

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.No. 18335 of 2020

Kumaran @ Gunasekaran,
S/o.Devaraj

... Petitioner/2nd Accused

Vs.

The State represented by,
The Inspector of Police,
Panruti Police Station,
Cuddalore District.
(Crime No. 2040 of 2020)

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail in Crime No. 2040 of 2020, on the file of the respondent police.

For Petitioner : Mr.M.Vijaya Ragavan

For Respondent : Mr.T.Shunmugarajeswaran

Government Advocate (Crl. Side)

ORDER

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on

06.09.2020 for the offences punishable under Sections 147, 148, 294(b), 323, 506(ii) & 302 of IPC, in Crime No.2040 of 2020, on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant viz., Karthik is that there was previous enmity between the family of the defacto complainant and the accused. While so, on 05.09.2020, at about 06.45 p.m., while the defacto complainant and his brother were standing near Thiruvathigai bus stand, the accused persons had surrounded them with weapons and had assaulted them with iron pipes and stabbed his brother repeatedly with knife, due to which, his brother sustained injuries and he was admitted in the Panruti Government Hospital and thereafter, referred to Cuddalore Government Hospital, where the brother of the defacto complainant was declared brought dead. Hence, the complaint.

3.The learned counsel appearing for the petitioner would submit that even as per F.I.R. the allegation against the petitioner is that he caught hold of the deceased when the other accused alleged to have assaulted him with knife and iron pipes. He would further submit that the co-accused in this case has

been granted bail by this Court vide order dated 18.11.2020 in Crl.O.P.No.18044 of 2020.

4.The learned Government Advocate (Crl.side) appearing for the respondent would vehemently oppose stating that due to previous enmity between the petitioner and defacto complainant, the petitioner along with other accused had waylaid the defacto complainant and his brother and assaulted them with iron pipes and stabbed the brother of the defacto complainant indiscriminately with knife. Thereby, the brother of the defacto complainant sustained serious injuries and he was admitted in the Panruti Government Hospital and later he was referred to Cuddalore Government Hospital, where, he was declared brought dead. He would further submit that the investigation is pending.

5.Taking into consideration of the facts and submissions and also considering the period of incarceration suffered 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 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.1, Panruti**, 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 stay at Madurai and report before the Thallakulam Police Station everyday at 10.30 a.m. until further orders. The petitioner shall not enter into the jurisdictional limits of the respondent police.**

(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.

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

20.11.2020

Internet : Yes/No

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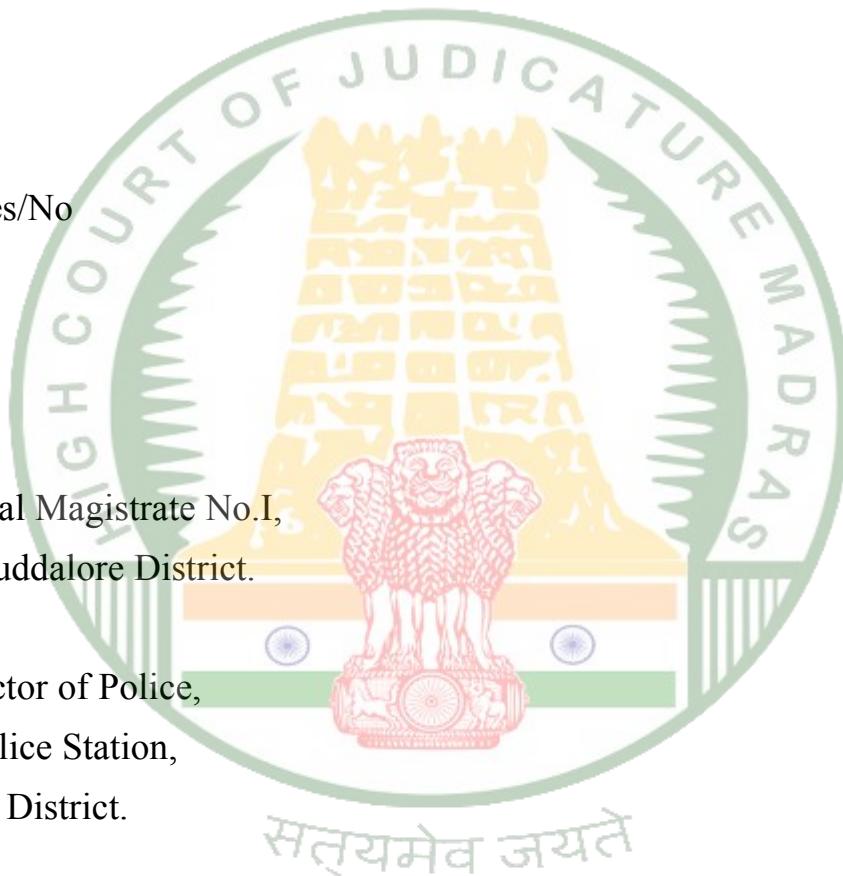
To

1.The Judicial Magistrate No.I,
Panruti, Cuddalore District.

2.The Inspector of Police,
Panruti Police Station,
Cuddalore District.

3.The Superintendent,
Central Prison, Cuddalore.

4.The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

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Crl.O.P.No.18335 of 2020

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20.11.2020

CRL.O.P.No.18335 of 2020

M.NIRMAL KUMAR,J.

The petitioner who is arrayed as A3 in Crime No.2040 of 2020 for offences under Sections 147, 148, 294(b), 323, 506(ii) and 302 of IPC, had filed an application for bail before this Court in Crl.O.P.No.18335 of 2020 and this Court by order dated 20.11.2020, had granted bail to the petitioner. Thereafter, the petitioner had approached the learned Judicial Magistrate -I, Panruti to execute sureties and the concerned Judicial Magistrate had failed to entertain the sureties for the reasons that the offence under Section 120-B which got later included in Crime No.2040 of 2020 along with other offences, does not find mention in the order copy in Crl.O.P.No.18335 of 2020 dated 20.11.2020, and refused to entertain exclusion of sureties. In the process, the petitioner who had obtained Bail is still kept in confinement. Hence, the case has been listed today under the caption “for being mentioned”.

2. The learned Counsel for the petitioner would submit that the co-accused one Vijayakumar/A4 in this case was granted bail in Crl.O.P.No.18044 of 2020 by order dated 18.11.2020 and in that order copy, Section 120B is included. The lower Court ought not to have returned the sureties since the

offence under Section 120-B which has been included later and it is not an substantial offence whereby, the gravity and nature of the case changed or altered in any manner. The lower Court failed to look to the fact that in the present case individual liberty is involved and the person who is granted bail could not come out on bail for the reason that the sureties could not be executed before the lower Court.

3. The learned Government Advocate would submit that since it was listed “for being mentioned”, he has got no instructions. He further submitted that inclusion of conspiracy offence under Section 120-B will not alter or shake any substantial change in the case.

4. It is seen, inclusion of Section 120-B, does not substantially, change or alter the nature of the case. The act of Lower Court not entertaining execution of sureties amounts to deprivation of the fundamental right of the person, which is not proper.

5. Hence, Registry is directed to **include Section 120B IPC** in

“Paragraph 1” of the order copy in **Crl.O.P.No.18335 of 2020** dated **20.11.2020** and issue a fresh order copy.

27.11.2020

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Note: Issue fresh order copy on 27.11.2020



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M.NIRMAL KUMAR,J.

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CRL.O.P.No.18335 of 2020

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27.11.2020