

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.20390 of 2020

1.Madhan

2.Aathikesavan

... Petitioners

Versus

The State of Tamil Nadu,
Rep. by the Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C., to enlarge them on bail pending case of the case in the S.C.No.147 of 2020 (On the file of the Learned XVI Additional Sessions Judge at Chennai) connected with Crime No.4295 of 2020 on the file of the respondent Police, (H-3, Tondiarpet Police Station).

For Petitioner : Mr.M.Illiyas

For Respondent : Mr.C.Iyyappa Raj

Additional Public Prosecutor

ORDER

The petitioners, who were arrested and remanded to judicial custody on 16.08.2020 for the offence under Sections 147, 148, 341, 307, 302, 506(ii) and 120(b) IPC in Crime No.4295 of 2020 on the file of the respondent police, seek bail.

2. The case of the prosecution is that the 1st petitioner was selling huge liquor bottles in prime price in the locality during the lock down period and he was arrested. On suspicion that the deceased Kesavan would have informed to the Police, he engaged the 2nd petitioner/A4 along with other accused to murder the said Kesavan. On 15.08.2020, at about 6.45 p.m., when the deceased Kesavan, his wife Priya were conducting Pooja in temple, all accused armed with deadly weapons and brutally attacked the deceased Kesavan in public place. Immediately, the deceased Kesavan was taken to the Stanley Government Hospital, where he declared dead. The wife of the deceased Priya lodged a complaint to the respondent Police. In this case, the investigation completed and charge sheet filed and it is pending trial in S.C.No.147 of 2020.

3. The learned counsel for the petitioners submitted that in this case, A9 was granted bail in Crl.O.P.No.18104 of 2020, dated 18.11.2020. Further, the other accused viz., Naresh @ Naresh Kumar,

Viji @ Vijayakumar and Gaja @ Gajendran, who are involved in the offence, were granted bail by the learned XV Metropolitan Magistrate, George Town, Chennai. He further submitted that the petitioners are prepared to abide by any stringent conditions that may be imposed on her. The petitioners were in custody for more than 128 days. The learned counsel further submitted that out of 18 cases mentioned against the 1st petitioner, in 6 cases he got acquittal and 9 cases are under Sections 107 and 110 Cr.P.C, in which the period is already undergone and 2 cases are prohibition offence. Except the two prohibition cases, all the other cases are concluded. In one case, trial is pending. Hence, he seeks bail.

4. The learned Additional Public Prosecutor submitted that the petitioners are notorious persons and the 1st petitioner has 18 previous cases and the 2nd petitioner has 9 previous cases, which are similar to the above case. He further submitted that the murder has been taken in public. The respondent Police completed investigation within the stipulated time and filed charge sheet. Earlier, the bail applications of the above petitioners are dismissed by this Court on 01.12.2020. It is further submitted that apart from 18 cases mentioned earlier, the petitioners are involved in 7 other cases, but in these cases he is on bail. As regards the previous cases against the 2nd petitioner, most of the cases investigation is pending and charge sheet not yet filed. Both the petitioners are History Sheetters. Hence, he opposed to grant bail to the petitioners.

5. Taking into consideration of the facts and circumstances of the case and submissions made by the learned counsel and also considering the fact that the petitioner is in judicial custody from 16.08.2020 and the similarly placed accused have been granted bail, this Court is inclined to grant bail to the petitioners subject to the following conditions:

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned XV Metropolitan Magistrate, George Town, Chennai 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 petitioners shall report before respondent police daily at 10.30 a.m., until further orders and shall appear before the trial Court on all hearing dates, without fail. Other than the days, they are required to appear before the Court.

(d) the petitioners shall not commit any offences of similar nature.

(e) the petitioners shall not abscond either during investigation or trial.

(f) the petitioners shall not tamper with evidence or witness either during investigation or trial.

(h) on breach of any of the aforesaid conditions, the learned Judicial 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].

(i) 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/-
23/12/2020

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 XV METROPOLITAN MAGISTRATE COURT, CHENNAI

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

3 XVI ADDITIONAL SESSIONS JUDGE, CHENNAI

4 THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

5 THE SUPERINTENDENT, CENTRAL PRISON, PUZHAL

6 THE INSPECTOR OF POLICE,
H-3, TONDIARPET POLICE STATION CHENNAI.

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

CRL OP.20390/2020

Date :23/12/2020

GKS:30/12/2020