

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fourteenth day of September Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice C.V. KARTHIKEYAN

CRIMINAL ORIGINAL PETITION No.11042 of 2020

IN C.C.NO.93 OF 2018

[ON THE FILE OF JUDICIAL MAGISTRATE-VI, COIMBATORE]

1 JULFIGAR [PETITIONERS / ACCUSED]
2 AMITHKUMAR

Vs

THE STATE REP.BY [RESPONDENT / COMPLAINANT]
INSPECTOR OF POLICE,
E-2, PEELAMEDU CRIME POLICE STATION,
COIMBATORE DISTRICT.
CR.NO.1747 OF 2017

For Petitioner : M/S. R.SANKARASUBBU Advocate

For Respondent : M/S. V.SHARADHA DEVI, Govt. Advocate

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

Petition seeking bail filed by the 3rd and 6th accused who are facing trial in C.C.No.93 of 2018, which is now pending before the Judicial Magistrate No-II, Coimbatore. C.C.No.93 of 2018 is the result of investigation in Crime No.1747 of 2017 on the file of the Inspector of Police, E-2, Peelamedu Crime Police Station, Coimbatore. The offences taken cognizance in the calender case are Sections 457, 380 r/w. 120 (B) of the Indian Penal Code.

2.The learned Government Advocate (Criminal Side) stated that the charge is also under Section 25 (1-B) of the Arms Act, but it is not clear whether charges had been framed under that Section, because in the status report filed by the Investigation Officer the only offences shown are under Sections 457 and 380 of I.P.C.,

3.The main ground on which, Ms.V.Sharadha Devi, learned Government Advocate (Criminal Side), opposed the grant of any consideration in the petition, is that the accused who are ranked as A3 and A6 have a series of earlier cases registered against them in various States namely, Andra Pradesh, Karnataka, Maharastra, Telungana, Kerala, Goa and in Tamil Nadu. It is stated that there are as many as 16 cases registered against the accused and all of them are theft of money from ATMs, at various places.

4. There are other accused who have not approached this Court.

5. The accused have been in custody from 15.12.2017.

6. The learned Government Advocate (Criminal Side), quite apart from pointing out the antecedents of the accused also relied on AIR 2007 SC 451, Rajesh Ranjan Yadav V. CBI through its Director, wherein, the Hon'ble Supreme Court had stated that though one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court should also take into consideration among other facts, the interest of the society.

7. The learned Government Advocate (Criminal Side), also relied on AIR 2005 SC 921, Kalyan Chandra Sarkar and Ors. V. Rajesh Ranjan and Ors., in which, in paragraph 18, the Hon'ble Supreme Court had held as follows:

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so."

8.The learned Government Advocate also relied on 2009 CrLJ 3877, Md.Shahabuddin V. State of Bihar, which was also an application seeking bail, wherein, the accused had been charged with offences under Sections 414 of I.P.C and 25(1-B) (a) and 26 of the Arms Act, and stated that the accused cannot claim prejudice, particularly, when the stage of the trial will have to be examined.

9.The learned Government Advocate (Criminal Side) also relied on 2007 CrLJ 3241, In Re: 122 Prisoners, which was an issue under "plea-bargaining". It is to be mentioned that plea-bargaining as a concept is not prevalent, and is not substantially followed in the State of Tamil Nadu.

10.In view of these circumstances, the learned Government Advocate (Criminal Side) very strongly urged that this Court should not consider the bail petition.

11.This submission by the learned Government Advocate (Criminal Side) had been equally strongly refuted by Mr.R.Sankarasubbu, learned counsel for the petitioners. It is his contention, that the entire trial is being conducted by the Magistrate and there are stipulations and guidelines given in the enactment itself and therefore stated that since there is violation of those guidelines, the petitioners are entitled for grant of bail.

12.The learned counsel for the petitioners placed reliance on the force of Article 21 of the Constitution of India and stated that when the Courts have themselves did not heed to the dictum of speedy trial, then the accused should not be put to hardship by long confinement.

13.The learned counsel also pointed out that the accused in this case, have been custody from 12.12.2017 and by any mathematical calculation, as on date, the accused has been in custody, undergoing the trial process for the past nearly three years.

14.The learned counsel drew the reference of this Court to Section 436(A) of the Code of Criminal Procedure, 1973, which had been introduced and inserted by Act 25 of 2005, with effect from 23.06.2006. Under the said provision, the maximum period for which an undertrial prisoner can be detained, has been specified as up to one-half of the maximum period of imprisonment specified for that offence under the law and if that period is extended, the provision stipulates that the said undertrial prisoner shall be released by the Court on his personal bond with or without sureties.

15.The learned counsel also placed reliance on section 437(6) of the Code of Criminal Procedure, 1973. The said provision is as follows,

"Sec.437:When bail may be taken in case of non-bailable offence.-

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6.If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs."

16.According to the said provision, in any case triable by the Magistrate, if the trial of the person is not concluded within a period of 60 days from the first date fixed for taking evidence, then if the accused has been in custody for the whole period, he shall be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

17.In this connection, the learned counsel also relied on (2000) 9 SCC 383, Mahesh Kumar Bhawsinghka V. State of Delhi. That was a case, wherein, the accused was charged with the offences under Section 120-B, 468, 477-A of I.P.C.. The Hon'ble Supreme Court observed that the amount involved was more than 1 Crore and thereafter, gave directions to the Trial Court to complete the trial within a period of three months. The Hon'ble Supreme Court, stated that the order was only a via media. They stated that if the trial court is not completed, then bail should be granted. But if the delay due to the completion of the trial is due to the accused, then he cannot be granted any concession.

18.The learned counsel also relied on the Constitutional Bench Judgment in (1992) 1 SCC 225, Abdul Rehman Antulay and Ors. V. R.S.Nayak and Anr., wherein, the provision under Article 21 of the Constitution of India, was examined and the Hon'ble Supreme Court, once again emphasised the fact that speedy trial is a right in built to every person who is forced to face the rigmarole of trial in any Court in India. It was emphasised that the accused cannot be kept under continuous detention, on the ground that though the trial has commenced it could not be completed within a specified period.

19.In this case, to determine the actual fact insofar as the flow of the trial is concerned, the Court first sought a status report from the Investigation Officer. In the status report, which is dated 18.08.2020, the Investigation Officer had stated that only one witness alone namely examination of the Investigation Officer alone has to be conducted as PW-32. It was also stated that the accused had an habit of changing counsels and quite strangely, the counsel who was changed, re-entered into the process and filed a petition under Section 311 of Cr.P.C., to once again cross examine the witnesses, who had already been cross-examined by his successor, who had replaced him and whom he again replaced.

20.This Court has nothing to add to the said facts.

21.Thereafter, the Court also sought for the report from the learned Judicial Magistrate No - II, Coimbatore. The report dated 08.09.2020 has been forwarded. It is seen that originally the case was tried by the learned Judicial Magistrate No - VI. Before that Court, ten witnesses had been witnessed and thereafter, on 07.05.2019, the case was transferred to the learned Judicial Magistrate No - II, Coimbatore, by orders of the learned Chief Judicial Magistrate, Coimbatore. It had been further stated that the trial had progressed. A perusal of the report shows that on a number of occasions, the accused were produced only through video conferencing and the reason, was non-availability of escort police. It is hoped that this was not deliberate ploy on the part of the prosecution to delay the trial.

22.At any rate, if the accused are produced through video conferencing, then there can be no possibility of examination of any of the witnesses.

23.It is then stated that the matter had been posted on 08.09.2020, but witnesses were not examined.

24.I have given deep thought to the submissions made by the R.Sankarasubbu, learned counsel for the petitioners/accused and to Ms.V.Sharadha Devi, learned Government Advocate (Criminal Side) appearing on behalf of the respondent.

25.The Court places its deep appreciation to the extremely lucid arguments advanced by both the learned counsels.

26.This is a matter where the accused had been admittedly in custody from 15.12.2017. As a matter of fact, the accused had approached this Court seeking bail on an earlier occasion also and that petition came to be considered by me on 14.10.2019 and directions were given for the progress of the trial and it was stipulated that the trial should be completed within a period of three months. This order had been pointed out by Mr.R.Sankarasubbu, and stated that trial should have been completed by 14.01.2020 and that the accused cannot be put into continuous incarceration, if the trial is not completed.

27.It is also seen from the report of the Magistrate that as on from 14.10.2019, on 18.10.2019, 24.10.2019, 05.11.2019 and 19.11.2019, the accused were produced only through video conferencing and witnesses were not produced on the side of the prosecution. It is thus seen that for nearly one month from the order of this Court, there was no progress and the blame for the same cannot be laid on the accused, since they were not produced before the Court at all. Witnesses were also not produced before the Court. The prosecution will have to answer the reasons for not producing the accused in the Court, on all those hearing dates.

28. The actual trial after the previous order of this Court commenced only on 28.11.2019. Witnesses were examined. The next hearing date was on 27.01.2020. During the entire month of December, again no witnesses were examined. It is not mentioned whether the accused were brought before the Court or not. After 27.01.2020, the trial again proceeded with and it was then posted on 28.01.2020, 10.02.2020, 12.02.2020, 13.02.2020, 17.02.2020, 24.02.2020 and 25.02.2020.

29. After that, a petition has been filed under Section 311 Cr.P.C., as stated above to recall witnesses for further cross examination. In the month of March it is seen that on 06.03.2020 and 17.03.2020, the trial progressed by cross examining witnesses recalled under Section 311 of Cr.P.C. On 20.03.2020, the accused were produced through video conferencing.

30. In view of all these facts, irrespective of the nature of offences committed, the Court has a duty to ensure that their rights for speedy trial is not frustrated. However, a balance will also have to be made, with the statement made by the learned Government Advocate (Criminal Side), that the antecedents of the accused will have to be examined and that social interest will have to be protected and that every right claimed is only subject to corresponding duties performed by the accused primarily to co-operate during trial by prompt cross examination of the prosecution witnesses.

31. In view of all these facts, I direct the learned Judicial Magistrate No -II, Coimbatore, to examine the Investigation Officer and complete the trial by 30.09.2020. No further time will be granted for completion of trial. In effect, if the learned Judicial Magistrate No - II, Coimbatore, does not complete the trial on 30.09.2020, then on and from 01.10.2020, the accused will be entitled for bail, on production of sureties as determined by the learned Magistrate. If trial is completed, then the accused will have to abide by the judgment passed.

32. However, grant of bail will not enure to the accused, if there is delay caused by the accused in completing the trial. The prosecution is directed to examine the Investigation Officer and ensure completion of trial by 30.09.2020.

33. Accordingly, this Criminal Original Petition is ordered.

-sd/-

14/09/2020

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

TRUE COPY

TO

1 THE JUDICIAL MAGISTRATE,
NO.II, COIMBATORE.

2 THE JUDICIAL MAGISTRATE,
NO.VI, COIMBATORE

3 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

5 THE INSPECTOR OF POLICE,
E-2, PEELAMEDU CRIME POLICE STATION,
COIMBATORE DISTRICT.

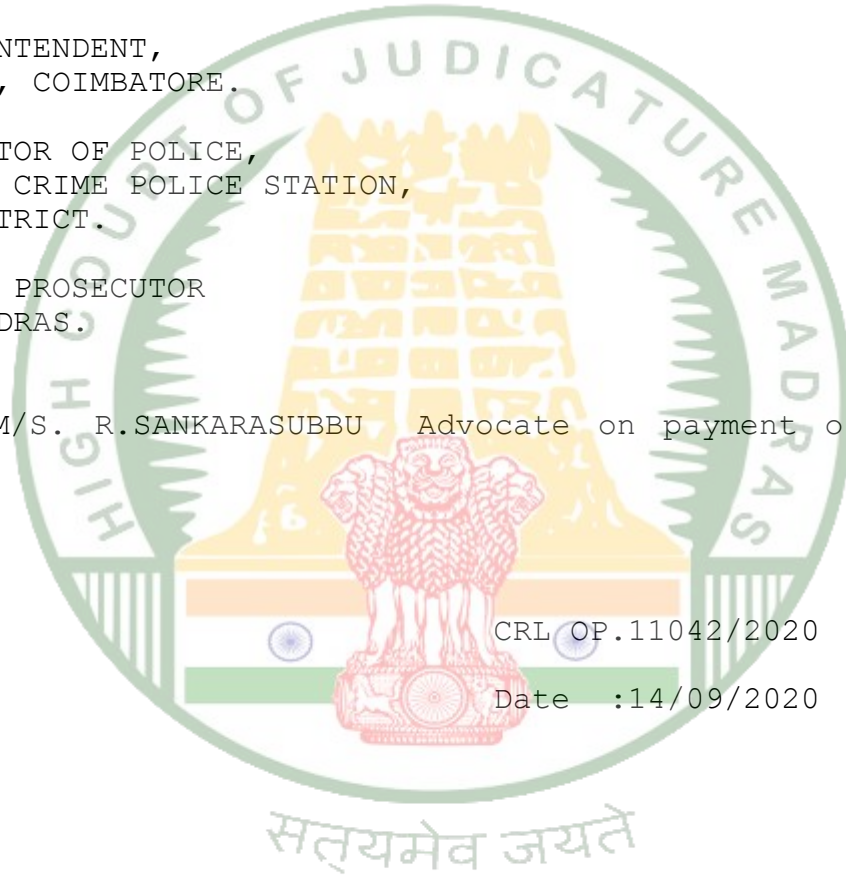
6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S. R.SANKARASUBBU Advocate on payment of necessary
charges

CRL OP.11042/2020

Date :14/09/2020

cs 15/09/2020



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