



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 13/07/2020

WEB COPY

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN

CRL OP(MD) . No.6759 of 2020

- | | |
|-----------------|----------------------------|
| 1. Vaithilingam | ... Petitioner/ Accused-A1 |
| 2. Chelladurai, | ... Petitioner/Accused -A4 |

Vs

State Rep. by
The Inspector of Police,
Pappanadu Police Station,
Thanjavur District.
(Crime No.278/2020)

... Respondent

For Petitioners : Mr.Kuppusamy, Advocate for
Mr.K.Pragadeesh Kumar,
Advocate.

For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

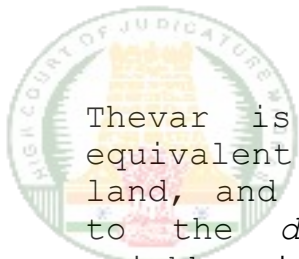
PRAYER :-

For Bail in Crime No.278/2020 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners are Accused Nos.1 and 4 and a crime has been registered against them for the offences punishable under Sections 147, 148, 448, 302 and 149 of the Indian Penal Code, in Crime No.278 of 2020 on the file of the respondent police. The petitioners were arrested and remanded to judicial custody on 12.04.2020 and hence, seeking to release them on bail, the present petition has been filed under Section 439 of the Code of Criminal Procedure.

2. The case of the prosecution in short is that, the deceased Thirumeni is the father of the *defacto* complainant. They are having agricultural land at Sangaranatharkudikadu in Orathanadu Taluk, Thanjavur District. Adjacent to their land, one Samu Vijaya



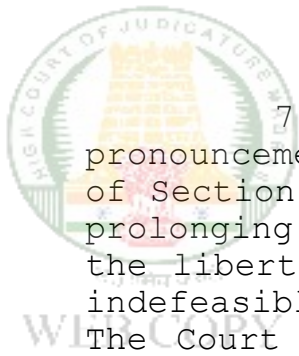
Thevar is also having land to an extent of nearly 40 'Ma', equivalent to 13 Acres, and they are having three borewells in their land, and through their land, an electricity supply line passes on to the *defacto* complainants's land. Earlier, the above said neighbouring land owner made a quarrel with the *defacto* complainant and his father and prevented them from taking water from their borewells. On 08.04.2020, when the *defacto* complainant irrigating the land through the borewell, one Appakkannu quarrelled with the deceased and asked him to switch off the motor. Subsequently, on 10.04.2020, early morning, the *defacto* complainant found that his father Thirumeni was found dead in the said borewell shed with multiple injuries. Alleging that the accused numbering nine have murdered his father, the present complaint has been given and based on the same, the crime has been registered on 10.04.2020 at about 10.00 a.m. and the petitioners/A-1 and A-4 in this case were arrested on 12.04.2020.

3. Mr.Kuppusamy, learned counsel appearing for the petitioners would submit that, the petitioners were arrested and remanded to judicial custody on 12.04.2020 and now, more than 90 days is over, but, so far, the police did not complete the investigation and no final report has been filed. In such circumstances, the petitioners are entitled for bail under Section 167(2) of the Code of Criminal Procedure. The learned counsel would further submit that all the other co-accused in this case were already released on bail.

4. Opposing the above, the learned Additional Public Prosecutor appearing for the respondent would submit that the petitioners are A-1 and A-4 and they are the main accused in this case and the investigation is yet to be completed and if the petitioners are released on bail, they are likely to interfere with the investigation and also tamper with the witness and hence, prayed for dismissal of the petition.

5. I have considered the rival submissions.

6. The petitioners are seeking bail invoking the provision under Section 167(2) of the Code of Criminal Procedure, on the ground that even after expiry of 90 days, no final report has been filed by the respondent police. Section 57 of the Code of Criminal Procedure empowers the Police Officer to detain the accused in custody for 24 hours. However, Section 167 of the Code of Criminal Procedure, as amended, authorizes the Magistrate to detain the accused in custody for a term not exceeding fifteen days in the whole. Section 167 also empowers a Magistrate to detain a person in custody while the investigation is being conducted by the police and also prescribes the maximum period for which such detention could be ordered. However, the proviso to Section 167(2) stipulates the right of an accused to be released on bail after the expiry of maximum period of detention provided therein.



7. The Hon'ble Supreme Court, in number of its pronouncements, has clearly held that the Proviso to Sub-Section (2) of Section 167 is a beneficial provision for curing the mischief of prolonging the investigation indefinitely, which ultimately affects the liberty of a citizen. Right for bail under Section 167(2) is a indefeasible right and it cannot be frustrated by the prosecution. The Court cannot extend the period within which the investigation must be completed on any reason, in the absence of any provision empowering the Court to extend the period. After expiry of the statutory period prescribed under Section 167(2) of the Code of Criminal Procedure, the accused cannot be detained in custody.

8. The Hon'ble Supreme Court in **Achpal Alias Ramswaroop and Another versus State of Rajasthan** reported in (2019) 14 SCC 599 has held as follows:

"20. We now turn to the subsidiary issue, namely, whether the High Court could have extended the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no court could either directly or indirectly extend such period."

9. The Hon'ble Supreme Court, in another judgment in **Rakesh Kumar Paul versus State of Assam** reported in (2017)15 SCC 67, has held that if the charge sheet is not filed within the prescribed time, the right of the accused for 'default bail' has ripened into the status of indefeasible right and it cannot be frustrated. The relevant paragraph reads as follows:

"38. This Court also dealt with the decision rendered in Sanjay Dutt, (1994) 5 SCC 410 and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond."



10. Very recently, the Hon'ble Supreme Court in **CRIMINAL APPEAL No.452 OF 2020 (ARISING OUT OF SLP (CRL.) NO.2433/2020) [S.KASI VERSUS STATE THROUGH THE INSPECTOR OF POLICE, SAMAYNALLUR POLICE STATION, MADURAI DISTRICT]**, decided on 19.06.2020, after considering the various other judgments, has held that an accused cannot be detained by the police beyond the maximum period prescribed under Section 167 of the Code of Criminal Procedure. It is relevant to extract the relevant paragraph of the said judgment, which reads thus:

"14. The scheme of Code of Criminal Procedure as noticed above clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty."

11. Following the above principles laid down by the Hon'ble Supreme Court, this Court is of the considered view that in the case at hand, the petitioners were arrested on 12.04.2020 and even after the expiry of 90 days, the police did not complete the investigation and no final report has been filed so far and hence, the petitioners are entitled to be released on bail.

12. Accordingly, the petitioners are ordered to be released on bail on their executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) **each** with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Orathanadu;

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

ii) the petitioners shall report before the respondent police daily at 10.30 a.m until further orders;

iii) the petitioners shall not tamper with evidence or witness;

iv) the petitioners shall not abscond during trial;

v) On breach of any of the aforesaid conditions, the learned 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]**;



vi) If the petitioners thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-
13/07/2020

/ TRUE COPY /

WEB COPY

/ /2020

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE, ORATHANADU.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM.
3. THE INSPECTOR OF POLICE,
PAPPANADU POLICE STATION,
THANJAVUR DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.6759 of 2020
Date :13/07/2020

MS/JC/SAR-2/14.07.2020/5P.5C