

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.11258 & 11291 of 2020

Ramkumar ... Petitioner (in Crl.OP.11258/2020)

R.Vijayaraja ... Petitioner (in Crl.OP.11291/2020)

Versus

State Rep.by

1.The Inspector of Police,
Steel Plant Police Station,
Salem District.

2.The Deputy Superintendent of Police,
CB-CID, No.85, Krishnan Street,
Nedunchalai Nagar, Suramangalam,
Salem - 636 005.

(Crime No.1 of 2020) ... Respondents (in both Crl.Op's)

COMMON PRAYER: Criminal Original Petitions filed under Section 438 Cr.P.C. to enlarge the petitioners on bail in the event of their arrest in connection with Crime No.1 of 2020 on the file of the respondent police.

For Petitioner in both Crl.OPs : Mr.M.Vijaya Ragavan

For Respondents in both Crl.OPs: Mr. M. Mohamed Riyaz,
Additional Public Prosecutor

For Intervenor in both Crl.OPs : Mr.K.Selvaraj

C O M M O N 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 punishable for the alleged offence under Section 174(iii) of Criminal Procedure Code, in Crime No.1 of 2020, on the file of the respondents, seek anticipatory bail.

2.The case of the prosecution, as unfolded on the basis of the complaint given by the intervenor/defacto complainant on 19.12.2012 is that her son Manikandan, aged 30 years was given in marriage to one Nithiya and they had three children. Her son was in the habit of consuming Ganja and he was mentally affected for two years and roaming in and around the village. He used to engage in quarrel with the Villagers. While so, on 18.12.2012 at 10.00 am, her son

quarrelled before the house of one Govindaraj. The said Govindaraj, Elumalai, Vijayaraja, Ramkumar had assaulted her son, dragged him and thrown him in front of the house of one Ganga, which is situated near the house of the defacto complainant. When the defacto complainant saw her son, he was in an unconscious stage and she had given water to her son. She had seen her son with injuries on forehead on left side with bleeding and over his back and right shoulder. Thereafter, the defacto complainant called 108 Ambulance and the staff of the Ambulance arranged one doctor, who examined her son and declared him dead. Immediately, the defacto complainant had given a complaint to the Salem Steel Plant Police Station to take action against four known persons. Initially the case was registered in Crime No.333 of 2012 under Section 174 of Cr.P.C. which was subsequently altered into one under Section 302 of IPC.

3. During the course of the investigation, one of the accused Govindaraj surrendered and gave confession statement and the same was recorded, wherein, he had stated that since the deceased misbehaved with his wife in his absence, a wordy quarrel arise between him and the deceased and he along with other accused assaulted the deceased with a Wooden Reaper. He also confessed that he called his brother-in-law Elumalai and his friends Vijayaraja and Ramkumar to help him drop the victim near his house and that they have carried the victim for some distance and thereafter unable to carry him had left him near the house of Ganga and went away. Based on the confession a Wooden Reaper used by Al Govindaraj to assault the deceased was recovered. Thereafter the body was sent for post mortem and during post mortem 11 external injuries found on the body of the deceased. However, forensic department had given a opinion that the deceased appear to have died due to the effect of Coronary artery disease. Based on the post-mortem report, on 07.12.2013 the investigation officer filed his final report by referring the case as "further action drop". When notice was issued to the defacto complainant, she filed a protest application on 26.04.2013, stating that her son was murdered by Govindaraj, his brother Jayavelu, Ramkumar and Vijayaraja and one unknown accused. Further a detailed protest petition was filed with different version. It was also stated that the accused had assaulted the defacto complainant's son with wooden log (i.e., Mattapalagai in tamil) and dragged the body of her son and dropped him before the house of one Ganga.

4. Based on the protest petition filed by the defacto complainant, the learned Judicial Magistrate ordered further investigation. Pursuant to such direction, further investigation was taken up by the first respondent/police. Thereafter, since there was no progress in the investigation, the defacto complainant filed a petition in Crl. OP. No. 28570 of 2013 before this Court to transfer the investigation pending on the file of the first respondent to some other independent investigation agency. This Court by an order dated 01.11.2018, transferred the investigation of the case to the file of the CBCID, Salem and it was re-numbered as Crime No.1 of 2020 by the second respondent. During the course of investigation, the second respondent sought for exhuming the body of the deceased and also conducted re-post mortem especially when the investigation disclosed

that the deceased had sustained various injuries but they were not disclosed in the post-mortem report issued by the Doctor. It is stated that the subsequent post-mortem report is awaited.

5.The learned counsel appearing for the petitioners would submit that the petitioners in both Criminal Original petition are innocent they have been falsely implicated in this case, due to previous enmity. Further, he submitted that originally the defacto complainant had categorically stated that her son was addicted to Ganja and used to fight with several persons in the Village and she had given the complaint only on suspicion that her son would have been murdered by Govindaraj and others. However, Al Govindaraj surrendered before the first respondent and gave confession based on which, the wooden reaper was recovered.. Hence, the case which was originally registered under Section 174 of Cr.P.C was altered to one under Section 302 of IPC.

6.The learned counsel for the petitioners would further submitted that during the original investigation done by the first respondent, the petitioners were called for enquiry and they appeared and also gave statements to the first respondent/police. He would further submit that since further investigation was ordered, the police found that the versions given by the defacto complainant two petitions were contrary in nature, whereas on the direction from this Court, the case was transferred to the file of the second respondent. He would further submit that the medical experts have given a opinion that the reason for the death of the deceased was Coronary artery disease. Due to family enmity, the defacto complainant had given the complaint and implicated the petitioners unnecessarily in this case. He would submit that the petitioners are very much present for the enquiry and they have also co-operated with the first respondent during the investigation. They would not abscond and they are prepared for any kind of enquiry and appear before the respondent police at any time and date.

7.The second respondent filed a status report, it is useful to extract the relevant portions of paragraph No.5, 6 and 10, hereunder:-

"5.I respectfully submit that , during the course of investigation on 11.12.2019, I visited the place of occurrence and examination of witnesses. So far 25 witnesses, including the petitioner Sakunthala, the deceased wife Nithiya and the deceased Manikandan friends & relatives and public were examined and recorded their statements.

6.I respectfully submit that, accordingly the Defacto complainant Shakunthala, Rajee the father of th edeceased, Vishwa Son of the deceased, one Kaathaaan and Weldon Raja had deposed before the Judicial Magistrate: 2 under section 164(5) CrPC.

10.I respectfully submit that, it reveals that the accused Govindaraj, Ramkumar/petitioner, MuttaiRaja @ Vijayaraja and Elumalai whom where noted in the FIR had committed murder of Manikandan due to

previous enmity. This murder is preplanned murder of the accused. There is evidence to prove that these accused had murdered Manikandan. Due to the assault of the above four accused, Manikandan had sustained 11 injuries over his body. Out of the above injuries the laceration injury over the left frontal region was grievous in nature. But the medical officer who conducted autopsy had given his opinion that the deceased would appear to have died of effect of Coronary artery disease. The defacto complainant had also mentioned in her complaint about the injuries sustained by her son Manikandan."

8. In the status report, it was stated that in continuation of the investigation, the second respondent exhumed the body of the deceased on the basis of the statement of witnesses with regard to the 11 injuries sustained by the deceased. However, in the earlier Postmortem report, the Forensic experts have given a final opinion that the deceased died of Coronary artery disease. Based on the portmortem report, the first respondent submitted final report stating that "further action dropped".

9. The learned Additional Public Prosecutor (Crl. Side) appearing for the respondent/police has stated that the petitioners are friends of A1, they have all conspired together to assault the deceased with Wooden Reaper 'Matta Palagai', due to this the deceased sustained injuries on the whole body and died.

10. The learned counsel for the intervenor would submit that from the beginning, the defacto complainant suspected the involvement of the petitioners and they alone are responsible for the defacto complainant's son's death. The first accused alone surrendered and gave confession statements. The investigation in this case was diverted and the investigation was not done in a proper manner. After a long drawn legal battle, at the instance of the defacto complainant the investigation in the case was transferred to the file of the second respondent and therefore the counsel for the intervenor opposed for grant of anticipatory bail.

11. Heard the learned counsel for the petitioners and perused the materials available on record.

12. In this case one Govindaraj/A1 surrendered before the first respondent/police and also given a confession statement. Based on the confession statement Wooden Reaper was recovered and thereafter the case was altered to one under Section 302 of IPC. However, based on the opinion given by the Forensic expert the case was referred as "further action drop". He would submit that on the basis of the protest petition filed by the defacto complainant, further investigation was ordered and there was no progress in the investigation. Later, as per the directions of this Court, the case was transferred to the file of the second respondent. It is submitted that 25 witnesses were examined so far under Section 164 of Cr.P.C and investigation is pending.

13. It is the case of the petitioners that A1 surrendered before the first respondent, where he admitted having committed the offence.

In the confession statement the first accused had stated that he was antognised with the deceased since he has misbehaved with his wife in his absence and thereby he attacked reasons for having caused the death of the deceased with Wooden Reaper and it was also recovered. However, on the basis of medical opinion given by the Forensic Department, final report was submitted as "further action drop". During the course of the investigation done by the first respondent, the petitioners also were examined by the first respondent. Further, the defacto complainant filed two protest petitions before the Trial Court and the pleading contained thereof were inconsistent with each other.

14.The defacto complainant had filed a Petition on 26.04.2013 and subsequently, another petition was filed through the counsel on 31.05.2013. Both the applications referred to the action taken against the petitioners. In the protest petition filed on 26.04.2013, apart from these petitioners, the defacto complainant has also implicated one Mani, his wife of Alamelu and Mani's brother Jayavelu and the petitioners friend Elumalai and one more unknown person. In the subsequent protest petition, the defacto complainant had referred to the specific overtact against these petitioners, one Govindaraj and Elumalai. The two protest petitions were not only self contrary to each other but also given with different versions.

15.This Court is of the opinion that at this stage, the custodial interrogation of the petitioners may not be required. In view of the same, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

16.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 order copy was made ready, before the Learned Judicial Magistrate No.I, Salem, on condition that the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each 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 conditions that:

[a] the petitioners and 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.

[b] the petitioners shall report before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter, every Monday at 10.30 am., until further orders.

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

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

[e] 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].

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

17.It is made clear that the observations made in this Order are only for the purpose of granting anticipatory bail to the petitioners and this Court has not rendered any finding as regards the merits of the case.

18.With these observations and directions, the Criminal Original Petitions are disposed of.

-sd/-

09/12/2020

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, सत्यमेव जयते
NO.I, SALEM

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM(FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
STEEL PLANT POLICE STATION,
SALEM.

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5 THE DEPUTY SUPERINTEND OF POLICE,
CB-CID, NO.85, KRISHNAN STREET,
NEDUNCHALAI NAGAR,
SURAMANGALAM, SALEM-636 005.

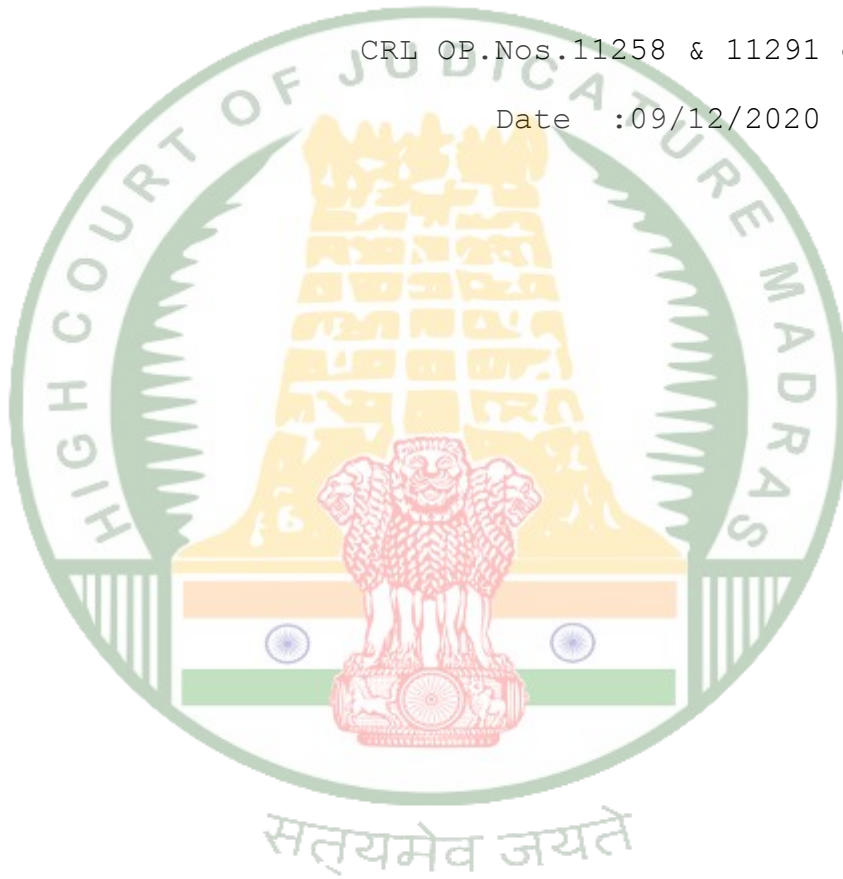
+2 CC to M/S. P.KUMARESAN Advocate on payment of necessary
charges Sr.Nos.8102 & 8103

+1 CC to M/S. K.SELVARAJ Advocate on payment of necessary
charges Sr.No.8060

CRL OP.Nos.11258 & 11291 of 2020

Date :09/12/2020

RVR 07/01/2021



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