



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

Saturday, the Twenty Eighth day of April Two Thousand Eighteen

PRESENT

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

CRL OP(MD) No.6670 of 2018

A.MURUGAN ... PETITIONER / ACCUSED NO.5

Vs

STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
Q- BRANCH CID, CHENNAI.
CRIME NO.01 OF 2016
IN S.C.NO.08/2017) ... RESPONDENT / COMPLAINANT

For Petitioner : M/S.T.LAJAPATHI ROY Advocate

For Respondent : Mr.CHELLAPANDIAN, Additional Advocate General
Assisted by Mr.OHM CHAIRMA PRABHU,
Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioner is shown as fifth accused in SC.No.08 of 2017 pending on the file of the learned Principal Sessions Judge, Karur. The final report was filed on 16.07.2017 by the respondent police under sections 18, 18A, 18 B, 20, 38, 39 of Unlawful Activities (Prevention) Act, 1967 r/w 34 and 465 IPC. Totally 5 persons have been shown as accused. It is submitted that the accused 3 and 4 have since been killed in an encounter in Kerala. The fifth accused in this case is in custody since 08.01.2017 onwards. He earlier applied for bail and but it was dismissed as withdrawn on 13.02.2018.

2.Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the state.

3.The learned Additional Advocate General strongly opposed the grant of bail. He pointed out that the principal accused in this case Kala and Chandra namely A1 and A2 are hardened Maoists. They are members of a banned terrorist organisation. The first accused was using an exclusive sim card for the purpose of contacting the petitioner alone. The police had intercepted the telephonic conversation and transcript of the same was also filed along with



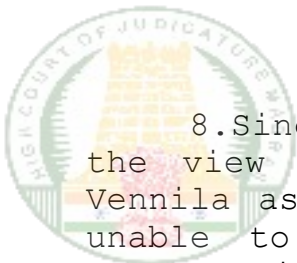
the final report. The C.D containing the conversation was also produced before the Trial Court. One Karthikeyan has identified the voice as that of the petitioner herein.

4.The learned Additional Advocate General took this Court through the statement of one Vennila, LW 45 to demonstrate the actual role played by the petitioner herein for recruiting members for the said banned organisation. When the premises of the petitioner was searched and certain articles were seized. In the letter seized from the petitioner's premises, another member of the said banned organisation had requested the petitioner for funds. He would also point out that this organisation is spreading terror in the central parts of the India and that they wanted a foot hold in Southern parts of the nation.

5.The learned Additional Advocate General also drew the attention of this Court to Section 43-D (5) of the Unlawful Activities (Prevention) Act, 1967. It states that if the Court on a perusal of the case diary or the report made under Section 173 of Cr. PC is of the opinion that there are reasonable grounds for believing that the accusation against the petitioner is prima facie true, then the petitioner shall not be released on bail. A further reference was made to the order dated 20.12.2017 passed by this Court in CrI.RC (MD)No.95 of 2017. It was observed in the said order that there are materials prima facie available at the time of the petitioner's arrest which shows the culpable role of the petitioner in supporting banned organisation including mobilisation of funds from the collected evidence. He would further submit that the above said finding would come in the way of granting bail to the petitioner herein.

6.This Court bestowed its anxious consideration to the rival contentions. The statement attributed to one Vennila LW.45 may be taken up first for consideration. The said Vennila has stated during investigation that her husband was originally a member of the said banned organisation and that even though he wanted to come out of the same and join the mainstream, the petitioner herein persuaded him to return to the party activities. It is stated that the petitioner herein used to meet her husband Mahalingam often and continued to persuade him to serve the party.

7.This Court is of the view that the police ought to have examined the said Mahalingam @ Nondi Mahalingam. The statement of Vennila is to the effect that her husband was often spoken to by the petitioner. If so, the husband of the Vennila could have very well been examined in this regard. It is admitted by the prosecution that the said Mahalingam is presently in prison. Yet inexplicably the said Mahalingam @ Nondi Mahalingam was not examined by the investigation agency. He is the best person to tell what the petitioner did to him.

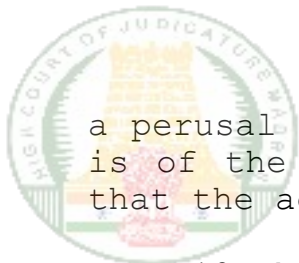


8. Since the said Mahalingam was not examined, this Court is of the view that no credence can be attached to the statement of Vennila as enclosed in the final report. Likewise, this Court is unable to attach any weight to the transcript of the tele-conversation said to have taken place between the main accused A1 and the petitioner herein. The petitioner was arrested on 08.01.2017 and remanded to judicial custody. The voice sample of the petitioner could have very well been collected and it could have been easily established that the voice contained in the said C.D is that of petitioner herein.

9. It is not the case of the prosecution that an attempt was made to collect the voice sample of the petitioner and that he refused. On the other hand, the statements of one Karthikeyan LW 65, LW 66 and LW 67 were relied upon in this regard. The said list witnesses G.Karthikeyan, Rajkumar and Arumugam are police personnel. They are not experts to identify the voice that is figuring in the C.D as that of the petitioner. Their statements do not inspire the confidence of this Court. This Court went through the transcript produced along with the final report. It indicates that some help was sought by the main accused from the person who is speaking on the other end. There is nothing on record to show that it was the petitioner who was the person speaking on the other end. In any event, the conversation by itself is not incriminatory in character.

10. It is not in dispute that the petitioner is a practising lawyer. He was appearing for the Maoists. Appearing for a Maoist is not a crime. On the other hand, if a Maoist accused of an offence seeks the professional assistance of a lawyer, it is his duty to defend. This Court is of the view that there is bound to be contact between the lawyer concerned and the accused. The conversations that takes place between them would definitely fall under the category of privileged communication. More than anything else, the kind of articles seized from the petitioner at the time of his arrest throws considerable doubt in the mind of this Court as to whether the accusations against the petitioner could be true. The articles recovered from the petitioner are rather innocuous and harmless. Some party literature were found. They by themselves cannot implicate the petitioner in any manner.

11. It is true that a letter asking for funds was found in the petitioner's custody. The learned Additional Advocate General took this Court through the contents of the entire letter. This Court is of the view that at best it can be construed as an appeal to the petitioner to raise funds for the legal defence of those who are inside. This cannot be said to be illegal. Likewise, this Court is clearly of the view that all the observations made by this Court in CrI.RC(MD)No.95 of 2017 dated 20.12.2017 will not come in the way of a dispassionate consideration of bail petition filed by the petitioner herein. At the time remand, certain observations are bound to be made by the Court. That cannot be put against the accused when his bail application is taken up for consideration. On



a perusal of the report made under Section 173 of Cr.PC, this Court is of the view that there are no reasonable grounds for believing that the accusations against the petitioner are prima facie true.

12. This Court posed a specific question to the learned Additional Advocate General as to whether the petitioner is accused of any act of violence in any other case. It was fairly submitted that in both the cases in which the petitioner is charged, the petitioner is not alleged to be involved in any act of violence. It is further admitted that the petitioner was practising as a Lawyer and was appearing for Maoists. The learned counsel for the petitioner pointed out that the petitioner is in custody for more than 15 months. He is a married and is having children. The learned counsel for the petitioner further submitted that the petitioner would not even attempt to take advantage of this order by applying for discharge. This Court makes it clear that the observations made in this order are only for the purpose of granting bail and that the petitioner will have to face the trial on merits.

13. Hence, this Court is inclined to enlarge the petitioner on bail. Accordingly, the petitioner is ordered to be released on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, each for a like sum to the satisfaction of the learned Principal Sessions Judge, Karur.

14. This Court is aware that the petitioner is in custody with another case also and that is why no further conditions are imposed.

sd/-
28/04/2018

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

TO

1. THE PRINCIPAL SESSIONS JUDGE, KARUR.
2. THE DEPUTY SUPERINTENDENT OF POLICE,
Q- BRANCH CID, CHENNAI.
3. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. CC to M/S.T.LAJAPATHI ROY Advocate SR.Nos.7897,7943

ORDER IN
CRL OP(MD) No.6670 of 2018
Date :28/04/2018

MS/PN/VK/14.05.2018/4P.7C