

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.19004 of 2020

Sivabalan

... Petitioner

Vs.

State by:-

.... Respondent

The Inspector of Police,
Devanampattinam Police Station,
Cuddalore District.
(Crime No.162 of 2020)

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

For Petitioner : Mr.R.Ganesh Kumar

For Respondent : Mr.Raghavan
Government Advocate (CrI. Side)

ORDER

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 29.10.2020, for the offence punishable under Section **147, 148, 341, 294(b), 324 & 302** IPC, in Crime No.162 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant is a fisherman carrying on the profession along with his brother. Further, the defacto complainant was a Former President of Gundu Uppalavaadi Panchayat. In the year 2019, the election was held, in which, the defacto complainant's wife Praveena and the eighth accused Wife Mrs.Shanthi contested the election, the defacto complainant's wife lost by 165 votes, due to which, there was no cordiality between them and the village was split into two groups. Thereafter, during the month of March 2020, sanitization work was going on near the defacto complainant's house. At that time, the eighth accused//Mathiazhagan in this case had scolded the sanitizing worker, which was objected by the defacto complainant's husband and there was a wordy altercation which caused clash and a case and

counter case came to be registered. Thereafter, on 01.08.2020, when the defacto complainant was sitting in front of his cousin sister's house, his brother/Mathivanan took his son to Gym, by that time, the accused persons have joined together and brutally attacked the brother of the defacto complainant with deadly weapons and he sustained injuries. When the defacto complainant came to know about the same, he rushed into the scene of occurrence and took his brother to the hospital and later, he died. Hence, this complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would further submit that the petitioner is an Advocate by profession, hails from the same hamlet and the petitioner was defending the rivals of the defacto complainant in all proceedings which irked the defacto complainant. Hence, the petitioner is falsely implicated in this case and the petitioner had not come into adverse notice. Since the defacto complainant's wife had lost the votes by a slender margin which is unable to digest him, he was waiting for an occasion to create problem and disturbance in the area, due to which, the above case was registered against the petitioner. Hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the petitioner is a named accused in this case and the specific overtact against the petitioner is that the petitioner had attacked the deceased on his right eye brows with knife. He would further submit that the petitioner has been recently arrested in this case and as regards the other accused who have been granted bail, there is no specific overtact against them and further with regard to accused No.7, he attacked the deceased on the hands, hence, this Court granted bail to A7 and the same benefit cannot be extended to the petitioner. He would further submit that the investigation completed and the charge sheet filed in P.R.C.No.34 of 2020 which is pending before the Judicial Magistrate No.III, Cuddalore. Hence, he opposed for grant of bail to the petitioner.

5. Taking into consideration the facts and submissions made by the learned counsels and also considering the fact that the period of incarceration suffered by the petitioner and the investigation completed and the charge sheet filed, 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 likesum to the satisfaction of the learned Judicial Magistrate No.III, Cuddalore 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 shall stay at Salem and report before the Salem Town Police Station daily at 11.00 a.m, except on the dates when his presence necessary before the Committal Court and Trial Court.

(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 abscond, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-

08/12/2020

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.III,
CUDDALORE

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
DEVANAMPATTINAM POLICE STATION,
CUDDALORE DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

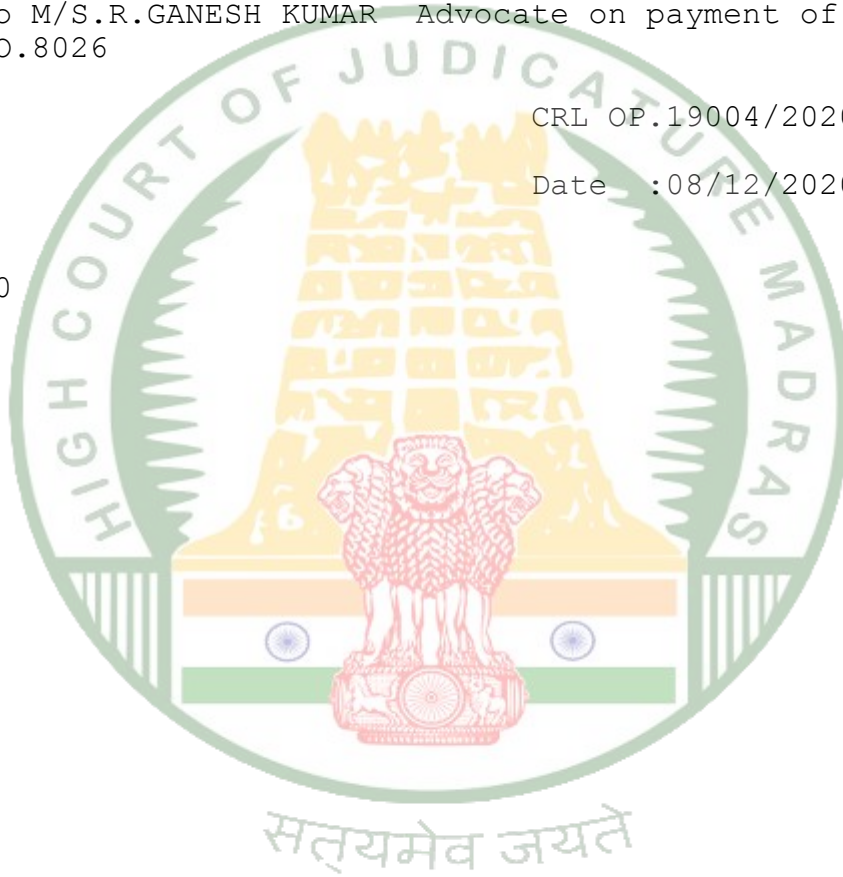
6 THE OFFICER INCHARGE,
SALEM TOWN POLICE STATION,
SALEM.

+1 CC to M/S.R.GANESH KUMAR Advocate on payment of necessary
charges SR.NO.8026

CRL OP.19004/2020

Date :08/12/2020

TA-09/12/2020



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