



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Original Jurisdiction)

Reserved on	28.09.2020
Delivered on	01.10.2020

PRESENT

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRL OP(MD)Nos.9934 to 9938 of 2020

CRL OP(MD)Nos.9934 and 9937 of 2020:

X.Thomas Francis ...Petitioner/Accused No.8
in both petition

vs.

State: Through its
Inspector of Police,
CBI P.S.,
New Delhi. ...Respondent/Complainant
in both petition

RC 0502020 S0009 of 2020 ...CRL OP(MD)No.9934 of 2020
RC 0502020 S0008 of 2020 ...CRL OP(MD)No.9937 of 2020

CRL OP(MD)No.9935 of 2020:

Muthuraj ...Petitioner/Accused No.5

vs.

State: Through its
Inspector of Police,
CBI P.S., New Delhi,
RC 0502020 S0008 of 2020 ...Respondent/Complainant

CRL OP(MD)No.9936 of 2020:

Muthuraj ...Petitioner/Accused

vs.

State: Through its
Inspector of Police,
CBI P.S., New Delhi,
RC 0502020 S0009 of 2020 ...Respondent/Complainant



CRL OP(MD No.9938 of 2020:

Murugan

...Petitioner/Accused No.2

Vs.

State: Through its
Inspector of Police,
CBI P.S., New Delhi,
RC 0502020 S0008 of 2020

...Respondent/Complainant

J.Selvarani

...Intervene Petitioner/Deceased Mother
in CRL MP(MD)Nod.4801 to 4805 of 2020
in CRL OP(MD)Nos.9934 to 9938 of 2020

For Petitioners : Mr.T.A.Ebenezer,
in all these petitions
For Respondent : M/s.L.Victoria Gowri,
(CBI) Assistant Solicitor General of India
for CBI Cases
in all these petitions
For Intervenor : Mr.T.Lajapathi Roy, Advocate
in all these petitions

PETITIONS FOR BAIL UNDER SECTION 439 OF THE CODE OF CRIMINAL
PROCEDURE.

COMMON PRAYER :-

For Bail in Case No.RC 0502020 S0008 and Case No.RC 0502020
S0009 on the file of the respondent/CBI.

COMMON ORDER : The Court made the following order :-

Totally, there are nine accused in this crime. The petitioner in CRL.O.P.(MD). Nos.9934 and 9937 of 2020 is Accused No.8; the petitioner in CRL.O.P.(MD).Nos.9935 and 9936 of 2020 is Accused No.6 in both Cases in RC 0502020 S0008 and RC 0502020 S0009, respectively; and the petitioner in CRL.O.P.(MD).No.9938 of 2020 is Accused No.4 in RC 0502020 S0008, on the file of the respondent/CBI. Thomas Francis (A-8) was arrested and remanded to judicial custody on 08.07.2020; Muthuraj (A-6) was arrested and remanded to judicial custody on 03.07.2020; and Murugan (A-4 in RC 0502020 S0008) was arrested and remanded to judicial custody on 01.07.2020 and hence, seeking bail, the present petitions have been filed.

2. The aforesaid case in RC 0502020 S0008 relates to the death of one Benniks, and RC 0502020 S0009 relates to the death of P.Jeyaraj, father of the deceased Benniks, both died in judicial custody.



3. The brief facts leading to filing of the present bail petitions are as follows:

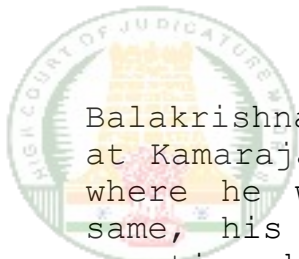
3.1. The deceased in these cases, namely Benniks and Jeyaraj were arrested on 19.06.2020 relating to Crime No.312 of 2020, for the offences punishable under Sections 188, 269, 294(b), 353 and 506 (2) of the Indian Penal Code on the file of Sathankulam Police Station, and both of them were remanded to judicial custody and lodged in Sub Jail, Kovilpatti on 20.06.2020. Subsequently, on 22.06.2020, at about 07.35 p.m., Benniks complained of wheezing problem and he was taken to the Government Hospital, Kovilpatti, where he died at about 09.00 p.m. Based on the complaint given by the Jail Superintendent, Sub Jail, Kovilpatti, a First Information Report was registered in Crime No.649 of 2020 under Section 176(1A) (i) of the Code of Criminal Procedure, at Kovilpatti East Police Station.

3.2. Thereafter, on the very same day, at about 10.20 p.m., Jeyaraj also fell sick and he was also taken to the Government Hospital, Kovilpatti and he died at about 05.40 a.m., on 23.06.2020. Once again, based on the complaint filed by the Jail Superintendent, Sub Jail, Kovilpatti, a First Information Report was registered in Crime No.650 of 2020 under Section 176(1A)(i) of the Code of Criminal Procedure.

3.3. In both the cases, inquest was conducted by the learned Judicial Magistrate No.1, Kovilpatti. Thereafter, post-mortem autopsy was conducted by a Board of three doctors from Forensic Medicine and Toxicology Department of Tirunelveli Medical College, Tirunelveli, and they gave an opinion that, both the deceased would appear to have died of complications of blunt injuries sustained.

3.4. In the meantime, based on reports that Benniks and Jeyaraj have died due to custodial torture in Sathankulam Police Station, the Madurai Bench of Madras High Court has taken *Suo Motu* Writ Petition in W.P.(MD)No.7042 of 2020 and ordered investigation by CBCID. Based on the direction, CBCID took up the investigation and registered two FIRs in Crime Nos.1 and 2 of 2020, during investigation, the complicity of the petitioners *prima facie* established and they were arrested on 08.07.2020, 03.07.2020 and 01.07.2020, respectively. Subsequently, investigation of both the cases was transferred to CBI, by the Government of Tamil Nadu, vide Notification dated 29.06.2020. Subsequently, the Government of India, also issued a Notification for CBI enquiry on 06.07.2020. Based on the same, the CBI took over the investigation and registered fresh First Information Reports in RC 0502020 S0008 and RC 0502020 S0009.

3.5. During investigation, it reveals that on 19.06.2020, at about 07.30 p.m., the deceased Jeyaraj was picked up by the Inspector of Police-Sridhar (A-1), Sub-Inspector of Police-



Balakrishnan (A-2) and Police Constable Muthuraj (A-6) from his shop at Kamarajar Chowk, Sathankulam and he was taken to Police Station, where he was illegally confined. After coming to know about the same, his son deceased Benniks rushed to the Police Station and questioned the Sub-Inspector of Police-Balakrishnan (A-2) regarding the arrest. At that time, there was a scuffle between them and the Sub-Inspector of Police - Balakrishnan (A-2) and Muthuraj (A-6) tried to manhandle the deceased Benniks and in order to defend him, Benniks pushed Muthuraj (A-6), at that time, the Sub-Inspector of Police-Balakrishnan (A-2) tried to manhandle Benniks, however, he evaded his attempt. Thereafter, Benniks was also wrongfully confined inside the Police Station and the Sub-Inspector of Police-Balakrishnan (A-2) along with the other accused persons have beaten Benniks severely. The Inspector of Police - Sridhar (A-1) instigated all the other accused persons to teach him a lesson on 'how to behave with police'. Thereafter, all the accused have beaten both the deceased throughout the night, in which, both the deceased suffered serious injuries and blood started oozing from their body and both the deceased were asked to clean the blood that had oozed from their wounds and scattered on the floor of Police Station with their own vests.

3.6. In the meantime, A-1, A-2 and A-3 have obtained a false complaint from Murugan (A-4), based on which, a crime was registered against both the deceased in Crime No.312 of 2020 for the offences punishable under Sections 188, 269, 294(b), 353 and 506(2) of the Indian Penal Code on the file of Sathankulam Police Station. That complaint was attested by Muthuraj (A-6).

3.7. On the next day morning i.e., on 20.06.2020, both the deceased were taken to the Government Hospital Sathankulam, wherein, despite the bleeding injuries found on all over the body on both the deceased, the Medical Officer gave a Certificate as 'fit for remand' and they were remanded to judicial custody by the learned Judicial Magistrate, Sathankulam, and they have been confined to Kovilpatti Sub Jail at about 02.30 p.m., on 20.06.2020.

3.8. Subsequently, on 22.06.2020 at 07.35 p.m., Benniks developed wheezing problem and he was taken to the Government Hospital, Kovilpatti, where he died at about 09.00 p.m. On the very same day, the deceased Jeyaraj also fell ill and he was taken to the very same hospital, where he died on 23.06.2020 at 05.40 a.m. The post-mortem autopsy was conducted on the dead body of both the deceased on 24.06.2020, wherein, number of blunt injuries were found on the body of Jeyaraj and Benniks and the doctors gave an opinion that both the deceased would appear to have died of complications of blunt injuries sustained.

3.9. During investigation, the respondent/CBI has examined as many as 105 witnesses and recorded their statements and filed a



3.10. The petitioner in Crl.O.P.(MD).Nos.9934 and 9937 of 2020, viz., Accused No.8 [Thomas Francis] stood charged for the offences punishable under Section 120-B IPC r/w Sections 302, 342 and 201 r/w 34 IPC.

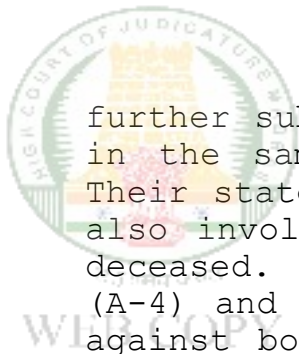
3.11. Likewise, the petitioner in Crl.O.P.(MD).Nos.9935 and 9936 of 2020, viz., Accused No.6 [Muthuraj] stood charged for the offences punishable under Section 120-B IPC r/w Sections 302, 342, 201, 182, 193, 211 and 218 r/w 34 IPC.

3.12. Insofar as the petitioner in Crl.O.P.(MD)No.9938 of 2020, viz., Accused No.4 [Murugan] is concerned, he stood charged for the offences punishable under Section 120-B IPC r/w Sections 302, 342, 201, 182, 193, 211 and 218 r/w 34 IPC.

3.13. Earlier, the petitioners herein filed bail applications before the learned Principal Sessions Judge, Madurai and the same were dismissed, thereafter, they have filed bail applications before this Court and the same were also dismissed as withdrawn on 25.08.2020. Again, seeking bail, they have filed the present petitions.

4. The learned counsel appearing for the petitioners would submit that at the time of occurrence, the petitioners were working as Constables in the Police Station and they have no role to play in the alleged custodial torture and they have been falsely implicated in this crime. From the materials collected during investigation, it could be seen that no *prima facie* case is made out against the petitioners. Insofar as Thomas Francis [A-8], in this crime is concerned, the only allegation made against him is that he was guarding the closed gate of the Police Station. That apart, the confession of the other accused clearly shows that A-2, in this case, took some friends to the Police Station at mid night and they also said to have involved in the occurrence, for which, there was no investigation by the CBI. It is further submitted that now the investigation was over and final report was also filed, the petitioners are in jail for nearly three months. The petitioners undertake that they will not abscond, in the event of releasing them on bail, they will not tamper with the witnesses, they will abide by any conditions imposed by this Court and they will co-operate with the trial. Contending so, the learned counsel prays for bail in favour of the petitioners herein.

5. Per contra, the learned Assistant Solicitor General of India appearing for the respondent/CBI would submit that at the time of occurrence, the petitioners were working as Constables in the Police Station and they were also involved in the custodial torture. All the petitioners herein along with Balakrishnan (A-2) and Raghuganesh (A-3) attacked the deceased brutally throughout the night and caused injuries, due to which, both of them died. She would



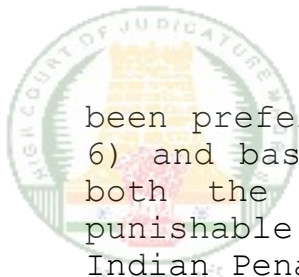
further submit that two of the women Police Head Constables working in the same Police Station are eye witnesses to the occurrence. Their statements *prima facie* reveal that the petitioners herein are also involved in the heinous crime and brutally attacked both the deceased. That apart, the investigation also reveals that Murugan (A-4) and Muthuraj (A-6) also involved in filing a false complaint against both the deceased along with A-1 to A-3. The petitioners were working as Police Constables in the very same Police Station and if they are released on bail, they will definitely tamper with the witnesses and they will not co-operate with the trial. Hence, she strongly opposed the bail applications.

6. The learned counsel appearing for the intervenor opposes the bail applications stating that, if the petitioners are released on bail, they will definitely tamper with the witnesses. Further, it is submitted that it is a heinous crime of custodial death and the petitioners, being police personnel, who are supposed to safeguard the interest of general public, instead, they were involved in these kind of offences against the innocent persons. Hence, he prayed for dismissal of the present petitions seeking bail.

7. I have considered the rival submissions and also perused the materials available on record meticulously.

8. It is a case of custodial death, in which, two persons - father and son were died. From the materials available on record, it could be seen that the the deceased Jeyaraj was taken to the Police Station by A-1, A-2 and A-6, where he was illegally confined. Thereafter, Benniks, S/o.Jeyaraj went to the Police Station and enquired about the arrest of his father, where, there was a wordy altercation between Benniks and the Sub-Inspector of Police - Balakrishnan (A-2). At that time, Muthuraj (A-6), the petitioner in Crl.O.P.(MD).Nos.9935 and 9936 of 2020, had entered into the Police Station and tried to manhandle him, and Benniks, in order to defend him, pushed Muthuraj (A-6). Immediately, Muthuraj (A-6) along with another Sub-Inspector of Police caught-hold of Benniks and started beating him, and it was going on for sometime. Thereafter, the Inspector of Police- Sridhar (A-1), instigated the other accused to beat both the father and son once again. At that time, the other accused, Murugan (A-4), Thomas Francis (A-8), Muthuraj (A-6), Samadurai (A-5) and Veilumuthu (A-9) caught-hold of the deceased by holding their limbs and thereby, aided Balakrishnan (A-2) to attack them. Thomas Francis (A-8) guarded the closed main gate and once again, they have indiscriminately beaten the deceased and they suffered severe bleeding injuries, especially in the buttocks.

9. The statements of the witnesses also reveal that both the deceased were asked to clean the blood that had oozed from their wounds and scattered on the floor of the Police Station with their own vests and the torture continued throughout the night. In the



been preferred by Murugan (A-4), which was attested by Muthuraj (A-6) and based on the complaint, a crime was also registered against both the deceased in Crime No.312 of 2020 for the offences punishable under Sections 188, 269, 294(b), 353 and 506(2) of the Indian Penal Code.

WEB COPY

10. On the next day morning, both the deceased were taken to the Government Hospital, Sathankulam with bleeding injuries. However, the police personnel were managed to obtain a Certificate from the Doctor as 'both of them were fit for remand', thereafter, they were produced before the learned Judicial Magistrate, Sathankulam, who remanded them to judicial custody and accordingly, both of them lodged in Kovilpatti Sub Jail. After two days, they have succumbed to injuries. The post-mortem reports also clearly reveal that both of them died due to complications of blunt injuries sustained by them.

11. From the materials available on record, it could be seen that the petitioners herein also played a vital role in the custodial torture. Two women Head Constables working in the same Police Station are eye witnesses to the occurrence. One of the Head Constables also gave a statement before the learned Judicial Magistrate under Section 164(5) of the Code of Criminal Procedure, which clearly reveals that all these petitioners along with the other accused have detained both the deceased illegally and also indulged in custodial torture. Insofar as Murugan (A-4) and Muthuraj (A-6) are concerned, they were also involved in registering a false complaint against both the deceased. The learned counsel appearing for the petitioners would submit that the only allegation against Thomas Francis (A-8) is that he was guarding the closed main gate, and there is no other allegation levelled against him, however, the statements of eye witnesses clearly reveal that he had also participated in the conspiracy and also caught-hold of the deceased along with the other accused and beat the deceased. The materials available on record *prima facie* show that the petitioners herein have committed the offence.

12. It is well settled law that while granting bail, the Court is to keep in mind whether any *prima facie* material is available to believe that the accused had committed the offence, the nature of accusation, seriousness of the offence, character, behaviour and position of the accused and also reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and if the accused is released on bail, there is any chance of fleeing from justice.

13. In **2005 (8) SCC 21 [State of U.P. through CBI Vs. Amarmani Tripathi]**, the Hon'ble Supreme Court has held as follows:

"It is well settled that the matters to be considered in an application for bail are,

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



(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the charge;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behavior, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being tampered with; and

(viii) danger, of course, of justice being thwarted by grant of bail (see Prahlad Singh Bhati V. NCT, Delhi [2001 (4) SCC, 280] and Gurcharan Singh V. State (Delhi Administration) [AIR 1978 SC 179]). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused".

14. In 2001 (4) SCC 280 [Prahlad Singh Bhati Vs. NCT, Delhi], the Hon'ble Supreme Court has also held as follows:

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which



means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

15. In the instant case, the materials available on record *prima facie* disclose that the petitioners have committed the offence. That apart, it is a case of custodial death, in which, two innocent persons have lost their precious lives. Furthermore, the petitioners are police personnel working in the same Police Station, if they are released on bail, there is a reasonable apprehension that the witnesses are likely to be tampered with, as some of the witnesses were working in the same Police Station. Considering the above circumstances and also considering the gravity of offence, I am **not** inclined to grant bail to the petitioners. Hence, the petitions stand dismissed.

sd/-
01/10/2020

/ TRUE 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.INSPECTOR OF POLICE,
CBI P.S.,NEW DELHI.

2.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3.THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL OP(MD)Nos.9934 to
9938 of 2020
Date :01/10/2020

SML

TK/PN/SAR.2/01.10.2020/9P/4C

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