

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.8359 of 2020

1). Ramachandran M/40,
S/O. Subramani

2). Ravichandran M/38,
S/O. Subramani

... Petitioners

Vs.

TheInspector of Police,
ERUMAIPATTI Police Station,
Namakkal District
Cr.No. 183 /2020

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioners on bail in Connection with the Crime No.183 of 2020 pending on the file of respondent police.

For Petitioners : Mr . R.NALLIYAPPAN

For Respondent : Mr.S.Karthikeyan

Additional Public

Prosecutor

ORDER

The petitioners/A1 & A2, who were arrested and remanded to judicial custody on 21.04.2020 for the offence punishable under Sections 307 and 302 IPC in Crime No. 183 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioners/A1 and A2 are brothers. The 2nd petitioner had illicit relationship with one Kousalya. A2 and kousalya were constantly speaking over mobile phone which was objected by Kousalya's husband Gobi as well as her brother Gouthaman. Due to which, there was enmity between them. On 20.04.2020, the petitioners herein along with two other juveniles had created problem with Gouthaman, brother of the Kousalya and attacked him with knife and wooden logs during which, the defacto complainant suffered injuries on his stomach and deceased Gouthaman on his head and face, the defacto complainant and deceased were taken to the hospital where the Gouthaman was reported dead and the defacto complainant was treated as in patient for a day. Hence the complaint.

3. The learned counsel for the petitioners would submit that on 20.04.2020 at about 07.00 pm. on the side of the defacto complainant, eight persons armed with wooden log were engaged, and attacked the petitioners, caused damages to the house and car of the petitioners. He further submits that the petitioners were brutally attacked and there was exchange of blow between the petitioner's group and the defacto complainant's group during which, A2 sustained fracture injury on the chin and jaw and A1 sustained grievous injuries and therefore a case was registered against the defacto complainant and others in Crime No.184 of 2020 under section 147,148, 294 (b), 324, 427 and 506 (ii) IPC. The petitioners were admitted in the Government Hospital, Namakkal and they were taking treatment as in patients. The petitioners are not reason for the death of the said Gouthaman and for the injuries sustained by the defacto complainant. It was the defacto complainant's group who were aggressor armed with wooden log and knife, attacked the petitioners and it turned to be a group clash free flow and exchange of blows. Hence, he prays for grant of bail to the petitioners.

4. The learned Additional Public Prosecutor would submit that the petitioners are A1 and A2. A2 was having illicit relationship with Kousalya and they were constantly speaking each other over mobile phone. Which was objected by the Kousalya's husband/defacto complainant/Gobi as well as her brother Gowthaman. Earlier to this, there was a case registered in Crime No.262 of 2018 for the offences under sections 294(b), 506(ii) against the petitioners which is now taken on file in CC.No.289 of 2019 and pending trial on the file of the Judicial Magistrate-I, Namakkal. Hence there was prior enmity between them. While so, on 20.04.2020, the defacto complainant and the petitioners, picked up quarrel during which, A1 and A2 armed with knife and two other Juvenile assaulted the deceased as well as the defacto complainant. On the side of the defacto complainant eight persons joined with them and attacked the petitioners for which a case was registered in Crime No.184 of 2020. In the present case, due to the attack by the petitioners, the said Gouthaman succumbed to injuries and the defacto complainant sustained injuries. Further in this case the juveniles are hirelings who are

in the age of around 17 years were engaged to finish off the said Gouthaman and the defacto complainant Gobi. Luckily, the defacto complainant/Gobi escaped from the attack. Hence objected for the bail of the petitioners.

5. It is to be seen that A1 and A2 had engaged two Juveniles in the age 17 years who are said to be hirelings and who have participated in the attack. The respondent police to take note that as per Juveniles Justice (Care and Protection of Children) Act 2015, Section 2(33) heinous offences is defined. In Section 15 of the Act, heinous offences committed by Child is elaborated, as per Section 18(3) of the Act, orders to be passed by board, need to proceed against the Child as an adult, as per Section 2(20) of the Act, such cases be proceeded before the “children Court”. This case is of heinous offences. The investigating officer to take appropriate steps as per Juvenile Justice Act 2015 in proceeding against the Juveniles who are around 17 years of age.

6. Considering the facts of the case, it is seen that A1 and A2 had sustained grievous injuries and they were admitted in a Government Hospital, Namakkal, with fracture and taken treatment as inpatient for three days. It is also seen that the defacto complainant's group consisting of eight persons attacked A1 and A2 and there seemed to be free flow of attack between both the groups. Further there is a case in counter. Considering the above facts and circumstances, this court is inclined to grant bail to the petitioners, subject to the following conditions;

(a) the petitioners shall execute their own bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each before the Superintendent of the concerned prison, in which the petitioners have been confined on their release;

(b) the petitioners shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the concerned Magistrate within a period of 15 days from the date of lifting of lockdown and commencement of regular functioning of Court below, failing which the bail granted by this Court shall stand dismissed automatically;

(c) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(d) the petitioners shall report before the respondent police as and when required for interrogation;

(e) the petitioners shall not commit any offences of similar nature;

(f) the petitioners shall not abscond either during investigation or trial;

(g) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(h) 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]***.

(i) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

6. With the above directions, this Criminal Original Petition is ordered.

09.06.2020

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To

1. The learned Principal Sessions Judge, Namakkal.
2. The learned Judicial Magistrate No.1, Namakkal.
3. The Inspector of Police,

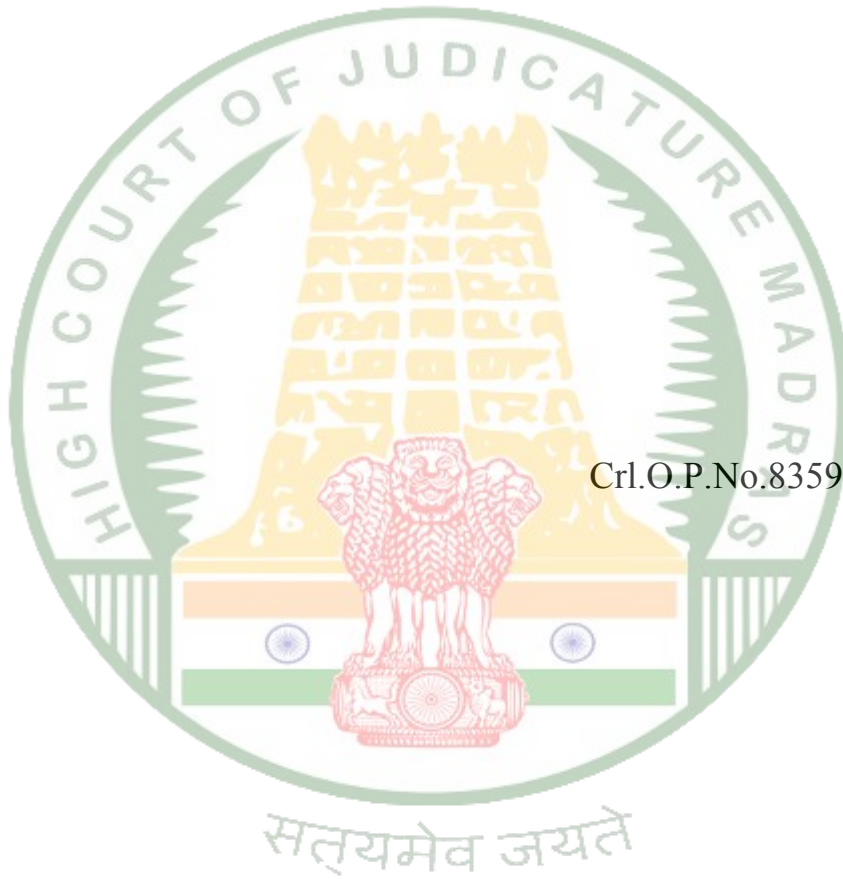
ERUMAIPATTI Police Station,
Namakkal District.

4. The Public Prosecutor,
High Court of Madras,
Chennai-104.
5. The Superintendent,
Central Prison, Salem.

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M.NIRMAL KUMAR.J.

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