



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

Friday, the Eleventh day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.344 of 2019

RAMARAJ

... PETITIONER / ACCUSED NO.5

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.5/2016

... RESPONDENT / COMPLAINANT

For Petitioner : MR.G.GOPAL KRISHNAN, Senior Counsel
for MR.I.VELPRADEEP Advocate

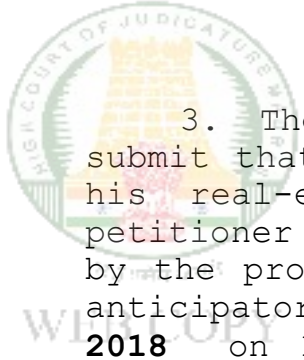
For Respondent : MR.S.CHANDRASEKAR, Additional Public Prosecutor

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

ORDER : The Court Made the following order :-

The petitioner/A5, who was arrested by the respondent police on 08.12.2018, for the offences punishable under Section 302 of IPC., in Crime No.5 of 2016, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on a complaint given by Chokkathayee, the wife of the deceased, a case was registered in Crime No.5 of 2018, before the first respondent Police stating that on 02.01.2016, at about 11.00 p.m., when her husband was descending from the stairs, he fell down and sustained injuries. Hearing her scream, the relatives rushed to the spot and took the injured to the hospital, where he was declared dead. Initially, the case was registered by the first respondent Police, for an offence under Section 174 Cr.P.C., and after investigation, the respondent filed the final report, as 'Action Dropped'. Thereafter, Radhakrishna Raja, brother of deceased Jeganatha Raja, had sought for transfer of investigation and made a representation to the Superintendent of Police and filed a petition before this Court and thereafter, the case was transferred to the second respondent viz., Inspector of Police, District Crime Branch, Virudhunagar District.

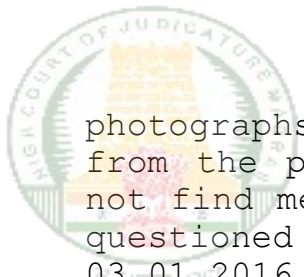


3. The learned counsel appearing for the petitioner would submit that the petitioner is a close associate of the deceased in his real-estate business. He would further submit that the petitioner is innocent and he did not commit any offence as alleged by the prosecution. The co-accused in this case has been granted anticipatory bail by this Court in **CRL.O.P. (MD) Nos.18986 & 19001 of 2018** on 11.01.2019. The petitioner is in incarceration for more than 30 days. The learned counsel further submitted that the petitioner's daughter's marriage was scheduled to be performed on 30.01.2019.

4. The learned Government Advocate (crl.side) appearing for the State, on instructions, would submit that initially a case was registered by Rajapalayam South Police Station under Section 174 of Cr.P.C., and final report was filed and closed the case, as 'Action Dropped', on 23.03.2016. A petition under Section 482 of Cr.P.C., has been filed before this Court for re-investigation in Crl.O.P(MD) No.15336 of 2018 and this Court, by had ordered the same on 29.08.2018. In the meanwhile, the Superintendent of Police, vide proceedings dated 17.09.2018 had handed over the investigation to the District Crime Branch. After that, the defacto complainant was examined and other witnesses were examined, queries were sent to Dr.N.Babuji, Senior Civil Surgeon, Government Hospital, Rajapalayam and who had deputed Dr.Megala, Duty Asst.Surgeon, Government Hospital, Rajapalayam, to visit the scene of occurrence on 01.10.2018. They also sent 11 questionnaires and had recorded their statements. It is seen that the injuries sustained by the deceased would have caused by blunt weapons. Further, Doctor Selvaraj, M.D., Forensic Medicine, Madurai Medical College sent Dr.Juliana Jeyanthi, Assistant Professor visited the scene of occurrence on 24.11.2018 in the presence of VAO and to them 29 questionnaires were sent and opinions were obtained that the injuries could have caused by blunt weapons. The death could not be possible due to accidental fall by rolling over the steps having a height of 172 cms. Head and scapula portion of the deceased could not be caused without any corresponding injuries of abrasion. Further, dresses could not be on the body of the deceased as found in the photograph when he is said to have rolling down through the steps. The death was due to homicidal attack as it is evident from the collection of blood below the head and spreading through hands and back portion of the body. The specific overt act against the petitioner is that while the deceased was sleeping, he caught hold his hands and legs and kicked forcibly on the chest and on the body of the deceased Jaganatha Raja.

5. The Court heard the submissions made on either side and has perused the statements and materials produced.

6. On perusal of the statements of the Doctors and questionnaires it is found that the doctors had visited the scene of occurrence two years after the occurrence and they have given opinion based on their visit to the scene of occurrence, seeing the



photographs and the postmortem report, dated 03.01.2016. It is seen from the postmortem report that what is being now elaborated does not find mention in it. Further, none of the Doctors presently had questioned or found fault with the Postmortem report, dated 03.01.2016, the opinion of the Doctors have to be tested.

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7. Considering the above facts and circumstances of the case, and also considering the fact that co-accused has been granted the relief of anticipatory bail and the petitioner's daughter's marriage is scheduled to be performed on 30.01.2019, this Court is inclined to grant bail to the petitioner, with certain conditions;

8. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, before the learned Judicial Magistrate, Rajapalayam, on condition that the petitioner shall execute 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 Magistrate concerned and on further condition that;

[a] if the petitioner failed to surrender before the said Magistrate within a period of fifteen days, this Order shall stand automatically cancelled.

[b] the petitioner shall report before the respondent police, daily at 10.00 a.m., until further orders, for interrogation, except from 29.01.2019 to 03.02.2019.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

sd/-
11/01/2019

/ TRUE COPY /

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

TO

1 THE JUDICIAL MAGISTRATE,
RAJAPALAYAM.

<https://hcservices.ecourts.gov.in/hcservices/>

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR AT SRIVILLIPUTHUR.



3 THE INSPECTOR OF POLICE,
RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.

4 THE OFFICER INCHARGE,
SUB JAIL, VIRUDHUNAGAR.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.I.VELPRADEEP Advocate SR.No. 671

ORDER

IN

CRL OP (MD) No.344 of 2019

Date :11/01/2019

JM/VR/SAR 3/11.01.2019/4P/7C