

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Cr1.O.P.No.5494 of 2021

S. Elumalai

... Petitioner

Vs.

The State rep.by
The Inspector of Police,
CBCID Police PS(OCU) Salem,
Salem District.
(Crime No.1 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in connection with the case Crime No.1 of 2020 pending investigation on the file of the respondent police.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mrs. M. Prabhavathi,
APP

O R D E R

(The case has been heard through video conference)

The Petitioner, who was arrested and remanded to judicial custody on 29.01.2021 for the offence punishable under Section 174(iii)Cr.P.C. altered to 302 IPC in Crime No.1 of 2020, seeks bail.

2. Totally, there are 4 accused and the petitioner is arrayed as A4. The case of the prosecution is that the deceased in this case, namely, Manikandan is said to be drunkard. The deceased wife said to have illicit intimacy with A2. When the same was questioned by the deceased, there was quarrel between the parties. Thereafter, the deceased said to have informed the Govindraj/A1, about the intimacy of her wife with somebody else, and A1 also having some grievance against the deceased. Due to the same, on the date of occurrence, all the accused attacked the deceased with wooden log and caused serious injuries to him, and left him near his house. The defacto complainant, who is the mother of the deceased, after coming to know about the incident, immediately, took the deceased to the hospital, where, he declared dead. Originally, a case under Section 174 Cr.P.C. has been registered and after investigation it was closed. Thereafter, the investigation was reopened and transferred to CBCID and they have conducted further investigation, and it reveals that, only these accused persons said to have attacked the deceased and caused his death. So far as this petitioner is concerned, he only kicked the deceased in his stomach and other accused said to have

attacked him with wooden log. Hence, the petitioner was arrested on 29.01.2021. Now, seeking bail , the present petition has been filed.

3. The learned counsel for the petitioner would submit that it is the case of circumstantial evidence. Earlier, a crime was registered under Section 174 Cr.P.C. After investigation, since the police was not able to find out the real accused, the complaint was closed. Thereafter, re-investigation was conducted by CBCID, and the petitioner has been falsely implicated in this case. Even as per the allegation, only A1 and A2 has motive as against the deceased. The petitioner is only a friend of A1 and A2, and petitioner only said to have kicked the deceased in his stomach, and only other accused attacked him with wooden log. He is in jail from 29.01.2021. Therefore, he prays to grant bail to the petitioner.

4. The learned Additional Public Prosecutor appearing would submit that all the petitioner jointly attacked the deceased and caused his death and left the body near his house. Even though, initially, investigation was closed, thereafter, CBCID police re-investigated the case and registered the case against the petitioner and others. Investigation is still pending.

5. From the perusal of the records, it could be seen that it is a case of circumstantial evidence. Originally, investigation done by the local police and it has been closed. Thereafter, re-investigation has been conducted by the CBCID police and the petitioner and others has been implicated in this case. The motive is only between A1, A2 and the deceased. The petitioner only said to have kicked the deceased in his stomach.

6. Considering the above said facts and circumstances of the case, and also considering the period of incarceration suffered by the petitioner, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.IV Salem, and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner, on release from the prison, shall report before the respondent police daily at 10.30 a.m., until further orders;

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during investigation or trial,

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial 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];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

7. With the above directions, this Criminal Original Petition is ordered.

-sd/-

26/03/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.IV, SALEM

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM(FOR INFORMAIION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
CBCID POLICE PS(OCU) SALEM,
SALEM DISTRICT

5 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

CC to M/S.B.VASUDEVAN Advocate on payment of necessary charges
Sr.4127

CRL OP.5494/2021

Date :26/03/2021

RVR 29/03/2021

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