



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

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RESERVED ON : 25.09.2019

PRONOUNCED ON : 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

CRL. A (MD) NO. 408, 424, 428 & 429 OF 2019

Chandrasekaran	.. Appellant in CA 408/2019
Prabhu	.. Appellant in CA 424/2019
Giridhar	.. Appellant in CA 428/2019
Suresh	.. Appellant in CA 429/2019

- Vs -

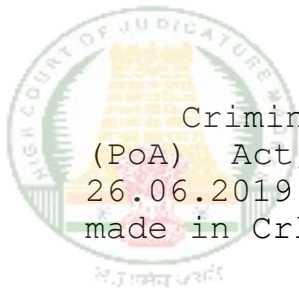
State rep. by
Deputy Superintendent of Police
CBCID
Namakkal. .. Respondent in all the appeals

PRAYERS:-

Criminal Appeal No.408/2019 filed u/s 14-A (2) of the SC/ST (PoA) Act, praying this Court to set aside the order dated 26.06.2019 passed by the III Addl. Sessions Judge (PCR), Madurai, made in Crl. M.P. No.581 of 2019 in Spl. S.C. No.31/2019.

Criminal Appeal No.424/2019 filed u/s 14-A (2) of the SC/ST (PoA) Act, praying this Court to set aside the order dated 26.06.2019 passed by the III Addl. Sessions Judge (PCR), Madurai, made in Crl. M.P. No.580 of 2019 in Spl. S.C. No.31/2019.

Criminal Appeal No.428/2019 filed u/s 14-A (2) of the SC/ST (PoA) Act, praying this Court to set aside the order dated 26.06.2019 passed by the III Addl. Sessions Judge (PCR), Madurai, made in Crl. M.P. No.576 of 2019 in Spl. S.C. No.31/2019.



Criminal Appeal No.429/2019 filed u/s 14-A (2) of the SC/ST (PoA) Act, praying this Court to set aside the order dated 26.06.2019 passed by the III Addl. Sessions Judge (PCR), Madurai, made in Crl. M.P. No.577 of 2019 in Spl. S.C. No.31/2019.

For Appellants : Mr. G.Gopalakrishna Lakshmanaraju, SC
for Mr.R.Venkateswaran
in CRL A(MD) No.408/2019
for Mr.S.G.L.Rishwanth
in CRL A(MD) Nos.424 & 429/2019
for Mr.P.Aju Tagore
in CRL A(MD) No.428/2019

For Respondents : Mr. A.Natarajan,
State Public Prosecutor,
assisted by Mr.V.Neelakandan,
APP (all cases)
Mr.T.Lajapathi Roy
for Intervenor in CRL A(MD) No.408/2019

COMMON JUDGMENT

The above criminal appeals are filed against the common order dated 26.6.2019, passed by the III Addl. District & Sessions Judge (PCR), Madurai, made in Crl. M.P. Nos.576 to 583 of 2019 in Spl. S.C. No.31/2019, dismissing the bail applications filed by the appellants/accused. These appellants are accused A-12 to A-15, who were charged for the offences u/s 120 (B), 201 r/w 120 (B), 302 r/w 120 (B), 471 r/w 120 (B), 468 r/w 120 (B), 465 r/w 120 (B), 384 r/w 120 (B), 325 r/w 120 (B), 364 r/w 120 (B) IPC and u/s 3 (2) (v) of the SC/ST (PoA) Act r/w 120 (B) IPC.

2. Earlier, the accused were granted bail by the Principal District Judge, Namakkal, where originally the trial was set in motion in S.C. No.78/2016. A petition was filed u/s 439 (2) Cr.P.C. for cancellation of bail granted to the respondent/accused and after taking note of the hostile conduct of some of the accused in threatening the learned Sessions Judge during the course of hearing, the learned Sessions Judge has framed the following points for consideration :-

"i) Whether the respondents herein are dragging on the case and also preventing the court from framing the charges as against these respondents?

ii) Whether any of the accused on bail committed similar offence or any heinous offence during the period of bail?

iii) Whether any of the accused on bail has absconded and trial of the case gets delayed on that account?



iv) Whether any of the accused on bail is terrorising the witness and committing acts of violence against the police/court?"

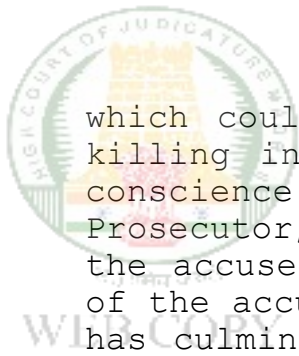
3. After examining the case in detail, the learned Sessions Judge finally cancelled the bail granted to the accused by order dated 7.6.18. Thereafter, the present bail applications have been moved on the ground that these accused have been suffering imprisonment since 7.6.18 and till date and as many as 79 witnesses have been examined on the side of the prosecution. According to the accused, all the independent witnesses have been examined and remaining witnesses to be examined are only official witnesses and, therefore, there would not be any legal impediment for their release on bail. Therefore, they moved the trial court for grant of bail after suffering incarceration since 7.6.18 for a year.

4. Learned trial Judge, after taking note of various factors, has ultimately dismissed the bail applications and, hence the present appeals have been filed.

5. Mr. Gopalakrishna Lakshmana Raju, learned senior counsel appearing for the appellants submitted that due to the conduct of some of the accused before the trial court in one of the hearings, the bail granted to some of the accused have been cancelled, which includes these accused, who have nothing to do with the conduct of some of the accused. These accused, according to the learned senior counsel, did not hold out any threat or exhibited any hostile behaviour before the learned trial Judge. According to the learned senior counsel, A-12, who is one of the appellant herein, was only charged for escorting the girl and other appellants, who are A-13 to A-15 were only charged for harbouring the accused, who were charged with overt acts of murder. Therefore, it would be inexpedient to keep them in the custody for indefinite period till the conclusion of the trial, which may take considerable time, since 26 witnesses are yet to be examined on the side of the prosecution.

6. Learned senior counsel further submitted that the independent witnesses have been admittedly examined and the remaining witnesses to be examined are all official witnesses. Therefore, there would not be any scope for threatening any of the witnesses if these accused are let out on bail pending conclusion of the trial. According to the learned senior counsel, for harbouring the accused, offence falls u/s 216 IPC and the sentence that is prescribed is only one year and, therefore, these accused are entitled to be enlarged on bail.

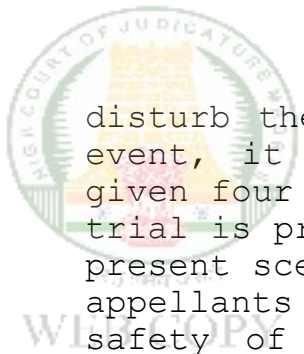
7. Per contra, Mr. A. Natarajan, learned State Public Prosecutor stoutly opposed the grant of bail to these accused for the reason that as far as these accused are concerned, they have all collaborated and actively participated in committing a heinous crime of murdering the hapless victim and that this is not a normal case,



which could be tried u/s 302 IPC, since the act is one of honour killing in doing away with the victim, which in fact shocked the conscience of the society. According to the learned State Public Prosecutor, the brutality in the way the victim was done to death by the accused is so very heinous and horrendous, and the further act of the accused in threatening the trial Judge in one of the hearings has culminated in the cancellation of bail granted to the accused. Even otherwise, all the accused are collaborators in committing the heinous crime of murdering an innocent person only on the basis of his caste affiliation and for falling in love with the girl belonging to a dominant community to which these accused belong. Therefore, in cases of honour killing, discretion of grant of bail must be sparingly exercised. The trial court has taken several factors into consideration and passed a detailed order and the trial court's refusal to exercise the discretion in favour of the accused does not call for any interference.

8. Further, it is contended by the learned State Public Prosecutor that when one of the accused, viz., A-17, was released on bail, he has absconded and that he is yet to be traced. Therefore, it is submitted that on these accused being let out on bail, there is all likelihood that these accused would also jump bail and abscond themselves, in which event, the trial would get derailed and delay the completion of the trial. Learned State Public Prosecutor also submits that when this Court has earlier intervened and granted bail to one of the accused, the State went on appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court has set aside the order granting bail to A-1 and directed the trial court to complete the trial within 18 months by its order dated 10.10.17 in SLP No.1757/17. Thereafter, the Hon'ble Supreme Court was once again approached, since the trial court could not complete the trial and the Hon'ble Supreme Court, by a recent order dated 12.4.19, has extended the period by four months for completing the trial. Therefore, the learned State Public Prosecutor submitted that the trial court is proceeding expeditiously with the trial and taking all steps to complete the same and that the official witnesses would be examined as early as possible and, therefore, it is submitted that at this stage it would not be in the interest of the prosecution to enlarge the appellants on bail and, therefore, sought for dismissal of the appeals.

9. Mr.Lajapathi Roy, learned counsel appearing for the intervenor/victim's family, submitted that in fact originally the trial was set in motion before the Principal District Judge, Namakkal and due to the hostile atmosphere in the conduct of the trial due to communal tension, this Court was moved and the trial was transferred to the file of the III Addl. District Judge (PCR), Madurai. Therefore, in the teeth of such scenario, it is not expedient to enlarge these accused on bail, since these accused, if they come out on bail, would ensure that the process of trial is



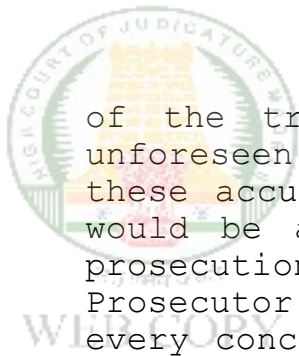
disturb the smooth conduct and finalisation of the trial. In any event, it is submitted that since the Hon'ble Supreme Court has given four months time on 12.4.19 to complete the trial and that the trial is progressing expeditiously, it would be wholly unsafe in the present scenario as also in the interest of justice to enlarge these appellants on bail. Further, if these accused are out on bail, the safety of the family members of the victim would be put in a perilous state of existence. Therefore, in the interest of justice, these appeals are liable to be dismissed.

10. This Court gave its anxious consideration to the submissions advanced by Mr.Gopalakrishna Lakshmanaraju, learned senior counsel appearing for the appellants, Mr.A.Natarajan, learned State Public Prosecutor appearing for the respondent and Mr.Lajapathi Roy, learned counsel appearing for the intervenor/victim's family and perused the materials available on record.

11. It is oft quoted that "*Bail is rule and Jail is exception*" and this Court has all along been following the above principle in grant of bail. However, whether the facts and circumstances in this case warrant adopting the said principle or a deviation from the said rule is the need of the hour is the pivotal question that falls for consideration before this Court.

12. It is not in dispute that the appellants herein are under incarceration since 7.6.18, for over a year or so. It is also not in dispute that bail was earlier granted, but in the face of the hostile attitude exhibited by the appellants and other accused in threatening the trial Judge, by a detailed order dated 7.6.18, the bail granted to these appellants and some other accused was cancelled and, thereby, the appellants are under incarceration since 7.6.18. From the above it is abundantly clear that due to the hostile and belligerent behaviour exhibited by the appellants and other accused, the learned trial Judge, who was trying the case, on facing the hostile situation has proceeded to cancel the bail.

13. Moreover, from the charges laid against these appellants, it prima facie appears that all the accused, viz., A-1 to A-17 have collaborated together and hatched a conspiracy to do away with the deceased/victim only for the reason that the deceased belonging to an oppressed community had fallen in love with a girl belonging to the dominant community. Therefore, for all purposes, the death of the deceased squarely falls under the ambit of 'Honour Killing' and in such circumstances, it is needless to mention that the seething anger nurtured by the perpetrators of the crime may not witness any abatement, even after considerable passage of time. This is because, the accused in such cases would always find justification for committing such heinous crimes in view of the historical dominance of certain communities over the others. In such event, it is expedient to keep the accused on leash till the completion



of the trial before the Sessions Court, lest, it may lead to unforeseen and unimaginable acts being perpetrated once over. If these accused are released on bail pending conclusion of trial, it would be a travesty of justice to the parties, particularly the prosecution, since, as rightly contended by the learned State Public Prosecutor as well as the learned counsel for the victim's family, every conceivable attempt would be made by these accused to stymie and retard the progress of the trial.

14. In any event, it appears that substantial portion of trial has been completed by examining 79 witnesses, as submitted by the learned State Public Prosecutor and only official witnesses remain to be examined, which would be done expeditiously. Therefore, in the fitness of things, this Court would not venture to release these appellants on bail by allowing these appeals at this crucial point of time. In cases of honour killing, the Courts must be wary in releasing the accused on bail, particularly, when a hostile, belligerent and remorseless attitude is exhibited by the accused and the courts should always be very circumspect in releasing such suspects before the completion of the trial.

15. It is also informed during the course of hearing that the appellant in Crl. A. (MD) No.408 of 2019, who is A-12 in the pending trial was involved in the murder of his wife by shooting her to death.

16. Though this Court cannot take the above as a material piece of evidence at this point of time, nonetheless, it would also be an additive factor in this Court refusing bail to the appellants.

17. For all the reasons aforesaid, this Court is of the considered view that this is not a fit case, where the appellants could be enlarged on bail at this point of time. There being no merits, these appeals are dismissed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

GLN

To

- 1) The III Addl. Sessions Judge (PCR)
Madurai.
- 2) The Deputy Superintendent of Police
CBCID
Namakkal.



3) The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate SR-90655
+2 CC to M/s.R. VENKATESWARAN, Advocate SR-90667 & 90993
+2 C.C. to M/S.S.G.L.RISHWANTH, Advocate SR.No. 90994 & 90995
+1 CC to M/s.P.AJU TAGORE, Advocate SR-90992

**JUDGMENT IN
CRL. A (MD) NOs. 408, 424
428 & 429 OF 2019
Pronounced on
30.09.2019**

JM/18.10.2019/7P/10C