



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

Date : 29/09/2020

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN

CRL OP(MD). No.10217 of 2020

S.Parthiban

... Petitioner/Accused No.8

Vs

The State rep.by
The Inspector of Police,
Vallam Police Station,
Thanjavur District.
Crime No.811 of 2020.

... Respondent/Complainant

For Petitioner : M/s.K.S.Duraipandian,
Advocate.

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

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

PRAYER :-

For Bail in Crime No. 811 of 2020 on the file of the
Respondent Police

ORDER : The Court made the following order :-

The petitioner herein was arrested and remanded to judicial custody on 25.06.2020 for the alleged offences under Sections 147, 148, 341, 342, 120(b), 302, 109 r/w. 34 of IPC.

2. There are totally 11 accused in this case and the petitioner herein is arrayed as A8. The deceased in this case is the husband of A1. The case of the prosecution is that there was frequent quarrel between the deceased and A1, and in order to murder him A1 said to have approached A8, and he in turn assured her that he will engage hireling from Trichy. Then A8 said to have approached A9 and A11 for that purpose and received a sum of Rs. 2 lakhs from A1, and engaged other accused namely A2 to A7 for murdering the deceased and on the date of occurrence when the deceased was travelling in a car A3, 5, and 9 had waylaid him and indiscriminately attacked him with dangerous weapons, caused his death and fled away from the scene of occurrence. Thereafter based on the complaint given by the Village Administrative Officer, the crime has been registered and during investigation all the accused were arrested.



3. The learned counsel for the petitioner would submit that the petitioner has not committed any offence. He would also submit that the petitioner is in jail for more than 90 days and the respondent police has not filed the final report till date and the co-accused namely A11 and A9 were released on bail by this Court on 11.09.2020 and 16.09.2020 in CrI.O.P(MD) No.8778 and 8755 of 2020 , hence he may be granted bail.

4. The learned Government Advocate(CrI.Side) would submit that the petitioner engaged the other accused and attacked the deceased brutally and caused his death in a cruel manner. He would also submit that the investigation is yet to be completed and the final report has not been filed so far and the co-accused namely A11 and A9 were released on bail by this Court on 11.09.2020 and 16.09.2020 in CrI.O.P(MD) No.8778 and 8755 of 2020

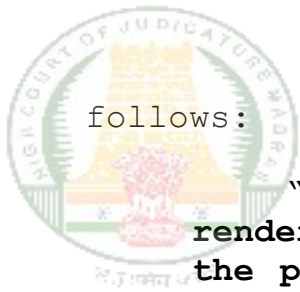
5. I have considered the rival submissions

6. The petitioner is 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, **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

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



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."

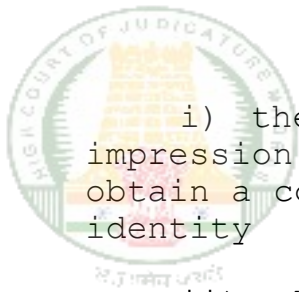
9. Very recently, the Hon'ble Supreme Court in **CRIMINAL APPEAL No.452 OF 2020 (ARISING OUT OF SLP (CRL.) NO.2433/2020) [S.KASI VERSUS STATE THROUGH THE INSPECTOR OF POLICE, SAMAYNALLUR POLICE STATION, MADURAI DISTRICT]**, decided on 19.06.2020, after considering the various other judgments, has held 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."

10. 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 petitioner was arrested on 25.06.2020 and even after the expiry of 90 days of judicial custody of far the final report was not filed.

11. In the above circumstances, this Court is inclined to grant bail to the petitioner on the following conditions.

12. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Thanjavur, Thanjavur District



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 petitioner shall report before the respondent police daily at 10.30 a.m until further orders.

iii) the petitioner shall not tamper with evidence or witness.

iv) the petitioner 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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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 accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

29/09/2020

/ 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. THE JUDICIAL MAGISTRATE NO II, THANJAVUR.
2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM.
3. THE INSPECTOR OF POLICE,
VALLAM POLICE STATION, THANJAVUR DISTRICT.
4. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
5. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL OP(MD) No.10217 of 2020

Date : 29/09/2020

AAV

<https://hccr.csr.gov.in/hccr/cases/2020/4P/6C>