

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.06.2020

CORAM

THE HONOURABLE MR.JUSTICE. M. NIRMAL KUMAR

Cr1. O.P. No.8896 of 2020

Gopi

... Petitioner

Vs.

The State Rep. by,
The Inspector of Police,
E-5, Sholavaram Police Station,
Thiruvallur District.
(Crime No.1122 of 2020)

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C, to enlarge the Petitioner on bail in Crime No.1122 of 2020 pending on the file of the respondent police.

For Petitioner : Mr. M. Sathyasai Eswari

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

The Petitioner, who was arrested and remanded to judicial custody on 22.04.2020 for the alleged offence punishable under Section 302 of IPC in Crime No.1122 of 2020, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant who is the father of the deceased had lodged a complaint before the respondent police. The deceased Balaji who was a painter normally used to stand with his friends in Solaiyammal Nagar. Three days prior to the occurrence, the deceased along with his friends had picked up a quarrel and fought with one Maharaja and his brother Elayaraja and also with his friends in Alamadeen Street. Due to this enmity, on 22.04.2020 at about 7.00 p.m., while the deceased Balaji was proceeding to Solayammal Nagar, was assaulted by the said Maharaja and Elayaraja and others with deadly weapon on his head, hand and leg as a result of which, the deceased fell down on the floor with severe blood injuries and thereafter the father of the deceased had come to the spot and attempted to take the deceased to the hospital within which, the deceased died. Hence the complaint has been registered.

3. The learned counsel for the petitioner would submit that there was some previous enmity between Maharaja, Elayaraja and his friends in which, the deceased along with his friends had picked up quarrel as a result they got fight and threatened them. He further submitted that the petitioner was not present on the earlier occasion

as well as on the date of alleged occurrence. Since, the petitioner is being friend of the named accused, he has been falsely implicated in this case. The petitioner's name was not found in the complaint. However, he has been implicated as an accused in this case only based on the confession of co-accused. Even as per the prosecution, the only allegation against the petitioner is that he was present with knife when the deceased was attacked by the other accused persons. Hence he prays for grant of bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that there are totally 8 accused in this case and that the present petitioner is A5. A1 to A6 have been arrested, A7 and A2 are still at large. He would further submit that the deceased Balaji is a painter, he used to roam around with his friends. While so, he had picked up quarrel with the accused group three days prior to the occurrence and threatened and warned them by showing knife for which, on the day of occurrence, the group belonging to Maharaja and Elayaraja attacked the deceased as a result of which, he died. The allegation against the petitioner is that, the petitioner had questioned the deceased and he was present in the scene of occurrence with other accused with knife. He submitted that the petitioner has got no bad antecedents. However, he vehemently opposed for the grant of bail to the petitioner.

5. Considering the facts and circumstances of the case and further taking into consideration that there is no specific overt-act against the petitioner for attacking the deceased and the petitioner's name was not found in the complaint and that he has been arrayed as an accused in this case only based on the confession of the co-accused and also taking note of the fact that the petitioner is in judicial custody from 22.04.2020, this Court is inclined to grant bail to the petitioner, subject to the following conditions:

- (a) the petitioner is ordered to be released on bail on executing his own bond for a sum of Rs.10,000/- (Rupees Ten thousand only) before the Superintendent of the concerned prison, in which the petitioner has been confined on his release;
- (b) the petitioner 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 petitioner shall report before the respondent police for a period of two weeks and thereafter as and when required for interrogation;

- (e) the petitioner shall not commit any offences of similar nature;
- (f) the petitioner shall not abscond either during investigation or trial;
- (g) the petitioner 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.

-sd/-

18/06/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE, NO. II, PONNERI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

3 THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
E-5, SHOLAVARAM POLICE STATION,
THIRUVALLUR DISTRICT.

CC to M/S.M.SATHYASAI ESWARI Advocate on payment of necessary charges

CRL OP.8896/2020

Date :18/06/2020

RVR 29/09/2020