



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

Wednesday, the Thirtieth day of January Two Thousand Nineteen
PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

WEB COPY

CRL OP (MD) No.1142 of 2019

1 KALIRAJ @ GOWTHAM
2 MANIKANDAN @ MANI

... PETITIONERS / ACCUSED NO.3 & 4

-Vs-

STATE REP.BY
THE INSPECTOR OF POLICE
DINDIGUL TOWN NORTH POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.881/2018

... RESPONDENT / COMPLAINANT

For Petitioners: Mr.C.D.JOHNSON, Advocate
For Respondent : Mr.K.SUYAMBULINGA BHARATHI,
Government Advocate(Crl.Side)

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

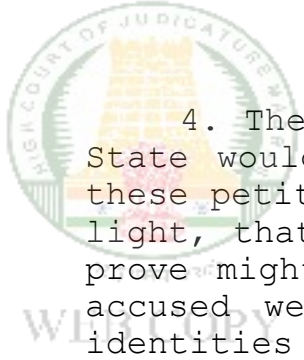
ORDER : The Court Made the following order :-

[Reserved on **25.01.2019**]

The petitioners / A3 & A4, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 147, 148 and 302 of IPC., in Crime No.881 of 2018, on the file of the respondent Police, seek anticipatory bail.

2. The case of the prosecution is that on 02.10.2018 the petitioners along with other accused unlawfully assembled with deadly weapons and attacked the defacto complainant Nagalakshmi's husband Veerasamy with Aruval indiscriminately and he died on the spot.

3. The learned counsel appearing for the petitioners would submit that based on the confession of the co-accused, the petitioners have been roped in and they are innocent and they have been falsely implicated in this case. He would further submit that the petitioners have been detained under Act-14. Further, the charge sheet has not been filed in this case. The petitioner has right of statutory bail. The same was not entertained by lower Court on the ground that bail petition is pending before this Court. The learned counsel, in support of his contention, has relied on a Judgment of Delhi High Court in **Powell Nwawa Ogechi Vs. The State (Delhi Administration)** reported in **(1986 Cr1.L.J.2081)**. If the contention is true, it is not a ground for not entertaining the petition under Section 167 of Cr.P.C.



4. The learned Government Advocate (crl.side) appearing for the State would submit that there has been specific overt act against these petitioners in commission of the brutal gruesome murder in day light, that too, in a public place. This murder had taken place to prove might of the accused, who are all of one group. Since the accused were wearing monkey caps and covering their face, their identities could not be immediately known by the defacto complainant. Further, the defacto complainant was in a shocked state, since she had witnessed the occurrence and the murderers attack on her husband and the other eyewitnesses were also in the state of shock. Thereafter, on the same day, they had given the description and identities of the accused. Further the petitioners were detained under Goondas Act, as per the proceeding of the District Magistrate and District Collector, Dindigul District, dated 28.11.2018 in Detention Order No.103/2018 and 104 of 2018, respectively.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. Taking note of the submission made by the learned Government Advocate (crl.side) that the petitioners have already been detained under Goondas Act, this Criminal Original Petition stands dismissed. The decision relied on by the petitioner is not applicable to the facts of the present case. It is made clear that the petitioner's indefeasible right under Section 167(2) Cr.P.C., is available to him till the charge sheet is filed.

sd/-
30/01/2019

/ TRUE COPY /

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

TO

1. THE INSPECTOR OF POLICE
DINDIGUL TOWN NORTH POLICE STATION,
DINDIGUL DISTRICT.
2. THE OFFICER INCHARGE, DISTRICT PRISON,
DINDIGUL.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.1142 of 2019
Date :30/01/2019

MS/VR/SAR-2/05.02.2019/2P.5C