



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 28.09.2020

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl.A.(MD)No.269 of 2020

WEB COPY

Selvakumar ... Appellant / Petitioner / Accused No.14
(Now confined in Central Prison,
Palayamkottai)

Vs.

1.State through

The Deputy Superintendent of Police,
South Police Station,
Thoothukudi,
Thoothukudi District.
Crime No.533 of 2019

... 1st respondent / respondent/
Complainant

2.Ramkumar

... 2nd Respondent /Defacto complainant

PRAYER: Criminal Appeal is filed under Section 14-A (2) of the Scheduled Caste/Scheduled Tribes Act, 1989, as amended by Act 1 of 2016, to set aside the order passed by the learned II Additional District and Sessions Judge (PCR), Tirunelveli, in Crl.M.P.No.965 of 2020, dated 04.08.2020 and enlarge the appellant on bail, pending investigation in Crime No.533 of 2019 on the file of the respondent police.

For Appellant

: Mr.R.J.Karthick

For R- 1

: Mr.K.Dinesh Babu
Additional Public Prosecutor

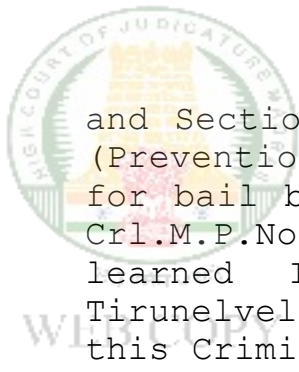
For R-2

: Mr.G.Thalaimutharasu
for Mr.A.S.Vaigunth

JUDGMENT

This appeal has been filed to set aside the order passed by the learned II Additional District and Sessions Judge (PCR), Tirunelveli, in Crl.M.P.No.965 of 2020, dated 04.08.2020 and enlarge the appellant on bail, pending investigation in Crime No.533 of 2019, on the file of the respondent police.

2. The appellant herein was arrayed as Accused No.14, in Crime No.533 of 2019, on the file of the Thoothukudi South Police Station. The case against the appellant is that on 21.08.2019, the appellant and other 20 accused involved in an offence of murder. FIR was registered in Crime No.533 of 2019, under Sections 148, 294, 341, 302, 502(ii), 120B, 34 and 109 IPC

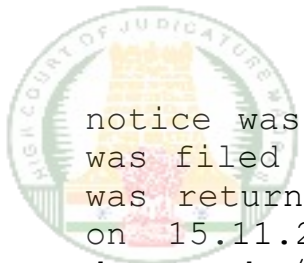


and Section 3(2)(Va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The appellant filed a petition for bail before the II Additional District Judge, Tirunelveli, in Crl.M.P.No.965 of 2020. That petition was dismissed by the learned II Additional District and Sessions Judge (PCR), Tirunelveli, on 04.08.2020. Against which, the appellant preferred this Criminal Appeal.

3. On the side of the appellant, it is stated that initially the name of the accused was not found place in the FIR. The allegation against the appellant is that he was standing in the road in some other place and he did not carry any weapon. There is no overtact against the appellant. Only bike of the appellant was recovered. Two charge sheets were filed one on 14.11.2019 and another on 15.11.2019. The subsequent charge sheet was taken on file and the first charge sheet was given a go-by. The charge itself is vague against the appellant. The only allegation against the appellant is that he participated in the conspiracy. On 28.11.2019, the appellant surrendered before the Court and still he is in custody. Co-accused A15 and A16 were already released on bail by this Court and prayed the appellant to be released on bail.

4. On the side of the first respondent, it is stated that the prime accused A21 was still absconding. In a petition filed by the defacto complainant in Crl.O.P.No.18762 of 2019, dated 19.12.2019, this Court has ordered to split up the case against A21 and to complete the trial within a period of three months from the date of examination of P.W.1. As per the direction of this Court, the case against A21 was split up in S.C.No.195 of 2019. To drag on the proceedings, the accused filed a transfer petition with a false allegation against the Presiding Officer and against the defacto complainant, in Crl.O.P.No.989 of 2020 and that petition was dismissed on 16.03.2020. Again, the second respondent filed a petition in Crl.O.P.No.4181 of 2020, before this Court, seeking for a direction, directing the learned II Additional Sessions Judge (Special Court for SC/ST (Prevention of Atrocities) Act), Tirunelveli to complete the trial proceedings in S.C.No.187 of 2019 and this Court passed an order on 16.03.2020, directing the trial Court to complete the trial proceedings as directed in the previous order of this Court, dated 19.12.2019.

5. It is further stated that the appellant is having previous antecedents of an recent murder case registered in Thisaiyanvilai police. The proceedings under Section 207 Cr.P.C and 226 Cr.P.C. are yet to be taken. Against the bail order given by the accused Nos.15 and 16 granted by this Court in Crl.A.No.8/2019, dated 24.02.2020, a Special Leave Petition was filed in Crl.A.No.2162/2020 before the Hon'ble Supreme Court, in which,



notice was ordered to the accused and the State. The final report was filed by the investigation officer on 14.11.2019 and the same was returned for correction and the same report was re-submitted on 15.11.2019. The brutal occurrence of the murder of the deceased / Sivakumar took place near the District Court complex and near the South Police Station campus, Thoothukudi, in broad day light. Two FIRs are registered against the accused for threatening the witnesses, Crime No. 730 of 2019, dated 28.11.2019, was registered by the South Police Station, Thoothukudi, against A19, for threatening the witnesses, L.W.2. Another case in Crime No.176 of 2020 was registered by the Palayamkottai police station, Tirunelveli, against A2, for threatening the witness LW1, within the District Court campus. The State has filed a petition for cancellation of bail against A19 in Crl.M.P.No.3672 of 2019, before the lower Court and the same is pending.

6. 16 accused are still in judicial custody in Central Prison, Tirunelveli. Prime accused is in judicial custody in Central Prison, Coimbatore. Considering the gravity and nature of the offence, the State appointed a Special Public Prosecutor for this case. The accused are habitual offenders involved in many criminal cases including several murder cases. If he is released on bail, there is every possibility for violation of Court order and he may abscond. It is further stated that there is every possibility for an attack against the appellant by way revenge, if he is released on bail.

7. On the side of the second respondent / defacto complainant, it is stated that considering the nature and gravity of the day light murder, the State has appointed the Special Public Prosecutor. Two wheeler was seized by the police, in the presence of witnesses. The appellant had bad antecedents. In the year 2018, the appellant involved in an offence in Crime No.319 of 2019, under Section 302 IPC. As per the orders of the Hon'ble Supreme Court in Criminal Appeal No.1272 of 2015 in SLP.No.1596 of 2015, the Court has to consider the previous antecedents of the accused before letting them on bail. It is stated that A1 is having 5 previous cases, out of which 3 cases are murder cases, one case is an attempt to murder. Except Accused Nos.15, 17 and 21, all other accused were having previous cases. A21 is still absconding.

8. This Court has already passed an order in Crl.O.P.(MD) No.18762 of 2019, dated 19.12.2019, and directed the trial Court to split up the case against A21 and complete the trial proceedings within three months period from the date of examination of P.W.1. Subsequently, the trial Court had split up the case as S.C.No.195 of 2019. Thereafter, A21 has filed a



petition before this Court, in Crl.O.P.(MD)No.989 of 2020, seeking transfer of the case. That petition was dismissed by this Court, on 16.03.2020. Since the defacto complainant and other witnesses were threatened, the defacto complainant filed a petition for speedy trial in Crl.O.P.(MD)No.4181 of 2020. On 16.03.2020, this Court again passed an order directing the trial Court to follow the previous direction of this Court in Crl.O.P.(MD)No.18762 of 2019.

9. On the side of the defacto complainant, it is stated that copies are furnished to the accused, as per the directions given by this Court for speedy disposal. There is no necessity to consider the period of incarceration. It is stated that the Hon'ble Supreme Court in Appeal (Crl.)Nos.381-382 of 2002 has made an observation that "period of incarceration cannot be a relevant consideration in the matter of bail". A similar judgment of the Hon'ble Supreme Court in Appeal (Crl.)No.1129 of 2004, dated 18.01.2005 is cited.

10. It is stated that A15 and A16 were granted bail by this Court, in Crl.A.(MD)No.8 of 2019, dated 24.02.2020. Against which, the defacto complainant approached the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.2162 of 2020, in which notice was ordered to the accused and the State on 02.06.2020, and the same is pending. It is wrong to state that two charge sheets were filed in this case. The charge sheet was returned and resubmitted. Already two F.I.Rs were registered for threatening the witnesses, which may be taken in to consideration. A case against A19 was registered by the Thoothukudi South Police Station in Crime No.730 of 2019, dated 28.11.2019. A case against A2 was registered in Crime No.176 of 2020 at Palayamkottai Police Station, Tirunelveli, for threatening the eye witness/L.W.1 within the Court campus. The State has filed a petition for cancellation of bail granted to A19 in Crl.M.P.No.672 of 2019, before the trial Court. Without issuing notice to the defacto complainant, as elicited under Section 15 (A) of SC/ST Act, bail was granted to A19. Hence, the defacto complainant filed a cancellation petition and the same is pending before the trial Court. The trial proceedings are pending for the past four months prevailing the COVID - 19 situation and to complete the 207 Cr.P.C. proceedings, the presence of accused is necessary. A judgment of this Court passed in Crl.O.P.No.18762 of 2019, dated 19.12.2019, is cited. The operative portion of the order reads as follows:

"Taking into consideration, the apprehension of the petitioner that there is possibility of the witnesses being threatened in the event of there being delay, direction is issued to the learned II Additional Sessions Judge, Special Court for SC/ST (Prevention of Atrocities Act), Tirunelveli to split up the case against the



available accused and proceed with the trial on day-to-day basis and complete the trial, within a period of three months, from the date of examination of the first witness."

11. It is further stated that if the appellant is released on bail, there is a chance for tampering the witness. A judgment of the Hon'ble Supreme Court in Appeal (Crl.)No.1248 of 2005 [State through C.B.I. Vs. Amaramani Tripathi] is cited.

12. Heard the learned counsel on either side and perused the materials available on record.

13. The submissions of both side counsel reveals that the appellant is in custody for more than 300 days. The appellant herein was arrayed as A14. It is seen that Accused No.21 was absconding and the case against A21 was split up. It is seen that the accused Nos.15 and 16 were already released on bail and the proceedings for cancellation of bail is pending. It is seen that this Court has ordered speedy trial in two proceedings. It is stated that two cases were registered against co-accused, for threatening the witnesses / L.W.1 and L.W.2. On the side of the prosecution, it is stated that if the appellant is released on bail, there is every possibility for violation of Court orders and for absconding. It is seen that the appellant involved in one more criminal case and there is possibility to harass the witnesses. The case is pending in the stage of 207 Cr.P.C. proceedings. The presence of the accused is necessary before the Court. If the appellant is released on bail, the trial proceedings may be delayed.

14. In the above circumstances, considering the antecedents of the appellant and considering the direction passed by this Court and considering the pendency of petitions for cancellation of bail, and considering the threatening of witness by the accused, this Court is not inclined to allow this appeal.

15. Hence, this Criminal Appeal is dismissed.

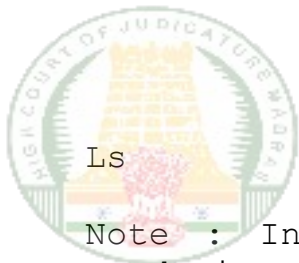
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Assistant Registrar (CRL.SIDE)

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Sub Assistant Registrar (CS)



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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 II Additional District and Sessions Judge (PCR),
Tirunelveli.
- 2.The Deputy Superintendent of Police,
South Police Station,
Thoothukudi,
Thoothukudi District.
- 3.The Superintendent, Central Prison,
Palayamkottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, Criminal Section(Records)-2 copies
Madurai Bench of Madras High Court, Madurai.

Crl.A. (MD) No.269 of 2020
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SJ(CO)
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