



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 18.08.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. A. (MD)No.226 of 2020

Karuppaiah

... Appellant/Petitioner/Accused No.13

Vs.

1.The State represented by
Deputy Superintendent of Police,
Manamadurai,
Sivagangai District.

2.The Inspector of Police,
Pazhayanoor Police Station,
Sivagangai District.
(Crime No.32 of 2018).

... Respondents 1 & 2/ Complainants

3.Maheswaran

...3rd Respondent/Defacto Complainants

4.Malaisamy

5.Dhanasekaran

6.Sugumaran

7.Deivendran

...Respondents 4 to 7/Victims

Prayer : This criminal appeal is filed under Section 14A(2) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amended Act, 2016, to call for the records relating to the order dated 13.05.2020 passed in Crl.M.P.No.374 of 2020 on the file of the learned Sessions Judge, Special Court for exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai and set aside the same and consequently enlarge the appellant on bail in connection with Crime No.32 of 2018 on the file of the second respondent.

For Appellant

: Mr.K.Gokul

For Respondents 1 and 2

: Mr.K.Chella Pandian,

Additional Advocate General

Assisted by Mr.K.Dinesh Babu

Additional Public Prosecutor

For Respondents 3,4,6 and 7

: Mr.Bhagavat Singh

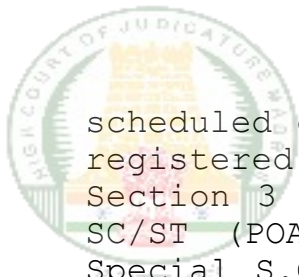
Respondent 5

: Died

ORDER

This appeal has been filed to set aside the order in Crl.M.P.No.374 of 2020 dated 13.05.2020, on the file of the Special Court for exclusively Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai and to enlarge the appellant on bail.

2.The case against the appellant is that the appellant along with other accused murdered three persons belonging to scheduled community and they injured five persons and damaged the house of the



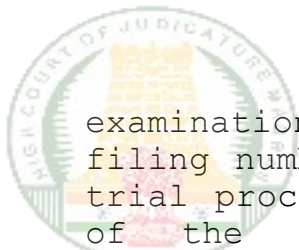
scheduled caste people. A case against the appellant and others was registered under Sections 147, 148, 294(b), 324, 307, 302 IPC and Section 3 of TNPPDL Act and Sections 3(1)(r), 3(1)(s), 3(2)(va) of SC/ST (POA) Amendment Act 2015. The case was taken on file as Special S.C.No.65 of 2018 before the Special Court, Sivagangai. The appellant filed a bail petition in Crl.M.P.No.374 of 2020 and that petition was dismissed by the Special Court on 13.05.2020. Against the dismissal order, the appellant preferred this appeal.

3.On the side of the appellant, it is stated that the appellant is in custody for the past 715 days I.e. More than two years. No purpose will be served by detaining the appellant for such a long period in prison. Though this Court has ordered to dispose of the case within a period of three months, the trial is yet pending. All the accused are in custody. Due to the pandemic situation, there cannot be any progress in the case and prayed the appellant to be released on bail.

4.The learned counsel appearing for the respondents 3 to 7/victims represented that this Court has ordered to conduct trial on day to day basis. The appellant and other accused failed to cross examine the witnesses on the date of chief examination. The appellant and other accused are in the habit of filing number of recall petitions and thereby causing delay in the proceedings. It is further stated that one of the victim, who was severely injured was continuously taking treatment and subsequently died due to the injuries. It is stated that particularly this appellant has caused 20 injuries to the victim/5th respondent, which can be seen from the records. Already this Court has granted bail to two of the co accused and the victims filed a special leave petition before the Honourable Supreme Court in S.L.P.No.648 and 649 of 2019 for cancellation of the bail and the Honourable Supreme Court passed an order cancelling the bail and remanded back the matter for fresh consideration and this Court rejected the bail petition on merits.

5.It is further stated that due to a communal clash, the appellant and other accused conspired together and in a well planned manner on 28.05.2018 at night time, they entered the house of the victims and assaulted them brutally.

6.On the side of the prosecution, it is stated that the appellant is a habitual offender having eight previous cases. Most of the cases are serious in nature. The earlier three petitions filed by the appellant were dismissed by this Court. The appellant by suppressing the dismissal of the earlier petitions has filed the present appeal. It is stated that this Court in Crl.O.P.(MD) No.16164 of 2018 on 10.09.2018, has directed the trial Court to conduct trial on day to day basis. Three witnesses are yet to be examined including the Doctor and one of the Investigating Officer. Without cross examining the witness, on the date of chief



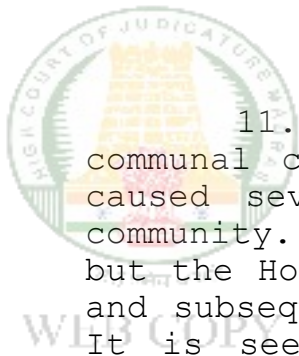
examination, the petitioner and other accused are in the habit of filing number of recall petitions, which leads to the delay in the trial proceedings. All the other accused are still in custody. Two of the co accused were granted bail by this Court in Crl.M.P.Nos.3328 and 3296 of 2018 dated 05.09.2018. The victims filed Special leave petition before the Honourable Supreme Court in SLP.No.648 and 649 of 2019 and the Honourable Supreme Court was pleased to set aside the order passed by this Court and remanded back the matter for passing a speaking order and subsequently, this Court rejected the bail petition. It is stated that the prosecution gathered inputs, which reveals that the victims are secretly planning for retaliation. If the appellant is released on bail, his life will be at peril. The trial is at crucial stage and if the accused is released on bail, he will hamper free and fair trial, as he has muscle and money power to trample with the witnesses and stifle with evidence and prayed the appeal to be dismissed.

7.By way of reply on the side of the appellant, it is stated that the appellant has mentioned the dismissal of two of the bail petitions. The appellant engaged some other advocate for filing the third petition and the present advocate is not aware of the third petition. Non mentioning of the dismissal of the third petition will not affect the right of the appellant. It is stated that in the counter filed by the prosecution, they have mentioned so many other incidents, which are not related to the present case. The pendency of the previous cases will not be a bar for an appellant to approach this Court for an order of bail. All the accused are in custody. There is no possibility for non co operation by the accused. The appellant and other accused have not caused any delay in cross examining the witnesses. The Special Leave petition was allowed by the Honourable Supreme Court only because the order of this Court was a non speaking order. The order in the special leave petition cannot be taken as a order against the co accused. It is further stated that the appellant is ready to reside in some other state and is ready to oblige any condition to be imposed by this Court.

8.On the side of the appellant, it is further stated that the prosecution has to prove that one of the victim died after two years from the date of occurrence. No medical proof was filed to that effect and that a death after two years cannot be treated as a death due to the occurrence.

9.On the side of the respondents 3 to 7, it is stated that there were more than 20 injuries inflicted to the victims. Only due to the injuries, one of the victim died after two years.

10.On the side of the prosecution, it is stated that the appellant is a habitual offender having eight other cases and the suffering of the victims are to be considered.



11.It is seen that the appellant and others involved in a communal clash, which resulted in the death of three persons and caused severe injuries to five others, who belong to scheduled community. It is seen that two of the co accused were granted bail but the Honourable Supreme Court allowed the Special Leave Petition and subsequently, the bail granted to the co accused was rejected. It is seen that all the accused were in custody. There was a direction passed by this Court to conduct trial on day to day basis within a period of three months. Though the order of this Court was passed in the year 2018, there are three witnesses yet to be examined. It is also seen that the appellant was involved in eight previous cases.

12.Considering the fact that there is a life threat for the appellant by the victims and considering the fact that there are only three witnesses to be examined and considering the serious nature of the offence and on considering the prior antecedents of the appellant, this Court is not inclined to grant bail to the appellant. This Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mrn

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 Sessions Judge,
Special Court for exclusive Trial of Cases under SC/ST (POA) Act,
Sivagangai District.
- 2.The Deputy Superintendent of Police,
Manamadurai,Sivagangai District.
- 3.The Inspector of Police,
Pazhayanoor Police Station,Sivagangai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Crl. A.(MD)No.226 of 2020

18.08.2020

AP(04/09/2020) 4P 5C

<https://hcservices.ecourts.gov.in/hcservices/>