the Rajasthan High Court in the decision reported in 2008(1) L.W.CrI.381 (G.Balasubmaniam V. State).

10.In view of the above said decisions, this Court holds that once anticipatory bail petition is filed before the High Court, even if it is dismissed as 'withdrawn' or 'not pressed', the second respondent anticipatory bail petition is not maintainable before the Sessions Court."

6.Infact a copy of the said direction was marked to all the Principal District Court throughout Tamil Nadu. The Principal District Judge, Thoothukudi is figuring at Serial No.27. That apart

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a Hon'ble Judge of this Court (Mrs.Justice. J.NISHABANU) held on 05.09.2017 in Crl.O.P(MD).No.2533 of 2017 that it would not be competent for the Sessions Court to entertain an application for anticipatory bail once the same was dismissed by this Court. The Principal Sessions Judge, Thoothukudi, was very much aware that the respondent herein had earlier moved this Court and that the same was dismissed. Infact the dismissal of the anticipatory bail application filed by the respondent herein is referred to in the impugned order itself. Thus, with the full knowledge about the earlier dismissal of his anticipatory bail petition by this Court, the Principal Sessions Judge, Thoothukudi (Thiru.N.Rajasekar) had granted bail. The reasons given are that even though his earlier application was dismissed, the law enforcing authority had not taken serious steps to apprehend him for more than two months. On this ground the Sessions Judge came to the conclusion that custodial interrogation is not necessary. Another reason given by the Sessions Court is that bail was granted for one co-accused on 31.01.2018. The learned Additional Advocate General appearing for the State rightly pointed out that these considerations are totally irrelevant for grant of anticipatory bail.

7.This Court expresses its acute displeasure over the judicial conduct of Thiru.N.Rajasekar, Principal Sessions Judge, Thoothukudi, over his act of granting anticipatory bail to the respondent herein. Mr.N.Rajasekar, learned Principal Sessions Judge, Thoothukudi, has indulged in an act of judicial indiscipline. This Court condemns the same. It is submitted that this order was granted on the last day of his service. Less said the better! The order in Crl.M.P.No.396 of 2018, dated 31.01.2018 is quashed. The Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge, Thoothukudi.
2. The Inspector of Police,  
Eral Police Station,  
Thoothukudi District.
- 3.Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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