

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.Nos.11519 & 11520 of 2020

Idayavarman

... Accused / Petitioner in
Crl.O.P.No.11519 of 2020

1.Idayavarman
2.Nirmal
3.Vasanth
4.Suresh
5.Yuvraj
6.Ramesh
7.Kandasamy
8.Amulraj
9.Sudhagar
10.Muthu
11.Ramesh

... Accused / Petitioners in
Crl.O.P.No.11520 of 2020

versus

The Inspector of Police,
Thiruporur Police Station,
Thiruporur.

(Crime Nos.1626 & 1628 of 2020)

... Respondent / Complainant
in both Crl.O.Ps.

Common Prayer: Criminal Original Petitions are filed under Section 439 of the Code of Criminal Procedure, to enlarge the petitioners on bail in Crime Nos.1626 and 1628 of 2020 on the file of the respondent Police.

For Petitioners : Mr.R.Shunmugasundaram
in both Crl.O.Ps. Senior Counsel for
Mr.M.Babu Muthu Meeran

For Respondent : Mr.A.Natarajan
in both Crl.O.Ps. State Public Prosecutor
Assisted by Mr.M.Mohamed Muzammil
Government Advocate (Crl.Side)

C O M M O N O R D E R

These two bail petitions are filed under Section 439 Cr.P.C. to enlarge the petitioners on bail in Crime Nos.1626 and 1628 of 2020 on the file of the respondent police.

2. The factual matrix involved in these bail petitions are common in nature and therefore, both petitions are heard together and are being disposed of by this common order.

3. Mr.R.Shunmugasundaram, learned Senior Counsel appearing for the petitioners in both petitions submitted that the petitioner in CrI.O.P.No.11519 of 2020 and the first petitioner in CrI.O.P.No.11520 of 2020 is the sitting M.L.A. of Thiruporur Constituency. 3 F.I.Rs have been lodged on 11.07.2020 in respect of commotion took place in the Village where one of the de facto complainant, namely, Kumar in Crime No.1628 of 2020, who said to be the real estate men, brought 50 henchmen along with J.C.B. machineries to lay road forcibly on the land belonging to the Temple, which was objected by the Villagers and one Lakshmipathi, father of the first petitioner in both petitions. However, the opposite group started unleashing violence against Lakshmipathi and his men. As a result, Lakshmipathi sustained cut injury in the hip, besides one Gurunathan and Manogaran also sustained injuries on head and other parts of the body. As Lakshmipathi, father of the first petitioner in both petitions fell down in such clash, in order to prevent the further attack being made on his father, the first petitioner opened the fire with his pistol to disperse the crowd. As a result, one of the passer-by, namely, Srinivasan, who is the de facto complainant in Crime No.1626 of 2020 sustained some pellet injuries on the back. Immediately, he was rushed to the Hospital, it appears that he sustained minor injuries. Based on his F.I.R., Crime No.1626 of 2020 came to be registered at 9.00p.m. on 11.07.2020.

4. It is the further contention that the above F.I.R. clearly indicates that only Kumar and others were aggressors in the matter and they unleashed the violence. Therefore, a crime has been rightly registered under Section 308 of IPC and Section 25(1)(A) of the Arms Act, 1959. Subsequently, at the instance of the father of the accused in Crime No.1626 of 2020, 2 F.I.Rs were registered against the opposite parties in Crime No.1627 of 2020 for the offences under Sections 147, 148, 324 and 307 of IPC and Section 25 (1)(A) of the Arms Act, 1959. Thereafter, another F.I.R. came to be filed in Crime No.1628 of 2020 at the instance of one Kumar, who is arrayed as an accused in Crime No.1627 of 2020 at a later point of time in the same day. Hence, the learned Senior Counsel contended that merely because the first petitioner is M.L.A. happened to be opposite party, an offence has been registered at the instance of the de facto complainant at a later point of time. Whereas, the complaint lodged by the injured makes it clear that only the injured has used his gun to disperse the crowd but the subsequent F.I.R. implicated the sitting M.L.A. At any event his contention is that, if the F.I.R. lodged earlier point of time indicate only as self-defence in order to disperse the crowd in front of his house used the gun and the de facto complainant has sustained only simple injuries.

5. The learned Senior Counsel also contended that though the licence for the weapon has been expired on 31.12.2019, the first petitioner has filed an application for renewal, which is still pending before the concerned authorities. Therefore, his contention

is that the accused are in custody from 12.07.2020 and substantial part of the investigation is over and the main accused in this case has been granted bail in CrI.O.P.No.11188 of 2020 dated 31.07.2020. Hence, he prayed for grant of bail.

6. Whereas, Mr.A.Natarajan, learned State Public Prosecutor appearing for the respondent besides filing a common counter affidavit vehemently contended that M.L.A. is the first petitioner in both petitions has prevented his neighbour one Kumar, who is owning a land in the same Village and therefore, when Kumar questioned the activity of the accused, all of sudden, the accused with an intention to cause death has used the illegal fire on him and air rifle for which he did not have a licence on the particular day. Despite the fact that the licence has been expired as early as on 31.12.2019, fire arm has not been deposited as mandated in the law, in order to renew the weapon. Continuous possession of such fire arm without renewal by the person, who is a member of legislative assembly cannot be permitted.

7. It is the contention of the learned State Public Prosecutor that further investigation and custodial interrogation revealed that certain illegal cartridges were also recovered from the house of the accused/first petitioner on the basis of the voluntary statement given by him. Hence, submitted that the investigation is not completed in these cases and if the accused are enlarged on bail, they may taking the advantage of the position of first petitioner in the Society, tamper the evidence. Hence, opposed to grant of bail.

8. I have carefully considered the submissions made on either side and perused the materials available on record.

9. The counter of the prosecution filed in this regard indicates that all FIRs have been registered based on the same incident said to have been took place on 11.07.2020. Of course, the earliest information was recorded from the de facto complainant, one Srinivasan, who is neither connected A nor B party, but simply passer-by, his version indicates that there are group clash in the Village over the pathway and the group belongs to other side brought some machineries to lay the road, which was objected by the other group, in which the first petitioner, father and other members sustained injuries. As a result, the sitting M.L.A./accused opened fire in self defence as a result passer-by sustained injuries. Subsequent F.I.Rs in this occurrence in Crime Nos.1627 and 1628 of 2020 in cursory look out also makes it clear that this incident had happened due to some land dispute, particularly, between one Kumar and the first petitioner. Of course, at the time of deciding the bail, the Court should only look into prima facie materials and avoid elaborate discussion of the merits of the case by appreciation of evidence. However, when the materials prima facie indicate that there appears to be some group clash and injuries are sustained by one group, namely, accused party.

10. On perusal of the Case Diaries indicate that one Lakshmipathi, father of the first petitioner and one Gurunathan and one Manogaran, belong to the same group had sustained severe injuries, whereas the other side has not sustained injuries. There is no materials available on Case Diaries about the other persons in other group, who sustained injuries by any weapon. The nature of injuries sustained by the de facto complainant is simple in nature, as per the medical records. Further, 2 small pellets have been removed. Further, the counter of prosecution makes it very clear that the other side group engaged in a real estate business and there were disputes over the pathway. Further, the counter also indicates the prosecution examined as many as 26 witnesses in Crime No.1628 of 2020 and de facto complainant, Srinivasan allegedly sustained pellet injuries, has also discharged from the Hospital.

11. Though it is urged by the learned State Public Prosecutor that after the expiry of the licence, weapon has not been surrendered. The contention of the learned Senior Counsel is that the application for renewal has filed prior to the expiry of the licence and is still pending is not disputed. Though non-deposit may attract the penal provision as per the Arms Act, this may be proved by the prosecution at the time of trial against accused. Any observation made by this Court in order to find out facts prima facie need not be taken note of by the trial Court.

12. Therefore, prima facie it appears that the entire occurrence and the use of weapon appears to be done in a group clash only to disperse the crowd. At this stage, when the Court is inclined to pass an order on severe condition, the learned Senior Counsel for the accused submitted that the petitioners are prepared to deposit some amount towards Hospital. In view of his submissions, this Court directs the petitioners in both the petitions to deposit together a sum of Rs.3,00,000/- [Rupees Three Lakhs Only] to the Adyar Cancer Institute.

13. Taking into consideration of the facts and circumstances and substantial part of the investigation is over and also the period of incarceration suffered by the petitioners and one of the main accused in the counter case has already granted bail by this Court in CrI.O.P.No.11188 of 2020 dated 31.07.2020, this Court is inclined to enlarge the petitioners on bail, subsequent to the following conditions:

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute their own bond for a sum of Rs.10,000/- [Rupees Ten Thousand only], before the Superintendent of the concerned prison, in which, the petitioners have been confined and thereafter on their release;

(b) the petitioner in CrI.O.P.No.11519 of 2020 [Crime No.1626 of 2020] shall execute two sureties each for a sum of Rs.10,000/- [Rupees Ten Thousand only], before the learned Judicial Magistrate No.I, Chengalpattu, and petitioners in

Crl.O.P.No.11520 of 2020 [Crime No.1628 of 2020] shall execute two sureties each for a sum of Rs.10,000/- [Rupees Ten Thousand only], before the learned Judicial Magistrate No.I, Chengalpattu;

(c) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned concerned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(d) Immediately, on their release, a sum of Rs.3,00,000/- as volunteered by the petitioners, will be paid to the "Cancer Institute WIA, No.18/36, Sardar Patel Road, IIT Campus, Adyar, Chennai - 600 036" and for such deposit, they have to file a proof before this Court. In the event of non-payment, the bail granted by this Court shall stand cancelled automatically, without reference any further orders.

(e) the petitioner in Crl.O.P.No.11519 of 2020 [Crime No.1626 of 2020] and the first petitioner in Crl.O.P.No.11520 of 2020 [Crime No.1628 of 2020] shall stay at Vellore and report before the Vellore Town Police Station, everyday at 10.30a.m. and 5.30p.m. until further orders. The petitioner shall not enter into the jurisdiction limits of the respondent police. The petitioners 2 to 11 in Crl.O.P.No.11520 of 2020 [Crime No.1628 of 2020] shall report before the respondent police everyday at 10.30a.m. and 5.30p.m. until further orders.

(f) the petitioners shall not commit any offences of similar nature;

(g) the petitioners shall not abscond either during investigation or trial;

(h) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(i) On breach of any of the aforesaid conditions, the learned Judicial 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];

(j) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A of IPC.

14. With the above directions, these Criminal Original Petitions are ordered.

-sd/-
06/08/2020

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, CHENGALPATTU

2 THE PRINCIPAL SESSIONS JUDGE
KANCHEEPURAM DISTRICT,
CHENGALPATTU

3 THE OFFICER INCHARGE
SUB-JAIL, POONAMALLEE

4 THE OFFICER INCHARGE
SUB-JAIL, SAIDAPET, CHENNAI

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE
THIRUPORUR POLICE STATION,
THIRUPORUR,

7 THE CANCER INSTITUTE [WIA]
NO.18/36, SARDAR PATEL ROAD, IIT CAMPUS,
ADYAR, CHENNAI-600 036.

8 THE OFFICER INCHARGE
VELLORE TOWN POLICE STATION,
VELLORE

CC to M/S.M.BABU MUTHU MEERAN Advocate on payment of necessary charges

CRL OP.11519 & 11520/2020

Date :06/08/2020

RD 18/08/2020