

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 06.11.2019
Pronounced on :21.11.2019
CORAM
THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
Crl.O.P.No.25784 of 2019

Pugalendhi

... Petitioner/third party

Vs.

1. The State rep. by
The Sub-Inspector of Police,
Samalpatti Police Station,
Krishnagiri District,
Krishnagiri.

2. Mohan
S/o.Ganesan. ... Respondents/Respondent/
Petitioner

Prayer: Criminal Original Petition filed under Section 439(2) Cr.P.C. to cancel the bail granted by the learned Principal District and Sessions Judge, Krishnagiri in Crl.M.P.No.1313 of 2019 dated 12.07.2019 to the 2nd respondent herein.

For Petitioner : Mr.K.Thiruvengadam

For Respondent-1 : Mr.T.Shanmugarajeswaran,
Government Advocate.

For Respondent-2 : Ms.S.Deepika

ORDER

Application filed seeking to cancel the order granting bail to the second respondent/first accused Mohan @ Jim Mohan in Cr.No. 51 of 2019 on the file of the first respondent police, and granted by the learned Principal Sessions Judge, Krishnagiri in Crl.M.P.No. 1313 of 2019 by order dated 12.07.2019. The petitioner Pugalendhi is a brother of the deceased Parasuraman and originally, the Registry had raised an objection regarding the maintainability of the petition. However, the learned counsel for the petitioner had made an endorsement that the brother of the petitioner died of fatal injuries caused by the indiscriminate attack by the second respondent/first accused and other accused and also that several of his other family members suffered grievous injuries and that he was also an injured eye witness and therefore that the petition is maintainable.

2. The brief facts are that the second respondent/first accused held a prominent post in a political party in Samalpatti Village in Krishnagiri District. The villagers of Samalpatti had organised a song and dance programme in the Murugan Temple in their village, on the occasion of Panguni Uthiram function on 22.03.2019. During that function, the second respondent/first accused had also taken the opportunity to felicitate a local leader of his political party. This was objected by the relatives of the present petitioner, who claimed that the villagers had contributed money only towards the temple festival and not towards any felicitation ceremony. Enraged by that, at around 9.30 p.m., on the same day, i.e., on 22.03.2019, the second respondent/first accused along with several others had come over to the house where the present petitioner and his relatives lived. There was an altercation wherein several of the family members suffered injuries. Later the group disbursed after the other villagers gathered at the place. However, they came back at 11.30 in the night armed with deadly weapons and indiscriminately attacked the petitioner and his family members and caused the death of his brother and grievous injury to five members including three ladies. This led to registration of Cr.No. 51 of 2019 by the respondent police under Sections 147, 148, 324, 326, 307, 302, 149, 342 and 114 IPC as against 21 accused persons. The second respondent/first accused was taken into custody for the said offence. Later, he was also detained under Tamil Nadu Act 14 of 1982. Thereafter, one by one, the accused were granted bail either by the Sessions court or by the High Court. After considerable period of time, the case was also split up against the seventh accused, who absconded and a final report was laid before the learned Judicial Magistrate, Uthangarai. It is learnt that as on date it has been committed to the Court of Sessions. In the mean while, before the final report could be filed, the second respondent/first accused was granted bail by the learned Principal Sessions Court, Krishnagiri, in CrI.M.P.No. 1313 of 2019 by order dated 12.07.2019. He was however in confinement since he had been detained under Tamil Nadu Act 14 of 1982.

3. It is the contention of the petitioner herein that the son of the second respondent/first accused and others, threatened the wife of the deceased that she would also meet the same fate as her husband if she does not withdraw the complaint in Cr.No. 51 of 2019. It must also be mentioned that in the same course of events which led to the death of her husband, her right hand wrist was severed away completely from the hand. She was also an injured eye witness and was the defacto complainant in Cr.No. 51 of 2019. She had a young son and daughter. The son, aged about 13 years is also an eye witness to the entire incident. Quite independently, the son of the present petitioner, who is also aged 13 years is also an eye witness.

The defacto complainant in Cr.No. 51 of 2019, afraid of the threat issued to her and fearing for her life, committed suicide. Her dying declaration was recorded by the Judicial Magistrate and she stated she took the extreme step in fear of the threat issued by the accused persons. This led to registration of a further FIR in Cr.No. 126 of 2019 under Sections 116 and 306 IPC and also under Section 4 of Prohibition of Harassment of Women Act 2002. In view of the continuous threat, after bail was granted to the second respondent/first accused, which was in direct violation of the conditions of the bail which stipulated that either directly or indirectly the second respondent/first accused should not even attempt to tamper the witnesses, the present application was filed seeking to cancel the bail granted to him.

4. When the application came up for hearing for the first time, the second respondent/first accused was in custody having been detained under Tamil Nadu Act 14 of 1982. Consequently, notice was directed to the jail authorities where he was confined to produce him so that this Court could appraise him of the filing of this petition seeking to cancel the bail granted to him. Accordingly, he was produced before this Court from custody. When this Court explained to him the nature of the present petition and sought his opinion whether a legal aid counsel is required or whether he has the capacity to engage a counsel, he stated that he would engage a counsel by the next hearing date. Learned counsels also filed vakalat on behalf of the second respondent/first accused and advanced arguments. It must also be mentioned that in the meanwhile, a Division Bench of this Court had quashed the detention order.

5. Mr. A.Ramesh, learned Senior Counsel, who appeared on the first hearing date on behalf of the second respondent/first accused primarily relied on a Judgment of a learned Single Judge of this Court reported in 2015-1-LW(Cri)634 [State Vs. S.Kannan and Ors.]. That was a case which had been filed against an order of the Special Judge (CBI Cases), Chennai, who had rejected an application filed seeking police custody of the accused in that case. The learned Senior Counsel relied on paragraph Nos. 16 and 17 of the order of the learned Single Judge, which are extracted below for ready reference:-

"16. This Court has called for the entire bundle from the Trial Court by special messenger and on perusal of the affidavit it is found to be stated as follows:

"Solemnly affirmed and signed before me at Chennai on this 22nd day of January 2015".

17. Thus, there was nothing stated in the affidavit as to how they got the information, whether it is source information or they are personally aware of the fact or received from any records etc. In such circumstances, I am of the view that the affidavit filed by the Investigating Officer is not in accordance with law."

6. In that case, the learned Single Judge had rejected the affidavit filed on behalf of the prosecution on the ground that it did not disclose whether the facts stated were known personally to the deponent or were stated on the belief that the facts were true.

7. In that case, the learned Single Judge had relied on Rule 76 of the Criminal Rules of Practice and Circular Order, 1958 as amended and as followed in Tamil Nadu and as made by the High Court for the guidance of all Criminal Courts in the State. Rule 76 of Criminal Rules of Practice related to remands and 76 (1) related to remand to police custody. Rule 76(1) of Criminal Rules of Practice is extracted below for ready reference:

"76. Remands. (1) Magistrates shall not grant remands to police custody unless they are satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other police officer to the effect that the accused may be able to give further information. A request for remand to police custody, shall be accompanied by an affidavit, setting out briefly the prior history of the investigation and the likelihood of further clues with the police expect to derive by having the accused in custody, sworn to by the investigating or other police officer, not below the rank of a Sub-Inspector of Police. Magistrates may decide after perusal of the affidavit. Magistrates shall personally see and satisfy themselves about the accused's being sound in mind and body before entrusting him to police custody and also at the end of the period of custody by questioning him whether he had in any way been interfered with during the period of custody. When the object of a remand is verification of the statement of an accused, he shall, whenever possible, be remanded to the charge of a Magistrate and the period of remand shall be as short as possible."

8. This Rule has been further examined for better understanding by the learned Single Judge in paragraph 13 of the judgment referred above as follows:

"13.As per Rule 76 of the Tamil Nadu Criminal Rules of Practice, the following four ingredients is mandatory for granting custody of the accused:

(i) a request for remands to police custody shall be accompanied by an affidavit.

(ii) setting out briefly the prior history of the investigation and

(iii) the likelihood of further clues which the police expect to derive by having accused in custody.

(iv) sworn by the investigating or other police officer, not below the rank of Sub-Inspector of Police. The above ingredients had to be satisfied by the petitioner/CBI."

9. In paragraph 15, the learned Single Judge had also referred to Section 297 of Cr.P.C., which is as follows:

"297.Authorities before whom affidavits may be sworn.

(1) Affidavits to be used before any Court under this code may be sworn or affirmed before.

(a) any Judge or any Judicial or Executive Magistrate, or Court of Session, or

(c) any notary appointed under the Notaries Act, 1952.

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended."

10. It must be repeated that the learned Single Judge was dealing with a case relating to seeking police custody of the accused. Here this Court in involved with examining whether the bail granted by the Sessions Judge should be canceled and whether there are sufficient grounds to cancel the said bail. At any rate, since reliance was placed on the said judgment, this Court would also have to examine the precedents quoted by the learned Judge. The learned Judge had relied on a judgment of A.D.Tated J., of the Bombay High Court reported in (1989) 1 CR 112, Nandakumar Shankar Mhatre V. Dayanand Mahadev Mhatre and others, wherein, the Bombay High Court was concerned with the application for cancellation of bail and had extracted paragraph 5 and Chapter VII page 141 of Criminal Manual. 11th Edition as revised by Bombay High Court and had held that the affidavit in that particular case was not in conformity with the requirements of an affidavit as stipulated by the Bombay High Court. For

better appreciation, the said paragraph 5 which had been extracted by the learned Single Judge in paragraph 18 of a judgment is also extracted below:

"Paragraph 5 of Chapter VII page 141 of Criminal Manual. 11th Edition as revised by this Court reads thus:-

"5(1) Every affidavit should clearly specify what portion of the statement is made on the declarant's knowledge and what portion of the statement is made on his information or belief.

(2) When a particular portion is not within the declarant's own knowledge but it is stated from information obtained from others, the declarant must use the expression "I am informed" and if it is made on belief, should add "I verily believe it to be true". He must also state the source or ground of the information or belief and give the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he had received such information.

(3) When the statement rests on facts disclosed in documents or copies of documents procured from any Court or other person, this declarant shall state the source from which they were procured and his information, or belief, as to the truth of the facts disclosed in such documents."

11. At the outset it must be very specifically stated that this judgement is not binding on this Court and the Court can refer to only for persuasive reference. With due respects to the learned Senior counsel, the Criminal Rules of Practice as prevalent in Tamil Nadu are totally different from what had been approved by the Bombay High Court in their Criminal Manual. For that reason also, the said judgment is certainly not binding on this Court and I am justified in not placing reliance on the same.

12. In the Criminal Rules of Practice and Circular Order, 1958 as made by the Madras High Court for guidance of Criminal Courts in this State and which is also a guidance for the High Court, Rules 31 to 43 refer to affidavits. Very specifically, the ingredients as mentioned in paragraph 5(2) as extracted above and as found in Criminal Manual approved by the Bombay High Court does not find a place in the Criminal Rules of Practice and Circular Order, 1958, with respect to affidavits filed before this Court.

13. The specific rules from Rule 31 to Rule 43 with their sub-heading alone and Rule 41 in entirety are given below:

"R.31.Before whom may be sworn.....

- R.32.Filing.....
R.33.Form.....
R.34.Description of deponent.....
R.35.Writing to be on both sides and each page to be signed.....
R.36.Alterations and interlineations.....
R.37.Statement of officer before whom affidavit is sworn.....
R.38.Blind or illiterate deponent.....
R.39.Endorsement should state on whose behalf filed.
R.40.Affidavit stating matter of opinion.....
R.41.Affidavit on information and belief: Every affidavit containing statements made on the information or belief of the deponent shall state the source or ground of the information or belief.
R.42.Documents referred to in affidavits.....
R.43.Cross-examination on affidavit....."

14. It is thus seen that the deponent of the affidavit must state the source or ground of the information or belief. When the said source or ground of the information or belief are themselves direct and from a public document namely, First Information Report, registered by the police then, the source is obvious namely the direct knowledge of the deponent in his capacity as injured eyewitness and document itself. Even otherwise, the learned Senior Counsel had stated as a concession that the deponent may file a better affidavit, though it was strictly not required. The deponent also however filed a better affidavit.

15. In the better affidavit, the petitioner had stated that he was one of the injured witnesses in Crime No.51 of 2019, and therefore, every statement with respect Crime No.51 of 2019 had been stated from his own direct knowledge. He is also a resident of Samalpatti Village. He was physically present. He was also injured. He was an eye witness when the second respondent/first accused came along with the 20 others on the night of incident at 11.30 p.m on 22.03.2019 to his residence and cut his elder brother on the head and all over the body causing immediate death and also cut him (petitioner herein) and caused injured to him (petitioner herein) and also severed his middle finger of the right hand. He was also the direct eye witness to the severance of the right hand wrist of his brother's wife Manimegalai (the de-facto complainant in Crime No.51 of 2019) and also the direct eye witness when grievous injuries were caused to his uncle Dhanapal, his father Lakshmanan and mother Muniyammal and the mother of the de-facto complainant Unnamalai. Therefore, his affidavit contained information directly seen by him. He need not search for sources for such information.

16. In the affidavit, the petitioner had further stated that the police supplied to him at his request the details of a previous cases of the second respondent/first accused. He has further stated about the details in Crime No.126 of 2019 and also the confession of the accused in that case wherein, the second respondent/first accused has been stated to have given instructions to give threat to Manimegalai, the de-facto complainant in Crime No.51 of 2019, ultimately leading to her death also on 11.08.2019. He had further stated that the accused persons threatened his father Lakshmanan in respect to which Crime No.143 of 2019 had also been registered against the accused. These are all facts to the direct knowledge of the deponent of the affidavit. Consequently, I hold that the affidavit has no infirmity and can be examined by this Court. The judgment of the learned Single Judge of this Court relied on by the learned Senior Counsel is certainly distinguishable because in that judgment the Criminal Rules of Practice relating to affidavits namely, Rules 32 to 43 have not been referred to.

17. In view of the contentions raised, questioning the source of the facts stated in the affidavit, this Court had also called upon, the Investigating Officer to file a report detailing the facts and also with respect to the status of the investigation in the case and with respect to the averments made in the application seeking cancellation of the bail. Accordingly, the Inspector of Police, Samalpatti Police Station, Krishnagiri District, also filed a status report.

18. Further arguments on behalf of the first respondent/second accused were advanced by Ms.S.Deepika, learned counsel and arguments on behalf of the petitioner were advanced by Mr.K.Thiruvengadam. Heard also Mr.S.Shanmuga Rajeswaran, learned Government Advocate (Crl. Side).

19. It is the contention of Mr.K.Thiruvengadam that the first respondent/second accused had as many as 27 previous cases and a history sheet has been opened as against him. It is stated that he is an habitual offender and had committed the ghastly crime of not only committing the murder of the deceased but also chopping away the right wrist of the defacto complainant, who was also subsequently threatened and also committed suicide. Four other persons also suffered grievous injuries. It was stated that the two child eye witness will have to be protected and there is a danger to the lives of all the injured, who are also eye witnesses.

20. It was further pointed out that the learned District and Sessions Judge had failed to taken into account the antecedents of the second respondent/first accused and had, on a casual consideration of the facts had granted bail. The learned

Sessions Judge should have considered the gravity of the offence, the number of persons injured, the number of persons involved in the crime, and the nature of the injuries and the nature of the weapons used. The fact that all the accused and the injured were from the very same village and the possibility that there could also be further offences being committed was never considered by the learned Sessions Judge.

21. It was stated that these are relevant factors which should have been examined by the learned Sessions Judge before grant of bail. As a matter of fact, the son of the second respondent/first accused along with three other had also threatened the defacto complainant and fearing the worst, unfortunately, she had also taken away her own life. It is stated that a child eye witness has been left as an orphan and to ensure safety, police protection has also been given and it was consequently urged that this Court should cancel the bail.

22. Mr.S.Shanmuga Rajeswaran, learned Government Advocate (Criminal Side) also pointed out the facts of the case and stated that the second respondent/first accused is a member of a political party and a prominent member in the area. He has as many as 27 previous cases, including under Section 302 IPC and under Section 307 IPC, and had deliberately committed the offence with prior motive and intention to cause death of all the injured persons also. It was stated that he was history sheeted in the area and a known offender, and therefore the learned Sessions Judge had erred in not appreciating all the facts before granting bail.

23. Ms. S.Deepika, learned counsel for the second respondent/ first accused however stated that the entire case was a false case. It was stated that the present petitioner also participated in the function held to felicitate the political party leader during the temple festival. It was stated that both the accused and the injured were from the same village and had earlier participated in various social upliftment agitations. The learned counsel also stated that the police have deliberately withheld the fact that the second respondent/first accused was also grievously injured in the altercation during the incident which took place on 9.30 p.m., and was admitted in hospital and therefore, could not have participated in the incident at 11.30 p.m., when the offence under Section 302 IPC is said to have taken place.

24. The learned counsel also pointed out the discrepancies in registration of the FIR and stated that the incident which took place at 11.30 p.m., was registered as Cr.No. 51 of 2019, and the incident which took place earlier at 9.30 p.m., was registered as Cr.No. 52 of 2019 and the incident wherein the second respondent/first accused was injured was registered as

Cr.No. 53 of 2019. The learned counsel expressed grievance that the investigating authorities had deliberately closed the FIR in Cr.No. 53 of 2019 as 'mistake of fact' though the second respondent/first accused was admittedly grievously injured and was admitted to hospital. It was also pointed out that the second respondent/first accused had been acquitted in most of the cases pointed against him as antecedent cases and as a matter of fact, a Division Bench of this Court had also quashed the detention order passed against him under Tamil Nadu Act 14 of 1982. The learned counsel stated that it was improbable that he would have given instructions to threaten the defacto complainant and stated that he was in confinement in Central Jail at Vellore and was brought to Court under escort only for the committal proceedings. The learned counsel stated that the defacto complainant was depressed owing to the loss of her husband and therefore had voluntarily committed suicide. She also stated that a perusal of the accident registers showed that the injured were assaulted by three known persons and it was also stated that there were discrepancies in the time, date and in other material aspects in the records of the Investigating Agency. The learned counsel therefore stated that the bail granted should not be interfered with by this Court.

25. I have carefully considered the arguments advanced.

26. In the first place, in the affidavit, in the present case, the deponent is only stating facts to his direct knowledge, since he was an injured eye witness. Further facts which were already reduced in the form of First Information Reports are also stated and any new fact. The only facts which he had stated relate to the incidents leading to the registration of Cr.No. 51 of 2019 and the subsequent events with respect to the threatening of the defacto complainant which ultimately led to her to commit suicide and registration of Cr.No. 126 of 2019. These are all facts on record.

27. To substantiate the facts, a status report was called for from the Inspector of Police and this Court also examined the facts stated in the status report. It must be kept in mind that this Court is examining the necessity to cancel the bail already granted. This is permitted only if the accused who has been granted bail has violated the terms of the conditions of bail.

28. In the instant case, as is so in every case, one of the conditions of grant of bail is that the accused should not either directly or indirectly influence or threaten any of the witnesses. FIR No. 126 of 2019 has been filed only because the son of the second respondent/first accused and other accused persons threatened the defacto complainant. They specifically

told her that she would also meet the same end which her husband met, if she perused with her complaint which led to registration of Cr.No. 51 of 2019. Her right wrist was also severed off completely in the earlier incident. She had a minor son and daughter to protect. The minor son was an eye witness. She had taken the extreme step to commit suicide owing to the threats that she should not depose against the second respondent/first accused and should withdraw the complaint. I hold this threat is a direct violation of the conditions granting bail. I am not prepared to go into the legality or otherwise of the registration of the FIR. They are not germane to the issue under consideration. They are issues which can be taken up by the second respondent/first accused in appropriate proceedings.

29. The relevant fact in this petition is whether the bail granted should be cancelled or not. The second respondent/first accused has a long history of antecedents of violence and has nearly 27 cases registered against him. These included cases under Sections 307 IPC and also under 302 IPC. He is also a history sheeter in the area. He is also a prominent member in a political party and therefore, naturally, he has the wherewith all to influence or coerce any witness.

30. The previous cases as against the second respondent/first accused also include cases under Sections 302 and 307 of I.P.C which are grave in nature. The principles regard to grant of bail under Section 439 Cr.P.C., have been crystallized by the Hon'ble Supreme Court in Singh V. State of Rajasthan, 2012 (12) SCC 180 as follows:

"Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court." [emphasis supplied]

31. In Neeru Yadav V. State of UP, 2016 (15) SCC 422, the Hon'ble Supreme Court had held as follows:

"It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge." [emphasis supplied]

32. In *State of Bihar V. Rajballav Prasad*, 2017 (2) SCC 178, the Hon'ble Supreme Court had held that while the liberty of the accused is an important consideration, the public interest is also equally important. The Hon'ble Supreme Court had held as follows:

"....Undoubtedly the courts have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the Court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is this need for larger public interest to ensure that criminal justice delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations." [emphasis supplied]

33. The Honourable Supreme Court also had an occasion to emphasise the distinction between rejection of bail and cancellation of bail in *Dolatram V. State of Haryana*, (1995) 1 SCC 349. It was observed as follows:

"Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and

not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial." [emphasis supplied]

34. In *Dataram Singh V. State of Uttar Pradesh*, 2018 (2) Scale 285, it had been held as follows:

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial." [emphasis supplied]

35. In the present case, the supervening circumstances is that the second respondent/first accused had a direct hand in instigating his son and other accused in Crime No.126 of 2019, wherein, the accused had threatened the de-facto complainant in Crime No.51 of 2019 who already had lost her husband, had lost her right wrist, had seen brutal attacks inflicted on her own mother-in-law, father-in-law, brother-in-law and also the brother of the father-in-law and this threat had forced her to commit suicide leaving behind her two orphan children, one, also

an eye witness to the death of her husband. These are very relevant aspect.

36. In the judgment of the Hon'ble Supreme Court in Criminal Appeal Nos.1162 and 1163 of 2019, Bharatbhai Bhimabhai Bharwad V. State of Gujarat and Others, the Hon'ble Supreme Court held as follows:

"10. It is well settled that the consideration applicable for cancellation of bail and consideration for challenging the order of grant of bail on the ground of arbitrary exercise of discretion are different. While considering the application for cancellation of bail, the Court ordinarily looks for some supervening circumstances like; tampering of evidence either during investigation or during trial, threatening of witness, the accused is likely to abscond and the trial of the case getting delayed on that count etc." [emphasis supplied]

37. In the present case, there has been coercion and influence exerted on the injured eye witnesses, threats being given to the injured witnesses. These factors certainly call for cancellation of bail granted by the learned Sessions Judge. Further, it is seen that the learned Sessions Judge had failed to consider the antecedents of second respondent/first accused who has nearly 27 previous cases of inflicting violence on general public. The contentions of the learned counsel for the second respondent/first accused that this case is a put up case and that he was in hospital and that he did not participate in the violence are matters for him to establish during the course of trial. But, for the trial to be conducted in harmonious atmosphere, it is essential that the witnesses are protected and that the witnesses depose evidence without fear. It is seen that the second respondent/first accused is a prominent member of a political party in the local village. There is every possibility that day by day his very presence in the village will install fear in the minds of the witnesses and other villagers. To ensure the sanctity of the criminal justice system and to ensure that public interest has the confidence that the criminal justice delivery system works efficiently, smoothly and in a fair manner as stipulated by the Hon'ble Supreme Court in State of Bihar V. Rajballav Prasad, 2017 (2) SCC 178, supra, I hold without any hesitation that the bail granted must be cancelled. Accordingly, this Criminal Original Petition is allowed.

38. The Investigation Officer is directed to take into custody the second respondent/first accused forthwith.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Sub Inspector of Police
Samalpatti police station
Krishnagiri District
Krishnagiri

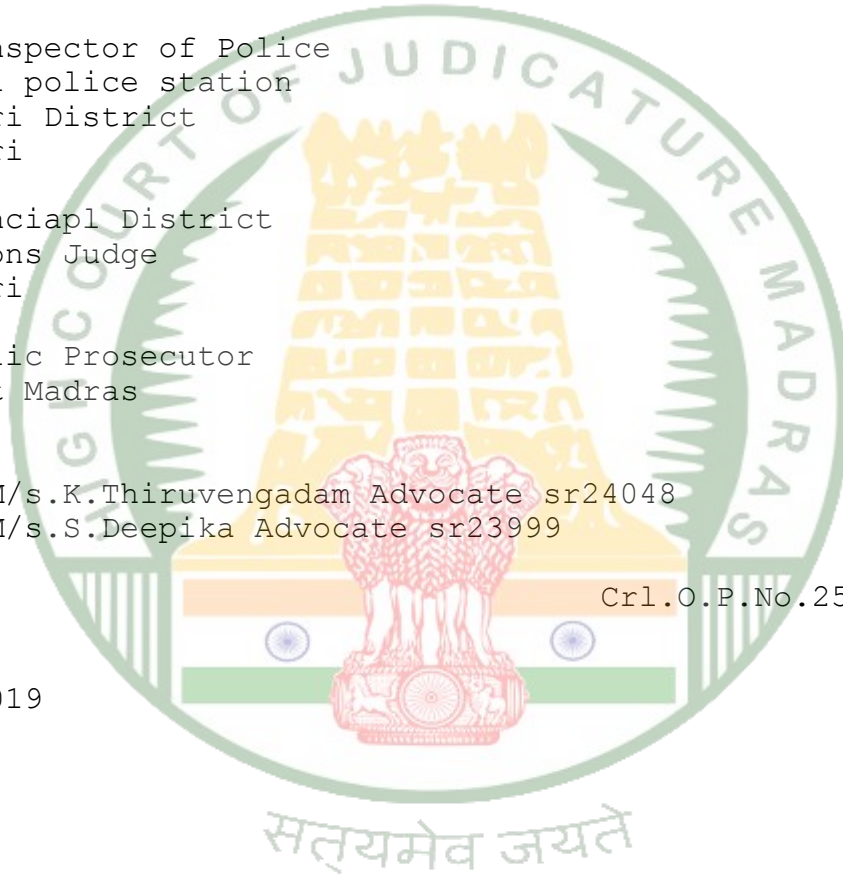
2.The Princiapl District
and Sessions Judge
Krishnagiri

3.The Public Prosecutor
High Court Madras

+1 cc to M/s.K.Thiruvengadam Advocate sr24048
+1 cc to M/s.S.Deepika Advocate sr23999

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