

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.11704 of 2020

1.S.Rajamani Mozhi
2.Chezhiyan

.. Petitioners

Vs.

The State rep. by
The Inspector of Police
B2 Tiruvallur Taluk Police Station
Tiruvallur District.
Cr.No.782 of 2020

...Respondent

Prayer: Criminal Original Petition filed under Section 438 of Criminal Procedure Code, praying to enlarge the petitioner on bail in the event of his arrest in Crime No.782 of 2020 pending investigation on the file of the respondent police.

For Petitioners : Mr.N.Poovalingam

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences under Sections 294(b), 324, 506(2) and 307 IPC later altered to 294(b) & 302 of IP, in Crime No.782 of 2020 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant one Selvanayagam is that there was a property dispute between him and his brothers for the past 20 years. While so, on 26.05.2020, when he and his son were in the fields, the accused had gone to the house of the de-facto complainant and abused the de-facto complainant's wife, namely Inbavalli with filthy language and the first accused had assaulted her with the handle of the knife on the head and that the second accused using the same knife hit his wife on the head with the handle of the knife. Thereafter, the de-facto complainant's elder brother, Arul and younger brother Parimalam had abused his wife and attacked her with wooden logs all over the body. The said occurrence was witnessed by the de-facto complainant's cousin, namely Evaal and thereafter, the de-facto complainant has admitted his wife in the Thirruvallur Government Hospital and thereafter, she was referred to Rajiv Gandhi Government Hospital, Chennai and thereafter, he has given a complaint to the respondent police on the same day viz., 26.05.2020. Initially case was registered for the offence under

Sections 294(b), 324, 506(ii) of IPC. Later, the victim died after three days and the case was altered to one under Sections 294(b) & 302 of IPC.

3.The learned counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have been falsely implicated in this case, due to a property dispute pending between them for 20 years. He would submit that the defacto complainant and the petitioners are close relatives, admittedly even as per FIR, a land dispute was pending between the petitioners and the defacto complainant for the past 20 years. Whiles, the wife of the defacto complainant has accidentally fallen down and died due to the injury sustained in her head. The defacto complainant, who was not present at the time of occurrence, in order to wreck-vengeance against the accused taking advantage of the injury sustained by his wife, had given a false complaint, as if the petitioners and their maternal uncles viz., Arul and Parimalam (A3 & A4), had assaulted his wife with the handle of knife and wooden logs, due to which, she died. Conveniently, the defacto complainant, in the complaint, had stated that his cousin one Evaal had witnessed the occurrence. Strangely, the said Evaal has not given complaint and till date no statement has been obtained from the said Evaal under Section 161 of Cr.P.C, by the respondent police. He would further submit that the said Evaal is a common relative to the petitioners as well as the defacto complainant. He would further submit that the said Evaal has informed the relatives that she had not witnessed the occurrence and that her name is wrongly included as a person who had witnessed the occurrence.

4.The learned counsel appearing for the petitioner would further submit that the said Evaal has sworn an affidavit before a Notary Public stating that she has not witnessed such an occurrence and that no statement has been obtained from her by the respondent. He would further submit that the medical report also suggest that there is no cut injury and the Doctor, who conducted autopsy has opined that the deceased died due to the injury sustained in the head and that it was a fissure fracture. He would further submit that A3 and A4, who are also related to the petitioners, were arrested and they have been released on bail by this Court in CrI.O.P.No.9563 of 2020, dated 26.06.2020. He would reiterate that a case of injury sustained due to a fall has been projected as a case of murder and the defacto complainant has maliciously implicated them. Therefore, he prays for grant of anticipatory bail to the petitioners.

5.The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioners, who are the brothers of the defacto complainant along with their relatives, have assaulted the defacto complainant's wife with the handle of the knife, due to which, she has sustained head injury and died after three days. He would further submit that even as per FIR, the defacto complainant has not seen the occurrence, whereas one Evaal who is a common relative to the defacto complainant as well as the accused had witnessed the occurrence and her name is mentioned in the FIR.

6.This case was originally listed on 04.08.2020. This Court taking into account the submissions made by the learned counsel appearing for the petitioners and also placing reliance on the sworn affidavit filed by the alleged eye witness one Evaal, had called for report from the respondent and today written instructions dated 23.09.2020 has been received. In the written instructions, it has been stated that the statement recorded from the eye witness Evaal under Section 161 Cr.P.C. has not been sent to the Court and it would be submitted to the Court at the earliest.

7.Heard the learned counsels. Perused the documents on record.

8.The incident had happened on 26.05.2020 and the case was registered for the offences under Sections 294(b), 324, 506(ii) and 307 of IPC later, the victim had died on 29.05.2020 and thereafter, the case was altered to one under Sections 294(b) and 302 of IPC. Though, the Statement of Evaal is stated to have recorded on 26.05.2020, it had not been sent to the concerned Court till 23.09.2020. The said Evaal has also filed the notarized affidavit before this Court stating that on 26.05.2020, she has seen her relative/the victim lying down in her house and that her son one Selvakumar was standing near by her. Thereafter, they spilled water on her face and that she woke up and she was taken by her son Selvakumar to Tiruvallur Government Hospital and later, the defacto complainant had come there and enquired with the people around and thereafter, she had accompanied the defacto complainant/Selvanayagam to the hospital and that the victim who was in the hospital was vomiting and that she was with the victim till 11.00 p.m., at Tiruvallur Government Hospital and thereafter, the victim was taken to Chennai Government Hospital in an Ambulance. She had further stated that other than that she had not seen any thing. The notarized affidavit of the said Evaal and the written instructions of the respondent police dated 23.09.2020 are taken on record.

9. Considering the facts and circumstances of the case, and the submissions made by the learned counsels, this Court is inclined to grant anticipatory bail to the petitioners, subject to the following conditions :

[a] Accordingly, the petitioners are ordered to be released on bail, in the event of arrest or on their appearance, within a period of fifteen days from the date on which the copy of the order is made ready, before the learned Judicial Magistrate No.I, Tiruvallur, on condition that the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which , the petition for anticipatory bail shall stand dismissed and on further condition that:

[b] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[c] the petitioners shall report before the respondent police daily at 10.30 a.m until further orders.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioners shall not abscond either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-

24/09/2020

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.I, TIRUVALLUR

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
B2 TIRUVALLUR TALUK POLICE STATION,
TIRUVALLUR DISTRICT.

CC to N.POOVANALINGAM Advocate on payment of necessary charges
sr.6475

CRL OP.11704/2020

Date :24/09/2020

RVR 12/10/2020