

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.11.2020

CORAM :

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

CRL.O.P.No.17503 of 2020

Ramesh

... Petitioner

Vs.

State by Inspector of Police,  
Mailam Police Station,  
Villupuram.  
(Crime No.1501 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.1501 of 2020 pending on the file of the respondent Police.

For Petitioner : Mr.K.J.Shiva Arudhra

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

O R D E R

(The cases have been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 08.09.2020 for the offences punishable under Section 174(1) of Cr.P.C then @ 304 (A) of IPC @ 302 of Indian Penal Code, in Crime No.1501 of 2020 on the file of the respondent police, seeks bail.

2.The defacto complainant viz. Manogaran had given a complaint stating that due to previous enmity, Sudhakar and others waylaid his son Ashok Kumar @ Sarma and committed murder of him by indiscriminately assaulting him with weapons and thereafter had thrown his body in front of a goods carrier lorry bearing Reg. No.28-BD-9565 and projected it as a case of road accident. Initially, a case was registered in Crime.No.1501 of 2020 under Section 174 of Cr.P.C. Based on the complaint, summons was issued to the accused under Section 61 of Cr.P.C. dated 03.09.2020 and the petitioner / accused was produced before the Court on 04.09.2020 and a statement was recorded from him under Section 164 Cr.P.C. on 05.09.2020. The petitioner had submitted before the court that he is the driver of the lorry bearing Registration No.TN28BD9565 and on 31.08.2020 at 6.00 a.m. he had delivered cylinder load at Tindivanam and returned at 9.00 a.m. When he was coming back towards Thanjavur and after crossing 5 Km from the Court, he was coming slowly on the left side of the slow track and at that time two persons had come in 2 two wheelers and one rider of the two wheeler had hit against the two wheeler of the victim and the victim fell down beneath his lorry due to which his rear wheel got over the victim, due to which, he

sustained injuries and died and that he had stopped his vehicle and surrendered before the respondent police. After recording of the statement, the case was altered to one U/s.279 and 304(A) IPC and the petitioner was produced before the Court. Whereas, the learned Magistrate had remanded him for the offence U/s.304(A) IPC @ 302 IPC. Thereafter, the petitioner had filed a bail application before the Court of Principal Sessions Judge, Villupuram in CrI.M.P.No.6857 of 2020 and it was dismissed on 22.09.2020, thereafter, another bail application in CMP.No.6754 of 2020 was filed and it was also dismissed on 05.10.2020, against which, the present application has been filed.

3.The learned counsel appearing for the petitioner would submit that admittedly it is a case of road accident. The petitioner had also appeared before the Court and given a statement admitting that he is the driver of the vehicle and he was returning to Thanjavur and at that time the victim was hit by another two wheeler and he fell down beneath the lorry and was run over by the rear wheel of the lorry driven by the petitioner, whereas, strangely, the learned Magistrate remanded him for the offences U/s.302 IPC without any material. Thereafter, bail applications filed by the petitioner were dismissed by the learned Principal Sessions Judge, Villupuram. He would further submit that subsequently the investigation has been completed and the respondent has also filed a final report before the concerned Magistrate for the offences U/s.279 and 304(A) IPC. Though the offences are bailable in nature, the Courts below did not look into the facts and materials properly and thereby, the petitioner is made to suffer incarceration in a case of bailable offence. He would further submit that the petitioner is in custody for more than 70 days and he would thereby pray for bail.

4.The learned Government Advocate (CrI. Side) would submit that the complaint was originally lodged by the father of the deceased due to animosity against other accused, alleging that the victim his son viz. Ashok Kumar @ Sarma was murdered by Sudhakar and 18 of his associates and his body was thrown in front of the moving lorry to project it as a case of road accident. He would further submit that the respondent had conducted the investigation properly and found that it is a case of road accident. He would further submit that the investigation has been conducted in a fair and proper manner and the final report has also been filed for the offences U/s.279 & 304(A) IPC. However, the learned Magistrate remanded the petitioner for the offences U/s.302 IPC and thereafter the bail applications filed by the petitioner before the Sessions Courts were also dismissed. He would reiterate that the final report has been filed only for the offences U/s.279 & 304(A).

5.Heard the learned counsel on either side. Perused the CD file.

6.The case of the prosecution is that the victim had died in a road accident, due to the rash and negligent act of the petitioner. The investigation has been completed and final report has been filed for the offences U/s.279 & 304(A), whereas, the petitioner has been unnecessarily kept in custody for more than 70 days. This Court is

of the opinion that the learned Judicial Magistrate No.II, Tindivanam has not properly looked into the case while remanding the petitioner. The learned Magistrate has also committed error in remanding the accused when the case of the prosecution itself is for the offences U/s.279, 304(A) of IPC which are bailable in nature. The liberty of the citizen has been considered very lightly and that he has been subjected to incarceration for a period of 70 days.

7. In view of the above, 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 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-II, Tindivanam, and on further conditions 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 petitioner, on his release from prison, shall report before the respondent police as and when required for interrogation.

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

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

(f) the petitioner 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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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 absconds, a fresh FIR can be registered under Section 229A IPC.

8. Registry is directed to call for a report from the learned Judicial Magistrate-II, Tindivanam, on what basis the petitioner was remanded to judicial custody for the offences U/s.302 IPC when the case of the prosecution itself is for offence under Section 279 and 304(A) of IPC and the Registry is also directed to call for a report from the learned Principal Sessions Judge, Villupuram that when there is no allegation against the petitioner for having committed the murder and when the case of the prosecution itself is for the offence under Sections 279 and 304 (A) IPC, as to why the bail applications filed by the petitioner were dismissed.

9. With the above directions, this Criminal Original Petition is ordered.

10. For reporting compliance post on 10.12.2020.

-sd/-  
18/11/2020

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.II, TINDIVANAM

2 THE CHIEF JUDICIAL MAGISTRATE  
VILLUPURAM (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,  
MAILAM POLICE STATION,  
VILLUPPURAM.

5 THE PRINCIPAL SESSIONS COURT,  
VILLUPURAM

6 THE OFFICER INCHARGE,  
SUB JAIL, VILLUPURAM

CC to M/S.K.J.SHIVA ARUDHRA Advocate on payment of necessary  
charges SR.NO.7618

CRL OP.17503/2020

Date :18/11/2020

RVR 19/11/2020