



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 20/11/2020

PRESENT

The Hon`ble Mr.Justice S.M.SUBRAMANIAM

CRL OP(MD). No.13174 of 2020

Datchinamoorthy

... Petitioner/Accused No.5

Vs

State Rep. by
The Inspector of Police,
South Gate Police Station,
Madurai District.
Crime No. 1018 of 2020.

... Respondent/Complainant

For Petitioner : M/s.Ak.Azagarsami,
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.1018 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A5, who was arrested and remanded to judicial custody on 22.08.2020 for the offences punishable under Sections 341, 302, 506(ii), 147 and 148 of IPC, on the file of the respondent police, seeks bail.

2.The learned counsel for the petitioner strenuously contended that the petitioner/A5 was no way connected with the scene of occurrence. Even, as per prosecution he was standing far away from the scene of occurrence. Petitioner/A5 had not attacked or caused death of the deceased persons and therefore, he is entitled for bail.

3.The learned counsel for the petitioner is of the opinion that the prosecution could not able to establish any other act and any other involvement of the petitioner in the criminal case and he is not a person. Thus, the petition is to be allowed.



4.The learned Government Advocate (Crl. side) objected the contention by stating that the petitioner/A5 is only the friend of A-1 and A-3 and A-4 had abetted the crime by watching the surrounding area in two-wheeler. When, A1 and A2 had committed an act of crime, the petitioner/A5 and other accused/A3 and A4 were watching the surrounding area in order to protect the commission of offence by A1 and A2 and therefore, he is equally contributed for the cause of death of the victim.

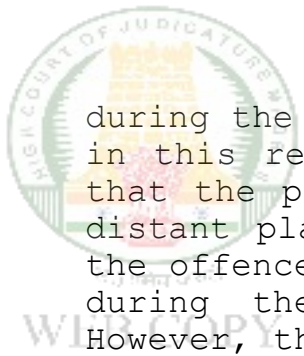
5.The learned Government Advocate (Crl. side) is of the opinion that A5 was subsequently added as accused based on the confession statement given by A1 and A2. Thus, the petition is to be dismissed.

6.It is brought to the notice of this Court that the charge sheet has already been laid in PRC No.746 of 2020 on 20.08.2020 and investigation has completed in all respects and therefore, there is no likelihood of tampering the witnesses or interfering with the process of investigation.

7.Right to seek bail under Section 439 of Cr.P.C. is an absolute one. Gravity of crime, character of evidence, position and status of accused with reference to likelihood flee from justice. Repeating the offence, tampering the witnesses are obstructing course of justice are to be proved to consider for grant of bail by this Court. Bail is a rule, refusal is an exception. Law presumes innocence unless allegations are established or proved against the persons charged. Of course, larger interest of the public is also be considered while enlarging the accused on bail.

8.Detention is not supposed to be punitive or preventive. The seriousness of the allegations or the availability of the materials are not the only consideration for declining the bail. There are various other factors, which can be considered for granting bail. Bail cannot be rejected in a routine manner. Facts, circumstances, probabilities and other complex nature and the seriousness of the crime are to be considered cogently, so as to arrive at reasonable decision. Pragmatic approach is to be adopted on certain facts and circumstances.

9.In the present case, prosecution revealed that A1 and A2 are persons who had attacked the deceased person and caused death. The petitioner/A5 and other accused/A3 and A4 were originally not included in the First Information Report and based on the confession statement of A1 and A2, the names of the petitioner/A5 and other accused persons/A3 and A4 are added as accused in the criminal case. As per the prosecution, A3, A4 and A5 were protecting the activities of A1 and A2 by watching the surrounding areas in a two-wheeler, however they were standing in a far away of place and therefore, the service of court and other aspects are to be established only



during the trial and it would not be appropriate to make any finding in this regard. However, the prosecution itself is of an opinion that the petitioner/A5 was watching the scene of occurrence from a distant place. However, they came with the accused for committing the offence. This complex nature of the facts are to be adjudicated during the trial elaborately, so as to establish the crime. However, the benefits of the some factual differences are to be held as advantageous to the accused for getting bail.

10. This Court is of the considered opinion that the petitioner/A5 was not involved in any previous case. The crime had been committed on account of certain family disputes. Thus, this Court is of the considered opinion that the petitioner is entitled to get bail as charge sheet has already been laid by the prosecution.

11. Taking note of the above facts and circumstances of the case and also taking into consideration the period of incarceration, this Court is inclined to grant bail to the petitioner subject to the following conditions:

12. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties (out of which one shall be blood related surety) each for a like sum to the satisfaction of the learned Judicial Magistrate, No.IV, Madurai.

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.

vii) the petitioner is directed to maintain good character till the disposal of the case and not to interact with the persons involved in the case.



13.It is made clear that the bail which is granted to the petitioner on the peculiar facts that he was standing faraway from the scene of occurrence, the said peculiar facts would not be applicable to A1 and A2 who were aggressors and committed the act of crime. Thus, the bail granted to the petitioner/A5 cannot be cited as precedent for grant of bail to A1 and A2.

sd/-
20/11/2020

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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.IV,
MADURAI.
- 2 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.
- 3 THE INSPECTOR OF POLICE,
SOUTH GATE POLICE STATION,
MADURAI DISTRICT.
- 4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.13174 of 2020
Date :20/11/2020

sjj
JM/VR/SAR IV/20.11.2020/4P/6C