

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.02.2020	Delivered on 17.02.2020
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.OP No.33856 of 2019

Yesurajan

.. Petitioner/A6

- Vs -

State represented by
The Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai-600 018.

...Respondent

PRAYER : Criminal Original Petitions filed under Section 439 of the Code of Criminal Procedure, to grant bail to the petitioner in S.C.No.348 of 2015, on the file of the 1st Additional Special Judge, City Civil Court, Chennai.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

The Petitioner, who was arrested and remanded to judicial custody for the alleged offence u/s 307 IPC and 120B, 341 & 302 IPC, seeking to grant bail in S.C.No.348 of 2015, on the file of the 1st Additional Special Judge, City Civil Court, Chennai.

2. The case of the prosecution is that on 14.09.2013 at about 5.00.p.m a Doctor was brutally attacked by certain accused persons. On 23.09.2013, the Doctor succumbed to the injuries. In the course of investigation, the respondent Police came to know that it was a deliberate and pre-planned murder due to enmity over a long standing property dispute. There are totally 10 accused persons in this case and the present petitioner is ranked as A6.

3. Initially, anticipatory bail petition filed by the petitioner was dismissed by an order dated 29.10.2013. A6 surrendered before the Police on 13.03.2014 and he was remanded to Judicial custody. A6 filed a bail petition u/s 167(2) of Cr.P.C, and the Statutory Bail was granted by the Court below.

4. After the petitioner was enlarged on bail, it is stated that he started to threaten, coerce and pressurize important witnesses in this case and was compelling them to become hostile witnesses. In the mean time, investigation was completed and a Final Report was filed and the case was committed to the VII Additional Sessions Judge, Chennai in S.C.No.348 of 2015. The trial commenced and the accused had threatened LW-3, LW-55, LW-56 and LW-57, and therefore, they were hesitating to come forth to give evidence. Based on the complaint given by one of the witnesses Bensam on 24.08.2017, an FIR also came to be registered before the Kotticode Police Station in Crime No.101 of 2017. That apart, one of the eye witnesses Gopinath had also given a complaint and one other witness Sivaji also gave a complaint.

5. In view of this development, the prosecution left with no other alternative filed a petition before this Court in CrI.O.P.No.2390 of 2018 for cancellation of bail granted to A-5 and CrI.M.P.No.7190 of 2018 for cancellation of bail granted in favour of A-6. The bail granted in favour of A-5 was cancelled by this Court by an order dated 28.04.2018 and the same was also confirmed by the Apex Court by an order dated 27.07.2018. The bail granted in favour of A-6 was cancelled by the Sessions Court by an order dated 09.07.2018 and the same was confirmed by this Court in CrI.R.C.No.840 of 2018 by an order dated 12.09.2018. The petitioner was again confined to judicial custody.

6. The petitioner filed a bail petition in CrI.O.P.No.6472 of 2019 before this Court. This Court took into consideration the entire facts and circumstances of the case and also the subsequent conduct of the petitioner threatening the witnesses. The bail was also opposed vehemently by the State on the ground that only 33 witnesses had been examined and there are certain other important witnesses, who will have to be examined by the prosecution. The State also impressed upon this Court with regard to the overt act on the part of the petitioner and also of the fact that the petitioner was absconding for a long time, after he was released on bail on an earlier occasion. This Court dismissed the bail petition with the following findings:-

"18. Taking into consideration, the earlier orders cancelling the bail granted in favour of the petitioners on the ground of threatening the witnesses and also of the fact that some more important witnesses are yet to be examined by the prosecution, and the trial itself has progressed smoothly enabling 33 witnesses examined on the side of the prosecution till now, this Court is not inclined to grant bail to the petitioners at this crucial stage of the trial. The fact that there is no progress in the investigation in Cr.No.101 of 2017, by itself will not have a bearing in considering the present bail petitions. Even though, the right and liberty guaranteed under Article 21 of the constitution of India is available even to an accused person for a fair trial, it is not a one way traffic and it also includes within itself the right and liberty of the victim and also the witnesses. When there is a threat exerted upon the witnesses, the same affects a fair trial and at which point of time this Court has to necessarily interfere and balance the rights. The collective interest of the Society in having an effective criminal justice system must be taken into consideration while ensuring fair trial.

19. In the result, both the petitions are dismissed and the trial Court is directed to complete the proceedings in S.C.No.348 of 2015, within a period of three months from the date of receipt of a copy of this order. The trial shall be conducted on a day to day basis without granting any unnecessary adjournments and the guidelines given by the Hon'ble Supreme Court in Vinod Kumar .Vs. State of Punjab reported in [2015] 1 MLJ (Cr1) 288 (SC), shall be strictly followed. Consequently, the connected miscellaneous petitions are closed."

7. The petitioner again filed a bail petition in Cr1.OP.No.13510 of 2019 and the same was also dismissed by this Court by an order dated 12.06.2019.

8. The petitioner has again filed the present bail petition on the ground that the petitioner has suffered incarceration for more than one year and the Trial has been completed and the case is now at the stage of questioning under Section 313 (i)(b) of Cr.P.C. Therefore, the apprehension that the petitioner will threaten the witnesses is no more available for the prosecution.

9. The prosecution has filed a counter affidavit resisting the bail petition on the ground that even now certain witnesses

are getting threatening calls from various mobile numbers and there is a threat to their life. It is further stated that when the earlier bail granted in favour of the petitioner was cancelled, the petitioner did not surrender immediately and he was absconding and therefore, if the petitioner is let out on bail, there are all chances of the petitioner again absconding from the clutches of law and therefore, the present bail petition is liable to be dismissed.

10. This Court heard the learned counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent police.

11. The attention of this Court has been drawn to the fact that the examination of all the witnesses on the side of the prosecution just got over very recently and the case is now at the stage of questioning under Section 313 (i)(b) of Cr.P.C. The petitioner has also filed an affidavit before this Court stating that he does not intend to recall any witnesses.

12. It is true that bail is the Rule and Jail is the exception. However, this norm cannot be applied in a case where a person, who was granted bail had misused the liberty and threatened the witnesses and as a result of the same, his bail got cancelled. In such cases, the Courts are expected to be more stringent while considering the subsequent bail petition.

13. The prosecution has produced some materials to show that even now threatening calls are received by some of the important witnesses from unknown mobile numbers. That apart, the First Information Report registered against the petitioner for threatening the witnesses is still under investigation. There is also a very strong apprehension in the mind of the respondent police that the petitioner will abscond, if he is let out on bail.

14. This Court had already fixed a time for the completion of the criminal case and now the case has reached the stage of questioning under Section 313 of Cr.P.C. The case is now posted for hearing on 20.02.2020 for questioning the accused persons. Thereafter, what remains is only the final judgment in the Criminal Case. Therefore, the case is going to get over very soon.

15. In the considered view of this Court, this Court is not inclined to grant bail to the petitioner at this stage and the petitioner can as well wait for the final verdict in the criminal case.

16. In the result, this Criminal Original Petition is dismissed and the Trial Court is directed to complete the proceedings within a period of one month from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

KMI

To

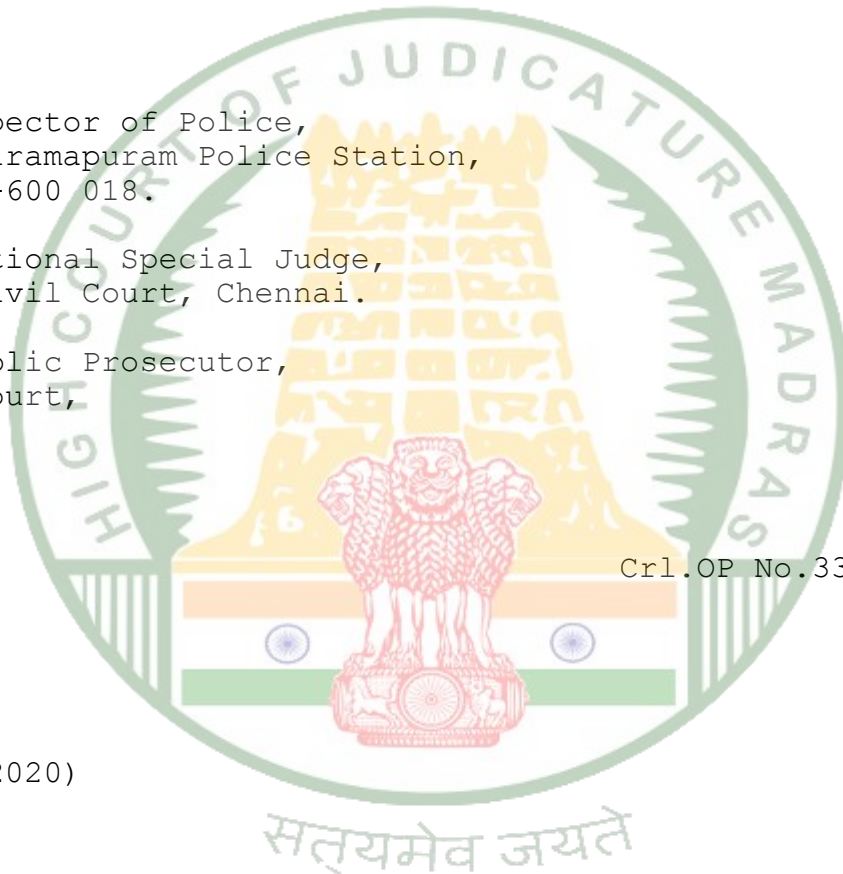
1.The Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai-600 018.

2. I Additional Special Judge,
City Civil Court, Chennai.

3. The Public Prosecutor,
High Court,
Madras.

Crl.OP No.33856 of 2019

BP(CO)
SP(11/03/2020)



WEB COPY