



WEB COPY

CRL OP(MD). No.11134 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 06/08/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.11134 of 2019

Sam Christudhas Joseph

... Petitioner/Accused

- Vs-

State Rep.by

The Inspector of Police

Marthandam Police Station,

Kanyakumari District,

Crime No.277 of 2019

... Respondent/Complainant

For Petitioner : M/s.D.Selvanayagam, Advocate.

For Respondent : Mr.V.Neelakandan,

Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No. 277 of 2019 on the file of the respondent police.

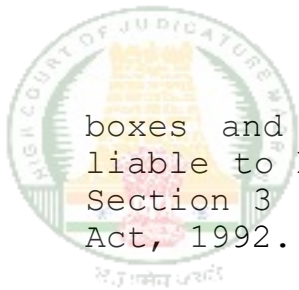
ORDER : The Court Made the following order :-

Memo filed by the petitioner is hereby recorded. This petition has been filed by the petitioner/accused No.3 seeking bail for the alleged offence punishable under Sections 342, 380, 435 and 451 of IPC and Section 3 (1) of the Public Property (Prevention of Damage and Loss) Act, 1992.

2. Heard both sides.

3.The case of the prosecution is that on 21.07.2019 during mid-night at about 02.50 a.m, the petitioner along with other accused persons tied hands, eyes and mouth of the watchman of the Marthandam Bee keepers Co-operative Society and broke open the door of the said Society and entered into the said Society and damaged the ballot boxes and also CCTV camera and disc and set afire to the ballot

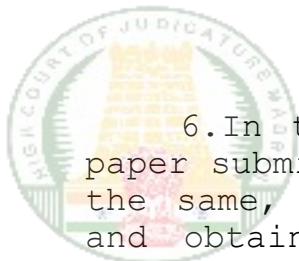
<https://hcservices.ecourts.gov.in/hcservices/>



boxes and caused total damage of Rs.15,500/- and hence they are liable to be punished under Sections 342, 380, 435, 451 of IPC and Section 3 (1) of the Public Property (Prevention of Damage and Loss) Act, 1992.

4. The learned counsel appearing for the petitioner has submitted that the petitioner has not contested the election of the Co-operative Society. His nomination paper was rejected and hence he along with other accused persons filed a writ petition in W.P.(MD) No.10617 of 2018 before this Court and this Court has passed an interim order on 03.05.2018 that the matter should be posted before the next vacation Court and in the mean time, the respondent should not publish the result of the election and the said result is still kept in abeyance. He further submitted that since there is an order of stay for publishing the election result, there is no necessity for the petitioner to damage the ballot boxes. He further submitted that the alleged act may have been committed by any of the contesting candidates. He further submitted that in the FIR, the name of the petitioner has not been mentioned and only based on the confession said to have been given by one Christhuraj (A1) before the police, the petitioner herein arrayed as accused. He further submitted that the confession which was said to have been given before the police is not admissible as per Section 25 of the Evidence Act. He further submitted that even in the said confession the said accused has not stated that the petitioner/A3 herein broke open the door of the said Society and caused damage to the ballot papers. On the contrary he has simply stated that he gave idea how to destroy the said ballot papers. Further, except the said confession statement, no other material is available to implicate these petitioners in the above crime and therefore, he prayed to grant of bail to the petitioner.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that since the nomination of the petitioner has been rejected, he is having grievance about the conducting of the election and hence he has conspired to destroy the said ballot papers. In pursuance of the said conspiracy, on 21.07.2019, during the mid-night at about 02.50 a.m, all the petitioner along with other accused persons went to the said Society and tied the hands, mouth and eyes of the watchman and broke open the door and entered into the Society and broke open the ballot boxes and set fire to the ballot papers and destroyed the said ballot papers and caused damage to the CCTV camera and disc. He further submitted that after registering the FIR, one Chirsthuraj was arrested and he gave a confession, in which, he has categorically stated that all the accused persons have conspired and also committed the aforesaid offence. He further submitted that since the investigation is at initial stage, the custodial interrogation of the petitioner is absolutely necessary, and hence, he prayed to dismiss this petition.



6. In the FIR itself it is stated that already the nomination paper submitted by the petitioner has been rejected and aggrieved by the same, the petitioner herein has filed W.P(MD)No.10617 of 2018 and obtained an interim order and hence counting of the votes stopped. Further it is stated that the four unknown persons on 21.07.2019 during mid-night at about 02.15 a.m came there and tied the hands of the watchman and after breaking the door, they entered into the said Society and broke open the ballot boxes and set fire to the ballot papers. In the FIR, the name of the petitioner has not been mentioned.

7. Further, admittedly, the nomination of the petitioner has been rejected and further the petitioner obtained interim stay from this Court by filing writ petition on 03.05.2018 itself, whereas, the alleged occurrence took place after more than one year from the date of obtaining interim order. Further, the only material, which is relied on by the prosecution is that during investigation, one Chiristhurai was arrested and he gave confession before the police and based on the said confession statement the petitioner herein has been implicated. In the said confession, he has stated that he only gave idea to the petitioner as to how to destroy the ballot papers and beyond that he has not stated anything in pursuance of the said idea, whether the petitioners herein have destroyed the papers or not. Further the alleged confession statement given before the police is hit by Section 25 of the Indian Evidence Act. So, no reliance can be placed upon the said confession statement. Apart from the aforesaid confession statement of co-accused said to have been given before police, no other materials have been produced by the prosecution to implicate the petitioner in the above case.

8. Taking into consideration all the aforesaid facts and the petitioner is in custody from 25.07.2019 and also the fact that already this Court grant anticipatory bail to the co-accused in Crl.OP(MD)No.10583 of 2019 by the order dated 26.07.2019, this Court is inclined to grant bail to the petitioner with certain conditions.

[a] 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 Judicial Magistrate Court, Kuzhithurai-I, Kanyakumari District.

[b] the petitioner shall report before the respondent police daily at 10.30 a.m for a period of one month and thereafter, as and when required for the interrogation.

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



[d] the petitioner shall not tamper with evidence or witness 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 absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

06/08/2019

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

TO

1. THE JUDICIAL MAGISTRATE, KUZHITHURAI-1,
KANYAKUMARI DISTRICT.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
3. THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI.
4. THE INSPECTOR OF POLICE
MARTHANDAM POLICE STATION, KANYAKUMARI DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.D.SELVANAYAGAM Advocate SR.No.12922

ORDER

IN

CRL OP(MD) No.11134 of 2019

Date :06/08/2019

MS/VR/SAR-1/06.08.2019/4P.7C