



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on	Pronounced on
16.10.2019	25.10.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. A. (MD) NOS. 52, 155, 165, 185, 24, 250, 251 & 321 OF 2019

Karuppuraja @ Muniyandisamy ... Appellant in CRL.A(MD)NO.52 OF 2019

Ilayaraja ... Appellant in CRL A(MD)No.155 of 2019

Kanith @ Kaneethkumar ... Appellant in CRL A(MD)No.165 of2019

Akkini @ Akkiniraj ... Appellant in CRL A(MD)No.185 of 2019

Ottakulathan @ kandhasamy ... Appellant in CRL A(MD)No.24 of 2019

1. Mayasamy

2. Muthumuneeswaran

3. Rajesh @ Rajeswaran ... Appellants in CRL A(MD). 250/ 2019

1. Ramakrishnan

2. Selvi ... Appellants in CRL A(MD). 251/ 2019

Karuppaiah ... Appellant in CRL A(MD). 321/ 2019

- Vs -

1. The State, rep. by
The Deputy Superintendent of Police
Manamadurai
Sivagangai District.

2. The State, rep. by
The Inspector of Police
Palayanoor Police Station
Sivagangai District.



3. Maheswaran
4. Malaisamy
5. Dhanasekaran : RR1 to 5 in all CRL Appeals
6. Sukumaran : R6 in all CRL Appeals except
Crl A.24/2019

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6. Chandrasekaran : R6 in Crl A.24/2019

7. Deivendran : R7 in all CRL Appeals

(RR-4 to 7 impleaded vide
order in Cr. M.P. No.1862/2019
dated 01.04.2019 in Crl A(MD)No.52/2019)

Appeal filed u/s 14 A(2) of the SC/ST (PoA) Act, 1989, against the order dated 31.10.2018, 31.10.2018, 31.10.2018, 31.10.2018, 11.10.2018, 27.05.2019, 27.05.2019 and 25.06.2019 respectively passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (PoA) Act, 1989, Sivagangai, in Cr. M.P. No.3847/2018, 3849/2018, 3846/2018, 3848/2018, 3688/2018, 2828/2019, 2829/2019 and 3386/2019 respectively set aside the same and release the petitioners on bail in connection with FIR in Crime No.32 of 2018 on the file of the first respondent police.

For Appellant : Mr. M.S.Jeyakarthik in
Crl. A Nos.52,155 & 165/19
Mr. E.Sathish Rajkumar in Crl. A. No.185/19
Mr. G.Karuppasamy Pandiyan
in Crl. A No.250 & 251/19
Mr. K.Anbarasan in Crl. A. No.24/19
Mr. J.Jeyakumaran in Crl. A. No.321/19

For Respondents : Mr. K.Chellapandian, AAG,
assisted by Mr. V.Neelakandan, APP
for RR-1 & 2 in all appeals
Mr. G.Bhagavath Singh for R-3 in all appeals
No appearance for RR-4 to 7 in
CA Nos.155, 165, 24 & 321/19
No Appearance for RR-4 to 6 in CA 52/19
R-7 unserved in CA No.52/19
RR-4 to 7 - service awaited in
CA Nos.185, 250 & 251/19

COMMON JUDGMENT

These appeals arise against the order passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the SC/ST (PoA) Act, Sivagangai on various dates, viz., 11.10.18,

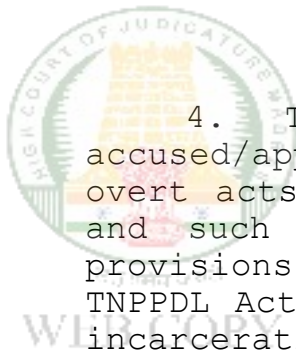
<https://hcservices.ecourts.gov.in/hcservices/>



31.10.18, 27.5.19 and 25.6.19 in various bail applications, in and by which the bail applications filed by the accused/appellants herein were dismissed. Aggrieved by the said dismissal, the accused/appellants are before this Court by filing these appeals.

2. The appellants are charged u/s 147, 148, 294 (b), 324, 307, 302 (3 counts) IPC and Section 3 of TNPPDL Act and 3 (1) (r), (s), 3 (2) (v)(a) of SC/ST (PoA) Amendment Act. The immediate genesis of the violent acts, which were allegedly unleashed by the appellants/accused could be traced to an incident, which happened on 26.5.18 during the temple festival, where one Chandrakumar of Katchanatham Village, belonging to Agamudaiyar community expected temple honours during the temple festival, which was denied to them. Therefore, the said Chandrakumar abused one Shanmuganathan and criminally intimidated him and his community people, who belong to the downtrodden communities. The local police came to the spot and apprehended the said Chandrakumar and initiated criminal proceedings. As a matter of retaliation, on 28.5.18, while the defacto complainant was standing on the terrace of his house, people belonging to the Agamudaiyar community had come to the village, armed with deadly weapons, and they attacked Shanmuganathan and several others in the village indiscriminately with deadly weapons. The attack was carried out by the mob belonging to the dominant community and at the end of the mob violence, three persons were brutally murdered and five persons sustained grievous injuries. The houses of the scheduled caste people were also damaged in the attack. The attack on the downtrodden community was so brutal that the bodies of the dead persons had cuts all over them. After unleashing the attack on the downtrodden community, the perpetrators of violence warned the villagers that their village would no longer be a place for a peaceful living in future. Pursuant to the attack, crime No.32/18 was registered by the police and several persons were charged for the offence as aforementioned, including the present appellants, who are before this Court. All the appellants/accused have been taken into custody immediately, after the case was registered, on various dates and they have been under incarceration since their arrest for more than a year or so as on date.

3. The appellants herein moved the trial court for their release on bail and the trial court, after hearing the objections from the prosecution, dismissed all the bail applications. According to the trial court, the investigation was not yet over and there was a likelihood of the accused tampering with the evidence and witnesses if they were enlarged on bail. The trial court has also considered the nature and gravity of the offence and the evidence in support of the accusation and the circumstances under which the offences were committed and, therefore, was disinclined to grant bail to the accused and, accordingly, dismissed the bail applications. As against the said dismissal, the present appeals have been filed by the accused.



4. The respective Learned counsel appearing for the accused/appellants impressed upon this court about the individual overt acts committed on 28.5.18, according to the FIR/charge sheet and such injural acts of violence do not attract the severe provisions of Section 302 or 307 IPC and also the provisions of the TNPPDL Act or the SC/ST (PoA) Act. Since the appellants are under incarceration for more than a year and that the trial is likely to be delayed further in view of the large number of witnesses to be examined and also the trial court has simply dismissed their bail applications without giving any detailed reasons, they requested this Court to enlarge the appellants on bail by allowing these appeals. According to the learned counsel appearing for the respective appellants, the courts have repeatedly and consistently held that pre-trial detention cannot be for an indefinite period and that 'Bail is norm and Jail is exception'. It is submitted that the appellants herein have suffered imprisonment for more than a year and, therefore, they are entitled to be enlarged on bail, as investigation is already over and charge sheet has also been filed. Therefore, the judicial custody of the appellants is no more required. Learned counsel for the appellants submits that any condition that may be imposed by this Court would be duly complied with by the appellants.

5. Per contra, Mr.Chellapandian, learned Addl. Advocate General, appearing for the State strongly opposed the grant of bail to these appellants. A detailed counter affidavit has been filed narrating in detail the entire sequence of events, which culminated in the brutal killing of three persons and causing grievous injuries on five persons. According to the learned Addl. Advocate General, the brutality of the triple murder, alleged to have been carried out by these appellants, has shocked the very conscience of the society as the motive for the murder was that the persons from the dominant community were denied temple honours during the temple festival. In the counter affidavit, detailed averments have been mentioned highlighting the various aspects and facts, which should be borne in mind by the courts while exercising its discretion towards grant of bail. The reasons, as set forth in sub-paragraphs (a) to (i) of Para-10 are extracted hereunder :-

"10.

a) *The village Kachanatham in Manamadurai Taluk, Sivagangai District is mostly inhabited by people hailing from downtrodden SC communities and in the surrounding villages, people belonging to other major communities are residing.*

b) *The entire taluk on being adjoining to Paramakudi and other Taluks in Ramanathapuram District is communally sensitive area as communal clashes occur dime a dozen on least pretext. It has the tendency to spread to the nearby districts as well. Though the occurrence which consumed 3*



precious human lives besides injuring 5 others though appear to be innocuously linked to temple, it has far reaching significance in affecting the lives of people residing in the year, more particularly people belonging to Adi dravidar communities.

c) The Marudhupandiar Guru Pooja is scheduled to be held on 27.10.2019 and Thevar Guru Pooja is slated to be held on 30.10.2019. Entire area will be in turmoil and that only due to the concerted action taken the situation is being brought under control from the year 2014. Prior to that, even small and innocuous incidents have caused havoc and created tension. In the year 2011, on 09.09.2011, 2 days prior to the 54th Immanuel Sekaran Memorial day, one Palanikumar, aged 16, a dalit school boy was murdered by the Thevar community people due to obscene wall writing on rival community's leaders. As a sequel to the above incident there were attacks and counter attacks and the Police had to open fire to quell the mob given to violence. As a result, total 6 persons lost their lives and 34 persons sustained injuries and only with great difficulty the situation was brought under control. The trouble lasted for more than a month and that this Hon'ble Court was pleased to order to transfer of investigation to CBI in WP (MD)No.21974 of 2011.

d) In another instant, one Malaikannan and Tirupuvanam from Tiruppuvanam when returning on 30.12.2012 in their two wheeler bearing Regn.No.TN 63 AB 9038 by tying the caste ribbon on their heads and while passing through the Scheduled Caste Colony at Ponniahpuram, the people from adi dravidar community murdered them.

e) In another incident on 30.10.2012, one Nagarajan along with Pugalendhi were coming to Paramakudi from Ilayangudi in two wheeler bearing Regn. No.TN 59 AB 2187, they were stopped near Vaigai Nagar and on being told that they hail from adi dravidar community, 10 member gang attacked them.

f) In fact in the year 2012 as a sequel to the loss of lives of 6 Adidravidars, by way of retaliation, one Jeyapandi and others belonging to Thevar communities coming in a Tata Maxi Cab TN 22AC 6124, the accused Ramar and Ramakrishnan hailing from Adidravidar community threw country bomb and attacked them on 30.10.2012 at 8 PM and 20 persons travelling in the cab sustained injuries and 7 persons died.

g) Simmering discontent is still evident between the Adi Dravida Communities and Maravars (Thevar



clan) in Kachanatham and surrounding villages. Such is the situation in and around Kachanatham where even a small and innocuous looking incident has the tendency to degenerate into major catastrophic incidents affecting peace and tranquility not only in the vicinity but has the tendency to spread its tentacles to the nearby districts affecting public order.

h) The intelligence input gathered reveals that the victims of the above carnage are secretly planning for retaliation and are waiting for the accused to come out from prison and hence the life of the accused is at peril. In fact in anticipation of the above move, at the time of production of the accused, additional police force is being deployed to prevent any untoward incident.

i) Likewise the appellants are granted the relief of bail true to their statement to do away with the lives and limbs of the Adi Dravidar community people, they will unleash violence and they will also continuously keep the SC community people of Katchanatham Village."

6. Learned Addl. Advocate General further submitted that earlier these appellants approached this Court and filed appeals against the dismissal of their bail applications in Crl. A. (MD) Nos.448, 397, 489, 434, 482, 398, 517, 400 and 573 of 2018 and all the above appeals were dismissed by this Court and without there being any change in circumstances, the present appeals have been filed. Moreover, learned Addl. Advocate General also submitted that in view of the sensitive nature of the violence unleashed at the instance of the accused/appellants, this Court was approached in Crl. O.P. (MD) No.16164/2019 and a learned Judge of this Court, vide order dated 10.9.18, directed the learned trial court to ensure the presence of the accused for framing the charges on the same day and conduct trial on a day-to-day basis. The trial court, in pursuance to the directions, as now been conducting the trial on a day-to-day basis and the last hearing was held on 11.10.19 for framing charges. According to the learned Addl. Advocate General, the trial is in a crucial stage and the trial court is yet to record the testimony of the material witnesses. In case the appellants herein are freed on bail, that will jeopardize the prosecution, as the witnesses would not be able to adduce evidence freely without fear. Therefore, in the interest of the prosecution and in public interest as well, the appellants should not be shown any indulgence by this Court. Lastly, learned Addl. Advocate General submitted that two other accused persons had approached this Court earlier and obtained bail on certain conditions. But when the State filed appeal against the bail granted to those two accused before the Hon'ble Supreme Court, the Hon'ble Supreme Court has set aside the order granting bail and



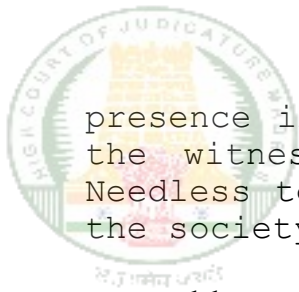
remanded the same to this Court for fresh consideration and those bail appeals are also pending consideration before this Court.

7. Mr.Bhagavath Singh, learned counsel appeared and opposed the grant of bail to these appellants on the ground that the post-mortem report reveals about the violent nature of attack on each of the deceased person. The post-mortem report, by itself, is a testimony as to how brutal was the attack, which was unleashed on the hapless persons belonging to the downtrodden community. According to the learned counsel for the victim, it was a cold blooded murder carried out by the persons from the dominant community with impunity. Moreover, learned counsel also submitted that these appellants live in a village, which is at a distance of 2 to 3 kilometers from the village where the attack took place and, therefore, it will not be in the interest of the society to enlarge them on bail now, as the atmosphere would not be conducive and the personal safety of the villagers would also be insecure.

8. This Court considered the elaborate submissions advanced by the learned counsel appearing for the respective appellants, the learned Addl. Advocate General appearing for the State and Mr.Bhagavath Singh, learned counsel appearing for the victim and perused the relevant materials and the pleadings placed on record.

9. In the counter affidavit filed on behalf of the State, it was very elaborately highlighted as to how there was a surcharged atmosphere prevailing in the nearby place where the violence took place on 28.5.18. It appears that there has been a simmering anger, grudge and animosity between the two sections of people belonging to different communities and the members of the communities were waiting to settle scores with each other whenever immediate opportunity arose. In fact, even presently, elaborate police bandobust has been provided to avoid any untoward incident between the communities in view of Guru Pooja being observed.

10. Further, the materials on record would unequivocally disclose that the violence unleashed on the village people on 28.5.18 had few parallels in the communal clashes that happened in the State of Tamil Nadu in the recent past. The brutality in which the crime was committed by the mob from the dominant community had a telling effect on the peace and tranquility of the society at large. The macabre nature of killing, which happened, was nothing but a result of communal conspiracy among the people from the dominant community and they let loose their communal frenzy, rage and hatred on the downtrodden community, which ultimately resulted in the death of three persons and grievous injuries to five persons. By the very nature of offence, which was unleashed allegedly at the instance of the present appellants are not the run of the mill crimes, which can be viewed with normal application of 'Bail is a rule and Jail is exception'. In such cases, the vulnerable prosecution is to be



presence in the society would have a chilling effect of fear among the witnesses, who are yet to be examined by the prosecution. Needless to mention, that the very presence of these persons out in the society could effectively unnerve the prosecution witnesses.

11. In such view of the matter, this Court is of the opinion that the individual liberty has to be relegated to the back burner and the paramount duty of the institution is to maintain law and order, public peace and tranquility. When seething anger and unalloyed grudge dominate the minds of the dominant community because of the historically stratified society, in order to protect the interests of the downtrodden community from tendering evidence without any undue influence, duress or fear, the Court must be very circumspect in exercising its discretion towards grant of bail.

12. As far as the present case on hand is concerned, this Court is of the considered view that being one of the exceptional cases, the appellants herein are not entitled to be enlarged on bail. Though, as stated supra, the learned counsel for the respective appellants attempted to draw the attention of this Court to the individual overt acts, as mentioned in the FIR/charge sheet, but on an overall consideration, this Court is of the considered view that there was a commonality of intention and well planned conspiracy was hatched in order to carry out the murderous assault on the villagers with deadly weapons and, therefore, this Court cannot be influenced or guided by individual overt acts, atleast for the purpose of grant of bail as every act has contributed to the death of three persons and also causing grievous injuries to five other persons. Therefore, regardless of the merit of each of the appellants, the grant of bail, at this point of time, would undermine the prosecution at present and would also go against public interest and detrimental to the witnesses, who are yet to depose before the Court.

13. For all the reasons aforesaid, the criminal appeals are devoid of merits and, accordingly, all the criminal appeals are dismissed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Sessions Judge
Special Court for Exclusive Trial of
Cases under SC/ST (PoA) Act
Sivagangai.



2. The Deputy Superintendent of Police
Manamadurai
Sivagangai District.

3. The Inspector of Police
Palayanoor Police Station
Sivagangai District.

4. The Superintendent,
Central Prison, Madurai

5. The Addl. Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1 CC to Mr.M.S.JEYAKARTHIK, Advocate (SR-94503[F] dated
25/10/2019)

+1.CC. To Mr.J.Jeyakumaran , Advocate in SR No.94552

**JUDGMENT IN
CRL.A(MD) NOS. 52, 155, 165,
185,24, 250, 251 & 321 OF 2019
25.10.2019**

GLN

MK (11.11.2019) 8P 8C