

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.11899 of 2020

Ashokan

... Petitioner

Vs.

State Rep by
The Inspector of Police,
Perambalur Police Station,
Perambalur District.
(Crime No.1837 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail pending investigation in crime No.1837 of 2020 on the file of the Inspector of Police, Perambalur Police Station, Perambalur District.

For Petitioner : Mr.K.S.Arumugam

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl. Side)

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 13.07.2020 for the offence punishable under Section 174 Cr.P.C. later altered to Section 304(ii) of IPC and read with Section 3 and 6 of Explosive Substances Act, 1908 in Crime No.1837 of 2020 seeks bail.

2. The case of the prosecution as per the defacto complainant Sathiyavarthan, Station House Officer, Thuraimangalam,, Perambalur, is that on 12.07.2020, they received an information that two persons were found battling for life inside a well and thereby a fire service team was sent to rescue the them and a Fireman Rajkumar went inside the well to rescue them. But only one person namely Baskar was rescued and during the course of rescuing, one Fireman namely Rajkumar and one Radhakrishnan died due to lack of Oxygen. During the course of investigation, it was found that the owner of the well in order to deepen the well, had caused explosion inside the well using detonator. Since, it was not handled properly and lack of Oxygen, the two persons who had gone inside the well got suffocated and got struck inside the well and during the course of rescuing, two persons died. Originally the case was registered under Section 174 Cr.P.C. and later altered to Section 304(ii) of IPC and read with Section 3 and 6 of Explosive Substances Act, 1908.

3.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person. Other than having supplied the explosives to the owner of the well, he is no way connected with the alleged offence. He further submitted that the petitioner is a license holder for selling explosives and he has got license upto 2022. He would submit that for the negligence on the part of the owner of the well in handling the explosives, the petitioner cannot be held responsible. He would further submit that Section 304(ii) cannot made out against the petitioner since, there was no intention for the petitioner to cause culpable homicide. He further submitted that the owner of the well was arrested and subsequently released on bail by the Court below and the petitioner has been suffering incarceration for 25 days from 13.07.2020. Hence, he prays for grant of bail to the petitioner.

4.The learned Government Advocate (Crl. Side) would submit that the petitioner had supplied detonator to the owner of the well to deepen the well which was handled by a person who is not qualified to deal with it. Therefore, he left the waste inside the well thereby, due to suffocation and lack of Oxygen, two persons died including the Fireman who had gone into the well to safeguard the victims. He would submit that investigation is pending. Hence, he vehemently opposed for grant of bail to the petitioner.

5.Taking into consideration of the facts and circumstances, the submissions made by the learned counsels and the fact that the petitioner has only supplied the explosive and considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute 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 and thereafter on his release;

(b) the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the learned Judicial Magistrate-I, Perambalur. within a period of two weeks after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier, 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 daily at 10.30 a.m. for a period of two weeks and thereafter every Monday at 10.30 a.m. until further orders.

(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 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];

(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/-

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, PERAMBALUR

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
PERAMBALUR POLICE STATION,
PERAMBALUR DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY

CC to M/S.K.S.ARUMUGAM Advocate on payment of necessary charges

CRL OP.11899/2020

Date :06/08/2020

RVR 14/09/2020