

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2020

CORAM :

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

CRL.O.P.No.19635 of 2020

Mohamed Azaruddin

... Petitioner

Vs.

State rep by
Inspector of Police,
Shankar Nagar Police Station
Chennai District
(Crime No.767 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail concerned in Crime No.767 of 2020 pending on the file of the respondent police.

For Petitioner : Mr.P.Muthamizh Selvakumar

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 24.11.2020 for the offences punishable under Sections 294(b), 307, 452, 506(ii) IPC later altered into Sections 120(b), 147, 148, 294(b), 307, 452, 506(ii), of IPC in Crime No.767 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the *de facto* complainant Ismail is that he is running a Chicken Stall and that on 17.07.2020 at about 11.30 a.m., when he was sitting in the Counter, two known persons and one unknown person entered into his shop and assaulted him indiscriminately with Aruval on his head and caused injuries to him. The defacto complainant suspected that the owner of the shop might have instigated the accused to commit the offence.

3. The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case based on the confession of the other accused. Even as per the prosecution, the allegation against the petitioner is that he had waited outside of the shop and watched the movements of public around the shop. He would further submit that all the accused in this case were arrested and two of the accused similarly placed as that of the petitioner, have been granted bail and there is no previous case against the petitioner and that the petitioner has been suffering incarceration from 24.11.2020. Hence, he prays for grant of bail.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would vehemently oppose stating that due to tenancy dispute, the owner of the petitioner had engaged assailants and assaulted the defacto complainant indiscriminately with Aruval. The overt-act against the petitioner is that he had waited outside of the shop and watched the movements of public around the shop during the occurrence. He would further submit that A9 in this case has been detained under Act 14 and that the injured has been discharged from the hospital.

5. Taking into consideration the facts and submissions made by the learned counsels and the fact that the injured has been discharged from the hospital 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, Tambaram, 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 everyday at 10.30 a.m. until further orders.

(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 stands ordered.

-sd/-
11/12/2020

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,
TAMBARAM.

2 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPET [FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
SHANKAR NAGAR POLICE STATION,
CHENNAI DISTRICT.

CC to M/S P.MUTHAMIZHSELVAKUMAR Advocate on payment of necessary charges

CRL OP.19635/2020

Date :11/12/2020

MK:14/12/2020