

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2020

Pronounced on : 28.01.2020

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

Crl.O.P.No.31547 of 2019
and Crl.MP.No.17296 of 2019

Venkatesan Petitioner / Respondent /Accused

Vs

The Inspector of Police
G5, Secretariat Colony Police Station
Kilpauk, Chennai - 600 010.
Crime No.333 of 2019

..... Respondent / Petitioner / Complainant

Prayer :- Criminal Original Petition filed under Section 482 of Cr.P.C., 1973 to set aside the impugned order dated 13.11.2019 passed in MP.No.3025 of 2019 in Crime No.333 of 2019 by the learned Judicial Metropolitan Magistrate No.II, Egmore, Chennai.

For Petitioner : Mr.Arun Anbumani

For Respondent : Ms.S.Thankira,
Government Advocate [Crl Side]

ORDER

The petitioner herein challenges the order of the learned Judicial Magistrate No.II, Egmore, Chennai, in M.P.No.3025 of 2019, in which, the learned Magistrate has cancelled the order granting bail to the petitioner in Crl.M.P.No.11212 of 2019 dated 30.09.2019.

2.1. The allegation is that on 21.09.2019, at about 9.00 p.m., the victim-Venkatesan, the husband of the defacto-complainant was requested by the petitioner/accused to join him for selling fish on the following day i.e., on 22.09.2012 and when Venkatesan refused, the petitioner picked up a wordy altercation with him and assaulted Venkatesan with a log on his head. The victim was immediately taken to the nearby hospital, where, first aid was administered, and thereafter, he was referred to Government Rajiv Gandhi Medical College and Hospital. At the instance of the victim's wife, the defacto complainant, the case in Crime No.333/2019 for the offences under Sections 341, 294

(b), 324, 506(ii) IPC., came to be registered on 22.09.2019, by the respondent police. Subsequently, Venkatesan succumbed to injuries on 19.10.2019, following which, the case came to be altered to one under Section 341, 294(b), 302, 506(ii) IPC.,

2.2. In the meantime, on 22.09.2019, the petitioner was arrested and was remanded to judicial custody. With barely 9 days in judicial custody, the learned Metropolitan Magistrate Vide order dated 30.09.2019, granted bail to the petitioner. After the death of the victim, the Investigating Agency has applied for cancellation of bail in MP.No.3025/2019, and Vide impugned order dated 13.11.2019, the same learned Magistrate has allowed the petition. The petitioner is now before this Court to set aside the said impugned order.

3. The learned counsel for the petitioner argued that the Court after weighing the facts of the case and has granted bail to the petitioner, and now the fact that he might have to be taken for custodial interrogation, cannot be a ground to cancel the bail. He relied on the authorities of the Hon'ble Supreme Court in Santosh VS. State of Maharashtra [(2019) 9 SCC 714] and Devender Kumar Vs. State of Haryana [(2010) 6 SCC 753].

4. The learned Government Advocate [Criminal Side] submitted that right through, the victim has been in serious condition in the Government Rajiv Gandhi Hospital, and that he ultimately succumbed to his injuries. She submitted that the petitioner was granted bail even on the 9th day, and that for custodial interrogation in terms of the pronouncement of the Hon'ble Supreme Court, the police is entitled to take judicial custody of the accused within 15 days of his remand, and hence, in this case, atleast six more days are left for the respondent police to apply for the same. This apart, when the victim was alive, he would have been available for the prosecution to describe the entire occurrence including the motive angle, but with the death of the victim, this has to be investigated, for which, custodial interrogation is essential. She also circulated the CD file of the case and opposes the prayer of the petitioner.

5. On perusing the bail order of the learned Metropolitan Magistrate in Crl.MP.No.11212 of 2019 dated 30.09.2019, the learned Magistrate has noted that the victim was in the hospital in serious condition. This Court, now extracts paragraph No.5 of the said order :

" 5. Considering the fact tat the petitioner has been in custody for the past 9 days, and the victim is in serious condition taking treatment in Rajiv Gandhi Government Hospital, and accused has no previous case, this Court finds that the petitioner may be enlarged on bail on the following conditions

.....

This would indicate that when the bail was granted to the petitioner, the victim was in serious condition and was still in hospital. In these circumstances, the learned Metropolitan Magistrate has erred in granting bail to the petitioner at the first instance.

6. This Court has gone through the CD file and the copy of the Accident Register show that the victim was drowsy and dis-oriented, that there is lacerated injury measuring 2 cm x 1 cm x 0.5 cm in the right parieto-occipital region, and also contusion measuring 4 cm x 4 cm in the right parietal region. The doctor, who first attended the petitioner has suggested CT scan of the brain. This itself indicates that the victim of the offence was in serious condition.

7. To large extent, the situation is a making of the Investigating Agency. This Court, repeatedly observes that in many cases where there are serious injuries to vital parts of the body, the Investigating Agency register cases only under Section 324 IPC., As long as cases are registered under such soft provisions, it would mislead the Magistracy about the nature of the offence committed, and misguide them while granting bail.

8. Given the nature of the allegation and given the fact the victim is now dead and that he is not in a position to speak about various facts which he had spoken, had he been alive, this Court considers it is a case where bail has to be cancelled. This Court finds no infirmity in the order dated 13.11.2019 passed by the learned Judicial Metropolitan Magistrate No.II, Egmore, Chennai, in M.P.No.3025 of 2019 in Crime No.333 of 2019. Accordingly, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

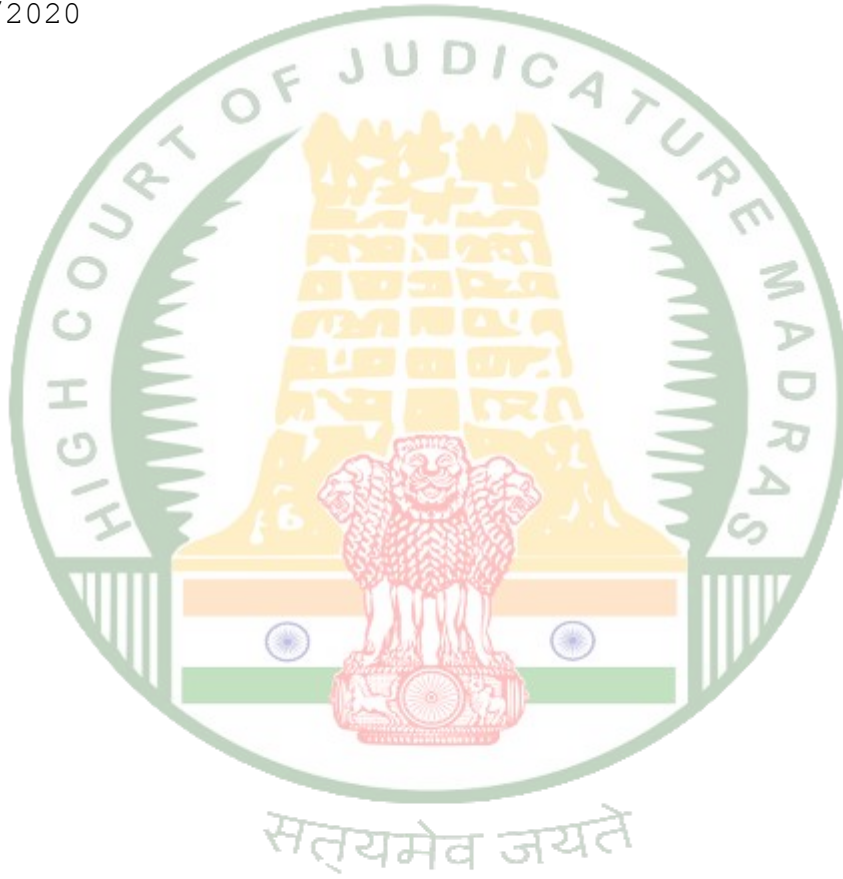
To:

1. The Judicial Metropolitan Magistrate No.II,
Egmore,
Chennai.

2. The Public Prosecutor
High Court, Madras.
3. The Commissioner of Police,
Chennai.

Cr1.OP.No.31547 of 2019

bp[co]
srg 19/02/2020



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