

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CRL.A.No.412 of 2020

1.S.Saravanan,
S/o.Sukumar

2.Muthu Kumaran
S/o.Muthuvel

.. Appellants

/versus/

1.Pon Raja Perumaal,

2.The State,
Represented by
The Inspector of Police,
T11 Thirunindravur Police Station,
Ambattur District,
Chennai

.. Respondents

PRAYER: Criminal Appeal filed under Section 14(A)(2) of SC/ST POA Act, 1989, to set aside the impugned order passed by the Principal District Sessions Judge, Thiruvallur in (Crl.M.P.No.) O.L.B.P.No.1472 of 2020 in Crime No. 554 of 2020, dated 24.08.2020 and exercise its jurisdiction to grant bail for the appellants.

For Petitioners	:	Mr.M.P.Rohitsurya
For R1	:	Mr.P.Prens Premkumar
For R2	:	Mr.C.Raghavan
		Government Advocate [Crl. Side]

JUDGMENT

The appellants, who are A5 and A6 in Crime No.554 of 2020 for the offence under Sections 120b, 147, 148, 302, 506(ii) IPC r/w 3(1)(X)-SC/ST Prevention of Atrocities Act 1989, was arrested on 15.07.2020. The accused moved a bail application before the Principal district and Sessions Judges, Thiruvallur in O.L.B.P.No.1472 of 2020, and the same was dismissed on 24.08.2020. Against which the present appeal.

2. The case of the prosecution is that on 14.07.2020, at about 7.00 p.m., the second respondent police received a complaint from one Pon Raja Perumal stating that on 14.07.2020 at about 04.45 p.m, his maternal uncle Paramaguru, President of Panchayat Board, Kosavan Palayam, was over seeing the Sewage Canal work and Cement Road work in Kosavan palayam. When the said Paramaguru was making payment for the workers, at that time, four persons came in three bikes. All were armed with knife and Aruval, attacked the said Paramaguru on his head, face, chest and all over the body. When the defacto complainant and others attempted to save the said Paramaguru the assailants threatened them by brandishing the knife. Thereafter they escaped from the scene of occurrence in their bikes. The

said Paramaguru died on the spot. Hence, a case came to be registered against the appellants and other accused.

3. The contention of the learned counsel for the appellants is that the appellants are doing brokerage business in real estate. Other accused A1 to A4 are their friend. Admittedly, in this case, the appellants' name does not find place in the FIR and they were not present in the scene of occurrence. The appellants are charged of conspiracy and based on the confession of co-accused the appellants were arrested and remanded in judicial custody for the past 117 days. He further submits that since the appellants were not present in the scene of occurrence the offence under Sections 147, 148, 302, 506(ii) IPC r/w 3(1)(X)-SC/ST Prevention of Atrocities Act, 1989, could not be attracted against them. The appellants reliable understand is that the investigation in this case is almost completed.

4. The learned counsel for the first respondent/defacto complainant submitted that the deceased Paramaguru was an Advocate practising in Tiruvallur. On seeing his involvement towards the development of society he was elected as President of Kosavan Palayam Panchayat Board and was

doing developments work for the people. Further, the deceased was taking care in conserving the natural resources. The accused, in this case indulged in illegal transportation of river sand. The deceased opposed the same and also informed them that if they further indulged in such activities, he would complaint to the Revenue Authorities and District Collector and hence enmity developed between the deceased and the accused.

5. He further submitted that the accused belonging to the caste Hindu Community and the deceased belonging to the Scheduled Caste Community questioning accused about the illegal transportation of river sand as offensive. Further, they were unable to bear the popularity, reputation and respect gained by the deceased in the society. Hence, all the accused conspired and committed the cold-blooded murder in the day light at the public place. They murdered the accused in the public place to infuse fear on the others and to prove their supremacy. Earlier A1 was involved in the similar nature of offence under Section 302 Cr.P.C. All the accused including the appellants have assembled near the graveyard, planned about the execution of the murder of the deceased. Thereafter, A1 to A4 executed the same. The appellants herein aided by providing the knife, Aruval and

also kept watching the movements of the deceased. Since the appellants herein being a part of the conspiracy, aiding other accused in committing cold-blooded murder in public place at the day light, they should not be granted bail. The appellants release would only cause fear among the eye witnesses and further embolden the appellants to commit such offence in future.

6. The learned Additional Public Prosecutor produced the case diary and submitted that on 14.07.2020 at about 4.45 p.m., the deceased Paramaguru who was the President of Kosavan Palayam was over seeing the Sewage Canal work and Cement Road work in Kosavan Palayam. At that time, A1 to A4 had come in three bikes armed with Aruval and Knife, committed brutal murder in the public place. The deceased was attacked on his head, shoulder, chest, stomach and all over the body. The attack was brutal and gruesome. The accused also threatened others who came to rescue the deceased by brandishing the knife after the murder. The assailants left the scene of occurrence in their bikes. The defacto complainant had took the deceased to the hospital, lodged a complaint. The respondent Police visited the scene of occurrence seized the blood stained

articles, examined the witnesses and some of the witnesses have given 164 statement, the identification parade was conducted and A1 to A4 were denied under Goondas Act. A5 and A6 were arrested on 15.07.2020 at about 5.30 p.m., Based on their confession gunny bag in which knife taken and the motor bike was seized. The appellants herein along with other accused, 20 days prior to the occurrence in met in an isolated place conspired and kept watching the movements of the deceased. The knife used for murder kept in the house of A2 and then handed over to A1 to A4 by the appellants. Hence, the appellants actively participated and involved in the commission of the murder.

7. He further submitted that, in this case the deceased who wanted to conserve the nature was done to death since he opposed the theft of sand and illegal transportation of the same. Further, since the deceased belonging to Scheduled Caste Community, restraining the act of the accused had added up to their enmity and while attacking the deceased they attacked him calling his community name and done him away. This attack has been made in the public place to show their supremacy over the depressed community. Further, if the appellants are granted bail, there is every

possibility of communal clash and possibility of repercussions is there and opposed for grant of bail to the appellants.

8. Considering the rival submission and perusal of the materials it is seen that the occurrence had taken place in public place at day light. The assailants Viz., A1 to A4 came in motor bikes, attacked the deceased who was the President of Kosavan Palayam Panchayat Board, on 14.07.2020, when he was over seeing the Sewage Canal Work and Cement Road Work, the deceased had been attacked and brutally murdered. The observation of the doctor in the post-mortem report are as follows:

“External Examination : all the limbs extended; normal built and normal nourished; both eyes closed. Nose intuct and no bleeding from it, tongue within the mouth and no bleeding from mouth injuries: 1) three lacerations below left ear and one below the other and sizes of 11x 4x 1 cm, 5 x 7x 1 cm, 8 x 2x 1 cm respectively 2) large laceration over left parieto occipital scalp involving scalp, penetrating bone and exposing brain parenchyma of size 16 x 7 x 4 cm 3) Incised wound on temporal scalp above ear 11 x 3 x 0.5 cm 4) Incised wound over the left side of neck on postero lateral aspect of size 5 x 2 x 4 cm 5) Nine sharp penetrating wound found over anterior abdomen and chest wall each of

sizes 3 x 2 x 3 cm depth 6) one sharp penetrating wound on shoulder back side of 3 x 2 x 1 cm depth 7) thumb complete cut injury at MP joint level with cut part hanging with all 4 limbs intact, genitals normal. Internal Examination: Head and Neck : Left parietal occipital skull bones fractures and underlying brain parenchyma lost Thorax: penetrating injuries of chest wall and the underlying ribs and lungs sharp penetrating wound over 2 side of chest penetrating ventricle of heart to and fro stomach contains 200 ml of partially digested food and has penetrating injury on its anterior wall. Liver shows penetrate wound on its surface of 25 x 0.5x 0.5 cm, Kidney shows penetrate injury on its upper surface, kidney normal, small and large intestine, urinary bladder normal.”

9. The injuries sustained by the deceased reflects the intensity, brutality and gruesomeness of the attack. The recoveries of the weapons and motorcycle were made shortly based on the confession of the accused. The appellants herein conspired with the other accused in commission of the offence and played active role. There are totally six accused in this case, A1 to A4 have been detained under Goondas Act. The appellants were not present in the scene of occurrence and their name does not found in the FIR. The alteration report dated 15.07.2020 and 15.10.2020 shows the same.

The appellants are charged for conspiracy and admittedly, they were not present in the scene of occurrence. The objection of the state is that there is possibility of communal clash and repercussions. Further the offence being gruesome and happened on the broad day light, the prosecution witnesses to be safeguarded. Further considering that the appellants are in confinement from 15.07.2020 for the past 117 days and the investigation is almost completed, this Court is inclined to grant bail for the appellants, subject the following conditions:

(a)the appellants shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each within a period of 15 working days from the date of receipt of a copy of this order with two sureties each for a like sum to the satisfaction of the learned Principal District and Sessions Judge, Thiruvallur, failing which, the Criminal Appeal for 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 learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(c)the appellants shall reside within the Municipal Corporation limits of Vellore and report before the Inspector of Police, Town Police Station, Vellore daily at 10.30 a.m., except on the days they are required to appear before the Court below for committal and trial.

(d) the appellants shall not commit any offences of similar nature;

(e) the appellants shall not abscond either during investigation or trial;

(f) the appellants shall not tamper with evidence or witness either during investigation or trial;

(g) 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]***;

(h) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

10. In view of the above, the order passed by the trial Court dated 24.08.2020 in O.L.B.P No.1472 of 2020 is set aside. The appeal is, accordingly, allowed.

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To:

1.The Principal District and Sessions Judge,
Thiruvallur.

2.The Superintendent,
Central Prison, Puzhal, Chennai.

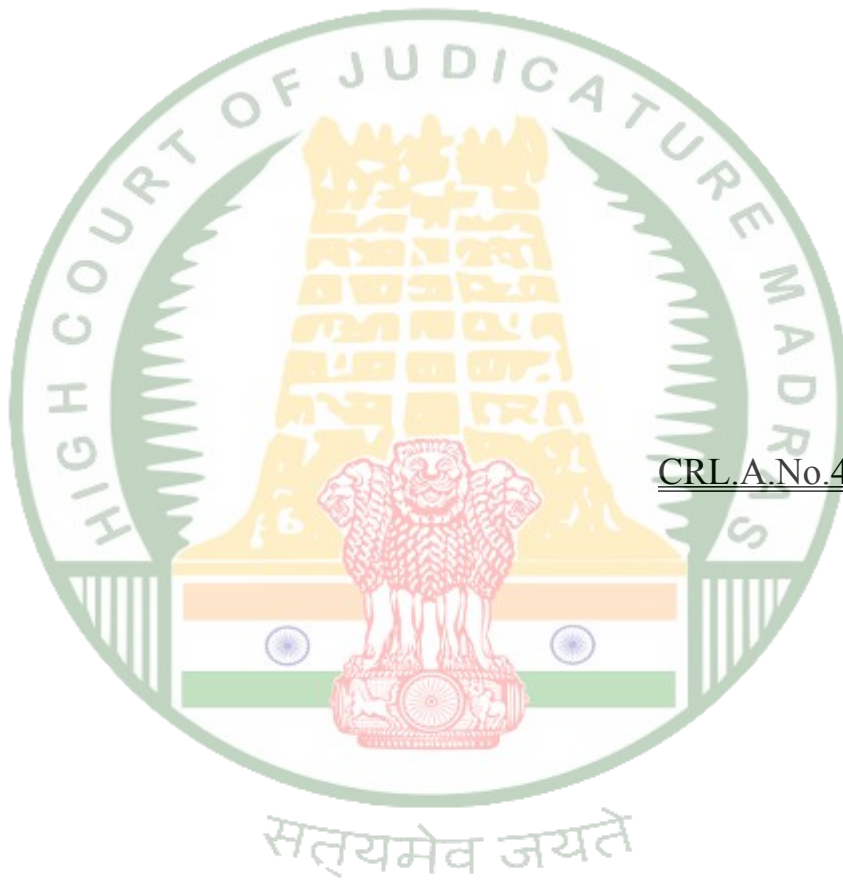
3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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