

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.08.2020	Delivered on 28.08.2020
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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

Crl.O.P.Nos.8488 and 8495 of 2020

K.V.Sayan ... Petitioner in Crl. OP No.8488/2020

Manoj @ Valayar Manoj Petitioner in Crl. OP No.8495/2020

Vs.

The State rep. By
Inspector of Police,
Kotagiri Police Station,
Kotagiri, The Nilgiris. ... Respondent in Crl. OP No.8488/2020

The State rep. By
Inspector of Police,
Shollurmattam Police Station,
Kotagiri, The Nilgiris. ... Respondent in Crl. OP No.8495/2020

Prayer: Criminal Original Petitions filed under Section 439 of Cr.P.C. to enlarge the petitioners on bail in SC No. 2 of 2018 on the file of the Sessions Judge, the Nilgiris.

For Petitioners : Mr.N.R.Elango, Senior Counsel
for Mr.E.Raj Thilak

For Respondents : Mr.A.Natarajan, State Public Prosecutor
Assisted by:
Mr.M.Mohamed Muzammil
Government Advocate (Crl. Side)

COMMON ORDER

This matter is taken up for hearing through Video-Conferencing with the consent of the learned senior counsel on either side.

The petitioners who were originally arrayed as accused Nos.2 and 3 in SC No.2 of 2018 on the file of the Principal Session Judge, Nilgiris, were shown as accused Nos.1 and 2, after the death of the first accused Kanagaraj, in a road accident.

2. The petitioners are charged with offences under Sections 120(b), 148, 449, 324, 342, 458, 395 read with 397, 302 and 396 of the Indian Penal Code. The petitioner in Criminal OP No.8488 of 2020 was arrested on 06.06.2017 when he was hospitalised, after having met with an accident on 29.04.2017. The petitioner in Criminal OP No.8495 of 2020 was arrested on 01.05.2017.

Since charge sheet was not filed within 90 days, the petitioner in Crl.OP No.8488 of 2020 was released on default bail by the learned Judicial Magistrate, Kotagiri, on 11.09.2017 in Criminal Miscellaneous Petition No.1881 of 2017 under Section 167(2) of the Code of Criminal Procedure. The petitioner in Criminal OP No.8495 of 2020 was released on regular bail by the learned Session Judge, Nilgiris at Udhagamandalam, on 15.12.2017 in Criminal Miscellaneous Petition No.941 of 2017. As there were several accused in SC No.2 of 2018, the framing of charges itself was delayed. In the meantime, on 11.01.2019 one Mathew Samuel, released a video containing an interview by the petitioners in these Criminal OPs viz., A1 and A2 in SC No.2 of 2018, claiming that the original first accused in the case Kanagaraj (deceased) had told them that the offence is being committed under the instructions of the incumbent Chief Minister of Tamil Nadu and the said Kanagaraj also assured them that all arrangements would be made for their safe passage after the commission of the offence.

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3. I am not reproducing the transcript of the interview, though it has been made available to me, since the interview was on social media for quite some time and the contents of it are very well known to the public at large also. Soon

after the publication of the interview in social media, an FIR was registered in Crime No.21 of 2019 on a complaint made by one Rajsathiyan, S/o.Rajan Chellapa. Acting upon the said complaint, both the petitioners were arrested at Delhi and were produced before the Chief Metropolitan Magistrate at Egmore. It is stated that remand was refused by the learned Magistrate. Thereafter, an application for cancellation of bail was moved before the learned Sessions Judge, Nilgiris at Udhagamandalam, on 08.02.2019 in Criminal Miscellaneous Petition No.53 of 2019. It is also stated that a suit in CS No.82 of 2019 has been filed seeking damages for defamation against the publisher of the interview as well as the petitioners herein and the same is pending on the file of this Court.

4. It is also seen that this Court has stayed further investigation in Crime No.21 of 2019 by an order dated 29.01.2019. It is further claimed that an FIR in FIR No.63 of 2019 was registered against the petitioners on 01.02.2019 at Udhagamandalam Police Station based on a complaint made by one Shantha wife of Nagarajan, who happens to be a list witness in SC No.2 of 2018 alleging that certain persons claiming to be connected with the petitioners herein had threatened her and her family. It is seen from the records that another

FIR in Crime No.71 of 2019 was lodged at the instance of one Pratheep, who is also a list witness in SC No.2 of 2018, claiming that certain persons claiming to be representing the petitioners had threatened him with dire consequences, if he is deposed against the petitioners in SC No.2 of 2018.

5. In the interregnum, the petitioner in Crl. OP. No.8488 of 2020 had filed a petition under Section 164 of the Code of Criminal Procedure, seeking to record his statements with reference to the interview dated 11.01.2019, in the said affidavit it is claimed that they stand by their statements made in the interview. The said petition was returned by the Court for certain compliances on 08.02.2019 and was not entertained.

6. While things stood thus, the learned Sessions Judge, Udhagamandalam, by his order dated 08.02.2019 cancelled the bail granted to the petitioners. Upon cancellation of bail, the petitioners were arrested on 02.03.2019. The order cancelling bail was challenged by the petitioners in Crl OP No.4533 of 2019 before this Court. This Court by order dated 06.03.2019, dismissed the OP affirming the order cancelling bail.

7. While things stood thus, the District Collector, Nilgiris passed an order of detention on 21.03.2019 detaining the petitioner in Criminal Miscellaneous Petition No.8488 of 2020 under Act 14 of 82. The said detention order was challenged by the petitioner in HCP No.1507 of 2019 and the said detention was quashed by the Division Bench of this Court on 06.11.2019. Thereafter, the petitioners moved the District Court, Udthagamandalam, seeking bail in Criminal Miscellaneous Petition No.750 of 2019 and the same came to be dismissed on 18.11.2019, on the ground that the order made in CMP No.53 of 2019 cancelling the bail has been confirmed by this Court.

8. Two other petitions for grant of bail were filed by the petitioners herein, in Crl.MP. Nos.52 and 53 of 2020, before the learned Sessions Judge, Udthagamandalam, which were also dismissed. The petitioner in Crl. OP No.8488 of 2020 had filed Crl. OP No.6346 of 2020 in this Court seeking bail and the same came to be dismissed by me on 15.04.2020 on the ground that the trial is at advanced stage and the cancellation of bail has also been confirmed by this Court. The petitioners have come up with these bail petitions seeking enlargement on bail.

9. The petitioners would aver that since the investigation itself is over and charge sheet has been filed the incarceration of the petitioners is quite unnecessary, unless it is shown that the release of the petitioners on bail would affect the trial of the Sessions Case in SC No.2 of 2018. It is also the contention of the petitioners that the fact that they had given an interview which was in exercise of their freedom of speech and expression, cannot be a ground for their incarceration forever. It is also pointed out that all the other accused except one have been enlarged on bail.

10. The claim of the prosecution that the petitioners are involved in a heinous crime and therefore, there should not be granted bail, cannot hold water since the petitioner in Crl. OP No.8488 of 2020 was released on default bail and the learned Session Judge, Udhagamandalam, had granted bail on merits to the petitioner in Crl.OP No.8495 of 2020, as early as on 15.12.2017. It is also claimed that the confirmation of the order cancelling bail cannot stand in the way of this Court, considering the bail applications of the petitioners.

11. The pendency of the suit as well as the stay of further proceedings in Crime No.21 of 2019 are also pointed out to buttress the contention of the

petitioners that their detention is unnecessary and they should be released on bail. The prosecution has filed a counter affidavit contending that the petitioners are not entitled to bail, since they have misused the liberty granted to them by the Courts. It is claimed that the interview that was given by the petitioners on 11.01.2019 was with intention of misleading the prosecution and also with an intention of instilling a fear in the minds of the witnesses by claiming that the offence itself was committed at the instance of the incumbent Chief Minister of the State.

12. The prosecution would contend that the statements made in the interview would have a chilling effect on the witnesses, who are yet to be examined by the prosecution as the petitioners in the interview had claimed that the offence itself was committed as per the directions of the incumbent Chief Minister of the State. The prosecution would also contend that the learned Session Judge, while cancelling the bail had concluded that the interview has the effect of interfering with the course of administration of justice and fair trial. The said finding of the learned Session Judge has been confirmed by this Court in Crl OP No.4533 of 2019 and the petitioners have not made out any case of change of circumstances to enable this Court to take a different view in

these bail petitions. The prosecution would further submit that the conclusions of the learned Single Judge, who decided the Crl. OP No.4533 of 2019 would be binding on this Court when it considers the effect of the interview as a ground for cancellation of bail.

13. I have heard Mr.N.R.Elango, learned Senior Counsel appearing for Mr.E.Raj Thilak, for the petitioners and Mr.A.Natarajan, learned Public Prosecutor, assisted by Mr.M.Mohamed Muzammil, Government Advocate (Crl. Side), appearing for the respondent/State.

14. Mr.N.R.Elango, learned Senior Counsel appearing for the petitioners would submit that the conditions for grant of bail have been laid down by the Hon'ble Supreme Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and another, reported in (2010) 14 SCC 496***. Unless it is shown that the petitioners come within any of the disqualifying factors set out by the Hon'ble Supreme Court in the said judgment, the petitioners would be entitled to bail. He would also reemphasise the established principle of law that *bail is a rule and jail is an exception*. Elaborating on his submissions, the learned Senior Counsel would submit that while considering these applications for bail, this Court need

not feel bound by the findings recorded by the learned Single Judge in Crl OP No.4533 of 2019 since, according to him, in the original petition seeking cancellation of bail, the Court was concerned with the reasons assigned by the learned Sessions Judge for cancellation of bail and it was not considering a petition for grant of bail. He would also submit that some of the observations made by the learned Single Judge, who disposed of Crl. OP No.4533 of 2019 are beyond the scope of the original petition which was a challenge to the order cancelling bail.

15. Mr.N.R.Elango, learned Senior Counsel appearing for the petitioners would also point out that even as early as on 02.02.2019, the petitioners have approached the Sessions Court with an application seeking to record their statements under Section 164 of the Code of Criminal Procedure, regarding the interview made by them on 11.01.2019. Therefore, according to the learned Senior Counsel, a right is vested in the accused persons to state the truth, before the Court at any point of time and the mere fact that they chose to divulge the truth, while he was on bail cannot be a ground for his incarceration throughout the trial.

16. Referring to certain observations of this Court in the order made in Crl. OP No.4533 of 2019 particularly in relation to the interview and the effect of the interview, the learned Senior Counsel would submit that these observations of the Court are not binding on me, when I consider the bail petition. He would also refer to Section 10 of the Evidence Act, to contend that the petitioners being co-conspirators with the deceased Kanagaraj, their statements about the conspiracy cannot be said to be hearsay.

17. As regards the two other FIRs filed in Crime Nos.63 of 2019 and 71 of 2019, Mr.N.R.Elango, learned Senior Counsel would take me through the contents of the said First Information Reports to point out that there is not even the reference to the petitioners in the FIR in Crime No.63 of 2019. However, in the charge sheet which was laid in the case on 29.05.2019 an occurrence that said to have taken place on 05.02.2019, has been included. The learned Senior Counsel would further argue that even in the FIR in Crime No.71 of 2019, it is not claimed that the petitioners threatened the said witness. It is only stated that some unidentified persons had threatened the said witness. It is the strenuous submission of the learned Senior Counsel for the petitioners that these two FIRs do not make out anything to conclude that the petitioners are guilty of

threatening the witnesses for the prosecution. The learned Senior Counsel would also point out that there has been a delay in registration of the FIR in FIR No.63 of 2019, where the complaint was given on 15.01.2019, the FIR came to be registered only on 04.02.2019.

18. These instances, according to the learned Senior Counsel have been brought about by the prosecution only to strengthen their case for cancellation of bail that was pending before the learned Sessions Judge, Uthagamandalam, as on the date of the occurrences. The learned Senior Counsel, would make it very clear that he is not inviting this Court to either review or test the correctness of the order in Crl OP No.4533 of 2019. The learned Senior Counsel would submit that *de hors* the said observations, this Court has the power to consider the application for grant of bail, if the other conditions are satisfied.

19. Countering the said submissions Mr.A.Natarajan, learned Public Prosecutor would vehemently argue that the contents of the interview that was published on 11.01.2019 will undoubtedly have an effect on the prosecution case and it would amount to an attempt to interfere with the course of justice.

The petitioners, who were favoured with the bail orders by the Court have, according to the learned Public Prosecutor, misused the liberty and chosen to make sweeping allegations against the incumbent Chief Minister of the State only with the view to send strong signals to the witnesses, who are to be examined on the side of the prosecution that this being a high profile case, they shall not speak the truth before the Court.

20. In order to buttress his submissions, the learned Public Prosecutor would point out that the petitioners who had let out on bail, even in the year 2017, i.e., on 11.09.2017 and 15.12.2017 have chosen to go public nearly more than a year after their release on bail and make scandalous and scurrilous allegations against the incumbent Chief Minister, only with a view to divert the course of justice and obtain an undue advantage over the prosecution.

21. The learned Public Prosecutor would also vehemently contend that the observations and findings of this Court in Crl OP No.4533 of 2019 as valid grounds for cancellation of bail do exist even as of today and this Court cannot take a contradictory view *de hors* the findings of this Court in Criminal OP No.4533 of 2019. Inviting my attention to the grounds on which the bail was

cancelled, the learned Public Prosecutor would submit that the cancellation of the bail was on the ground that the act of the petitioners in giving an interview on 11.01.2019 making various allegations against the incumbent Chief Minister and connecting him to the crime was found to be an act which would interfere with the course of administration of justice and the said findings of the learned Sessions Judge have been confirmed by this Court in Crl. OP No.4533 of 2019, the learned Public Prosecutor would submit that those findings having become final are binding on me.

22. The learned Public Prosecutor would further contend that the said threat still persists and the effect of the interview would still be ringing in the minds of the prosecution witnesses, who are to be examined in this case and there is every possibility of the petitioners repeating the act, if they are enlarged on bail. Therefore, according to the learned Public Prosecutor, the petitioners are not entitled to bail.

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23. Reliance is also place by the learned Public Prosecutor on the judgment in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and another***, referred to supra, and the judgment of the Hon'ble Supreme Court in ***Central***

Bureau of Investigation, Hyderabad v. Subramani Gopalakrishnan and another, reported in 2011 (5) SCC 296, in support his contention that the grant of bail is not automatic and the Court will have to take into account the conduct of the accused also. Reliance is also placed on the judgment of the Hon'ble Supreme Court in ***M.P.Lohia and Ors. v. State of West Bengal, reported in (2005) 2 SCC 686***, wherein the Hon'ble Supreme Court has condemned the practice of publication of articles regarding a matter which is *sub judice* as it would interfere with the course of the judicial proceedings. With reference to the attempt made by the petitioners to have them examined under Section 164 of the Criminal Procedure Code, the learned Public Prosecutor would rely upon the judgment of the Hon'ble Supreme Court in ***Jogendra Nahak and Ors. v. State of Orissa and Ors, reported in 2000 (1) SCC 272***, wherein the Hon'ble Supreme court has held that the Court need not record statements of persons, who are not sponsored by the investigating officer under Section 164 (1) of the Code of Criminal Procedure. Lastly, the learned Public Prosecutor would invite my attention to an order passed by this Court in ***Criminal OP No.11805 of 2020*** directing the trial to be completed within a period of three months from the date of the receipt of copy of the order.

24. I have considered the rival submissions.

25. Before proceeding further to examine the merits and demerits of the rival claims, it will be pertinent to extract the factors that are to be borne in mind while considering the application for bail as laid down by the Hon'ble Supreme Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and another***, case referred to supra, they are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behavior, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail."*

If the cases on hand are to be tested on the aforesaid principles laid down by the Hon'ble Supreme Court the stipulations 1, 2 and 3 need not be gone into, since the petitioners were released on bail earlier by the Magistrate and the Sessions Court and the said orders releasing the petitioners on bail were not challenged by the prosecution. The cancellation of the bail granted was on a subsequent event which the Court thought would have the effect of interfering with the administration of justice.

26. No doubt there is an attempt made by the prosecution to project the cases of threatening of witnesses by the petitioners, having seen the contents of the FIRs and the contents of the complaints made by those two list witnesses viz. L.W.22 and L.W.24 in SC No.2 of 2018, I do not think that there is enough substance in the said complaints to conclude that those instances alleged, even if true, would have the effect of influencing those witnesses to detract or feel influenced or threatened by the petitioners from speaking the truth. But the condition Nos.7 and 8, extracted supra, will have to be borne in mind while considering an application for bail particularly when the bail granted already has been cancelled by the District Court on certain grounds and the same has been affirmed by this Court and this Court had recorded certain factual findings

in the course of the order. Therefore, the task before me is not just consideration of the bail application but also to test the binding nature of the findings rendered in the earlier proceedings by a Co-equal Bench.

27. The condition No.7 enumerated by the Hon'ble Supreme Court reads as follows:

“reasonable apprehension of the witnesses being influenced”

This would not only take within its ambit a direct threat to the witness, but also an indirect method by which a sense of fear is instilled in the witness, so that the witness would desist from speaking the truth in the Court and condition No.8, ***“danger, of course, of justice being thwarted by grant of bail”*** would definitely take within its ambit an attempt made by the accused persons to implicate VIPs or VVIPs in the commission of the offence so that the direction of the trial gets diverted.

28. A perusal of the order of the learned Session Judge made in Criminal MP No.53 of 2019 cancelling the bail would show that the main grounds on which the bail was cancelled was that the interview and particularly the contents of the interview would definitely affect the course of trial and the fact

that the petitioners have chosen to claim that the offence itself was committed at the instance of the incumbent Chief Minister of the State would have a negative impact on the witnesses, who are yet to depose in the case, which according to the learned Sessions Judge would amount to interference with the course of justice. The said order was confirmed by this Court in Crl. OP No.4533 of 2019, wherein this Court has observed as follows:

“Though the statements made by the petitioners are inadmissible in evidence it amounts to direct interference with the administration of justice when the trial is pending. Further this interview was given by the petitioners after more than one year from the date of filing of charge. Till today there is no explanation from the petitioners about the purpose for which the interview was given by them.”

“The said interview was given by the petitioners only to misdirect with intention to deviate the trial Court and also to tarnish the name of the present Hon’ble Chief Minister of Tamil Nadu Thiru.Edappadi K.Palaniswami.”

29. The question that looms large now is as to whether, I could take a different view on the effect of the interview. Though Mr.N.R.Elango, learned Senior Counsel appearing for the petitioners would submit that those findings recorded by the learned Judge will not stand in the way and it will not amount to a review, if I am to independently examine the effect of the interview, I am afraid that such an exercise would amount to judicial indiscipline on my part.

30. The learned Single Judge who heard the Criminal. OP No.4533 of 2019 has come to a factual conclusion on the effect of the interview and just because I am considering the effect of the interview in a different context, I do not think I can take a different view and conclude that the interview did not have the effect as found by the learned Single Judge on an earlier occasion. Once I reach the said conclusion, I have no other option but to concur with the findings of the learned Judge, whatever I might have thought, if the matter had come before me as *res integra*. So long as the findings in Crl.OP No.4533 of 2019 stand, I do not think I can over reach the said findings and conclude that the action of the petitioners in giving the interview would not amount to interfering with the course of justice or influencing the witnesses.

31. I therefore do not think that it would be in the interest of justice to

enlarge the petitioners on bail. The fact that this Court has directed the trial to be completed within a period of three months should also be borne in mind, while considering the applications. I therefore do not see any reason to grant bail to the petitioners. Hence these Criminal Original Petitions are **dismissed**, the Trial Court shall adhere to the directions made in Criminal OP No.11805 of 2020 in completing the trial within the time framed fixed by this Court.

28.08.2020

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Index: Yes/No
speaking order/Non speaking order

Note: Issue Order copy today

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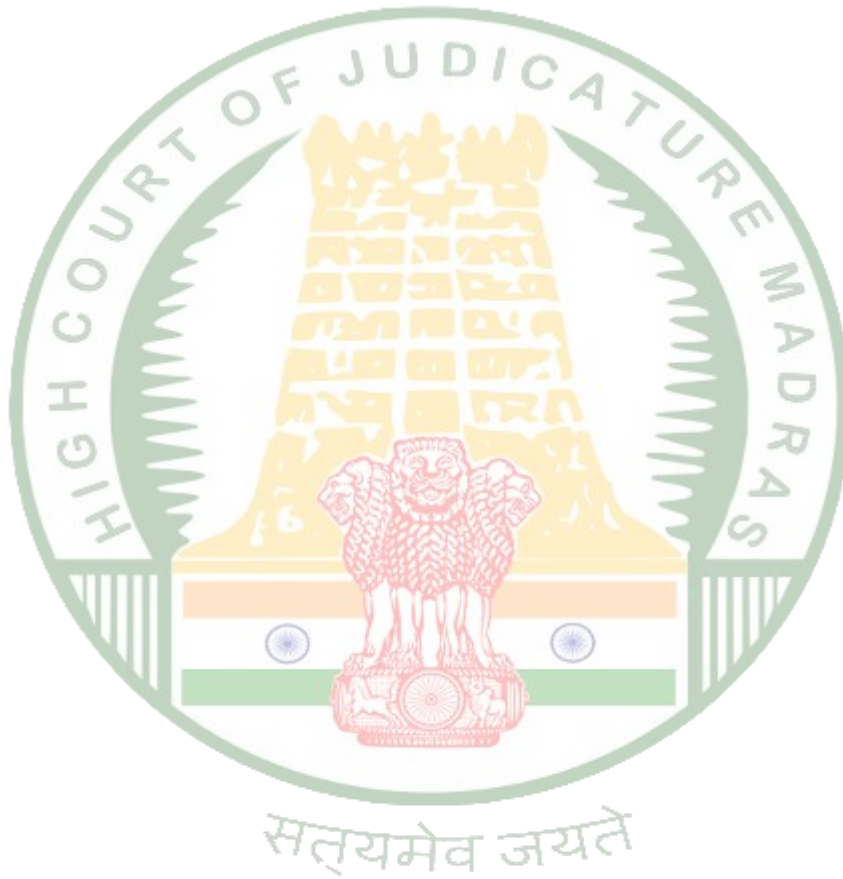
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