

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2020

CORAM

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

Crl.O.P.Nos.15905 & 15316 of 2020

1.Veerasandiran
S/o. Jayaraman

2.Pazhanivel
S/o.Jayaraman

3.Kandhan
S/o.Kathavarayan

4.Kathiravan
S/o.Irusappar

T.Akilan
S/o.Thangadurai

... Petitioners in
Crl.O.P.No.15905/2020

... Petitioner in
Crl.O.P.No.15316/2020

Vs.

State rep.by its
Inspector of Police,
Devanampattinam Police Station,
Cuddalore District.
(Crime No.162 of 2020)

... Respondent in
both the petitions

Common Prayer: Criminal Original Petitions filed under Section 439 Cr.P.C.
to enlarge the petitioner on bail in Crime No.162 of 2020 pending investigation
on the file of the respondent.

For Petitioners
In both the petitions : Mr.R.Ganesh Kumar
For Respondent
In both the petitions : Mr.C.Iyyappa Raj
Additional Public Prosecutor

COMMON ORDER

The petitioners/A7, A9, A15 & A16 & A18, who were arrested and remanded to judicial custody on 03.08.2020 for the offence under Sections 147, 148, 341, 294 (b), 324 & 302 IPC in Crime.No.162 of 2020, seek bail.

2. The case of the prosecution is that the *de facto* complainant a fisherman, along with his brother, was engaged in fishing. The *de facto* complainant was a former president of Gundu Uppalavaadi Panchayat. During the year 2019, the *de facto* complainant's wife Praveena and the eighth accused wife Shanthi W/o. Mathiyazhagan had contested the election for the post of President. The *de facto* complainant 's wife lost by 165 votes, and there was enmity between the groups. During the month of March 2020, when the sanitation work was carried near the *de facto* complainant's house, the said Mathiyazhagan had used abusive words against the sanitary workers and there was a wordy altercation over the same leading to clash between the two groups and a case and counter came to be registered. The *de facto* complainant was

sitting in front of his cousin sister's house. On 01.08.2020, his brother, the deceased Mathivanan took his brother's son to gym. At that time, the accused persons joined together and brutally attacked the *de facto* complainant's brother with deadly weapons and caused death. The accused armed with sword, knife and other deadly weapons. The *de facto* complainant and others rushed to save his brother. By then, the accused assaulted, inflicted serious injuries on his brother. Thereafter, the *de facto* complainant and others chased the assailants. The *de facto* complainant's brother was immediately taken to the Government Hospital, Cuddalore, where he was pronounced brought dead. Hence, the complaint.

3. The contention of the petitioners is that there was some rivalry between the petitioners' group and the *de facto* complainant's group since the *de facto* complainant's wife Praveena W/o.Masilamani lost the election to the petitioners group namely Shanthi W/o. Mathiyazhagan. The said Mathiyazhagan is arrayed as A8. Though the election was over in the year 2019, enmity was brewing between them and the village is divided into groups, the *de facto* complainant's group was finding reasons and picking up fight with the petitioner's group for even trivial issues and there have been case and counter. The *de facto* complainant with a motive implicated around 18 persons

as accused in his complaint. On a mere reading of the complaint, it is seen that the occurrence had taken place in the night hours and there is no mention about the availability of light, but in the complaint the accused name and their father's names have been clearly mentioned as well as the overt act has been equally distributed to each of the accused. Mere reading of the complaint would show that it is a motivated, exaggerated complaint. The petitioners were not present in the scene of occurrence. Further, the petitioners' houses, electronic items, boat, fishing net were all damaged, destroyed and burnt, damage caused to an extent of Rs.5 Crores, the *de facto* complainant's group, for which a case in Crime No.163 of 2020 came to be registered against the *de facto* complainant for 25 others for offence under Sections 147, 148, 294 (b), 427, 435, 448, 379, 436, 506(ii) IPC and Section 4 of TNPP (DL) Act, on the complaint of one Radha, W/o.Nagamuthu. Except for A7, for others, no overt act has been attributed. As regards A7, overt act attributed is that he had attacked the right hand and not on any vital part. The petitioners were arrested and remanded to judicial custody on 03.08.2020 and they have been in prison for the past 73 days. The investigation is almost over and prayed for bail. He further submitted that in the counter case, one of the accused was granted bail by this Court in Crl.O.P.No.15716 of 2020.

4. Learned Additional Public Prosecutor submitted that there are two groups in the village. The *de facto* complainant's group contested the village Panchayat Election and was unsuccessful. Hence, there was enmity between the two groups. Due to this issue, the enmity was brewing between the groups and there have been attacks and counter attacks at regular intervals by both the groups, cases and counter cases are being filed. On the date of occurrence, all the accused joined together, attacked the deceased with deadly weapons. The deceased sustained serious injuries. The *de facto* complainant's group and others came and chased away the petitioners' group. Thereafter, the deceased who was lying down was taken to the Government Hospital where he was pronounced brought dead. This occurrence took place at about 8.30 p.m.. Thereafter the *de facto* complainant's group attacked the petitioners group, caused damage to the boats, fishing nets, their houses and the articles for which a case in Crime No.163 of 2020 came to be registered. This occurrence took place at about 10.00 p.m.. Still tension is prevailing in the village. Peace committee has been formed and meetings are held and peace is yet to be restored. Police personnel are posted. He further submitted that investigation in this case is proceeding. Totally there are 18 accused in this case of which A11, A12 A17 are still absconding. The petitioners are A7, A9, A15, A16 and A18.

5. Learned Additional Public Prosecutor further submitted that the ten accused in this case are detained under Act 14, against whom serious allegations were made that they are disturbing the public order and having bad antecedents. As regards these petitioners, there is no specific overtact against them, except against A7, who attacked on the hands of the deceased. The petitioners are in custody for the past 73 days and the investigation is at the crucial stage. Hence, opposed the bail petition.

6. It is seen that there seems to be hostility between the groups in the fishing hamlet, the petitioners belong to one group and the defacto complainant belongs to other group, there is likelihood of implications. Admittedly, the petitioners are not attributed with any specific overtact. The petitioners are in incarceration for about 73 days, the substantial portion of the investigation completed. In view of the same, this Court is inclined to grant bail to the petitioners.

7. Accordingly, the petitioners are ordered to be released on bail on each of them executing a 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 learned Judicial Magistrate No.II, Cuddalore.

[a] 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 stay at Salem and report before the Salem town police daily at 11.000 a.m., until further orders. The petitioners shall not move out of the municipal limits of Salem city.

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

[d] the petitioners shall not tamper with evidence or witness 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 absconds, a fresh FIR can be registered under Section 229A IPC.

15.10.2020

bri

Note: Issue order copy on 16.10.2020

M.NIRMAL KUMAR, J.

rst

To

- 1.The Judicial Magistrate No.III,
Cuddalore.
- 2.The Superintendent,
Central Prison,
Cuddalore.
- 3.The Inspector of Police,
Devanampattinam Police Station,
Cuddalore District.

Crl.O.P.Nos.15905 & 15316 of 2020



WEB COPY

15.10.2020