

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.05.2021

Coram

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Criminal Appeal Nos.243 & 244 of 2021

Sitharthan ... Appellant/Accused No.1
S/o.Suresh Chand (in Crl.A.No.243 of 2021)

Suresh Chand ... Appellant/Accused No.2
S/o.Joharilal (in Crl.A.No.244 of 2021)

Versus

1.State, Represented by
The Inspector of Police,
CBCID - South Police Station,
Nagapattinam.

(Crime No.3 of 2021)

2.State Represented by
The Inspector of Police,
Thirvenkadu Police Station,
Nagapatinam.

(Crime No.165 of 2021)

3. Manonmani ... Respondents
W/o.Late, Srinivasan (in both Appeals)

Common Prayer: Criminal Appeals filed under Section 14-A(2) of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, to set aside the order dated 30.04.2021 passed in Crl.MP.No.1384 of 2021 and Crl.MP.No.1385 of 2021 respectively, by the Principal District and Sessions Judge, Nagapattinam and enlarge the appellant on bail in Crime No.3 of 2021, pending investigation on the file of the first respondent /police.

For Appellants : Mr.Arun Anbumani
(in both Appeals)

For Respondents : Ms.V.Sharadha Devi, (for R1 & R2)
(in both Appeals) Government Advocate

: Mr.R.Sankarasubbu (for R3)

COMMON JUDGMENT

The appellants in these appeals are figuring as A1 and A2 in Crime No.165 of 2021 originally registered on the file of the Inspector of Police, Thiruvankadu Police Station. Nagapattinam.

2.Manonmani is the wife of the deceased Srinivasan. Srinivasan was found dead on 17.4.2021 in the brick kiln chambers of RKB chambers. The chamber is owned by Thiru Siddharthan and his mother Lalitha. The deceased Srinivasan was working in the brick chambers for more than 20 years.

3.The stand of the intervenor is that the deceased/Srinivasan was employed there for more than 27 years. Srinivasan left the employment of the chambers sometime back. He had joined another brick chambers known as SKP chambers. However, he had certain outstanding issues to be settled. According to Srinivasan, he had to be paid Rs.1,25,000/- (Rupees One Lakhs Twenty Five Thousand only) towards gratuity and provident fund dues. According to the management of RKB chambers, only Rs.60,000/- was due.

4.In these circumstances, within the premises of RKB chambers, Srinivasan was found dead. Initially, Manonmani gave her complaint alleging that on 17.4.2021, at about 3:00 am, her husband received a call from RKB chambers, therefore he went to the premises of RKB chambers. At around 6:00 am. Manonmani got a call that her husband passed away. When Manonmani and her relatives rushed to the spot, she found her husband hanging in a kneeling position. Manonmani alleged that her husband had been murdered by the management of RKB chambers. She wanted the owner as well as other accused to be arrested.

5.Based on her complaint, Crime No.165 of 2021 was registered by Thiruvankadu Police Station under Section 174(3) Cr.P.C. Later in the day, Manonmani gave an additional complaint. In her additional complaint, she mentioned that on 12.4.2021 at about 10:00 am, her husband Srinivasan met the owners of the chambers namely Suresh Chand and his son

Sitharthan and demanded his settlement dues. Those two persons abused her husband by referring to his community. Manonmani had stated in her additional complaint that her husband felt heart broken by the occurrence. On 17.4.2021 at about 4:00 am, Mohan, working as Manager in RKB chambers, on his mobile, contacted her husband and asked him to come to RKB Chambers. Accepting the said invitation, Srinivasan had gone to RKB chambers for work. At around 6:00 am. she received information that her husband had died. Manonmani reiterated her allegations that Suresh Chand, his son Sitharthan, the Manager Mohan, and eight North Indian workers had joined together and beaten her husband to death. She had also alleged that in the very same chamber premises, earlier four other persons had died under mysterious circumstances.

6. Based on the additional complaint, an alteration report was prepared and few other provisions namely 306 and 352 IPC read with Section 3(1)(r), 3(1)(s) and 3(2)(v) of SC/ST (POA) Act were also added.

7. Both Sitharthan and his father Suresh Chand were arrested on 18.4.2021. The appellants herein filed Crl.M.P.No.1255 and 1256 of 2021 before the Special Court for bail. Vide common order dated 26.4.2021 the bail petitions were dismissed. Thereafter, the appellants herein renewed their bail petitions before the very same Special Court in Crl.MP.No.1384 of 2021 and Crl.MP.No.1385 of 2021. The second bail petitions were also dismissed by orders dated 30.4.2021. Questioning the same, these appeals have been filed.

8. Heard the learned counsel appearing for the appellants, the learned Government Advocate (crl.side) appearing for the investigation officer and the learned counsel appearing for the de facto complainant.

9. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and pressed for grant of bail. The said request was strongly opposed both by the learned Government Advocate and by the learned counsel appearing for the intervenor.

10. The learned counsel appealing for the intervenor pointed out that considering the gravity of the case, the investigation had been transferred from the file of the Inspector of Police, Thiruvankadu Police Station, Nagapattinam to the Inspector of Police, CBCID South Police Station, Nagapattinam. He would also point out that external injuries were found on the body of the deceased and this Court had also passed an order in W.P.No.10982 of 2021 for a second post mortem to be done on the body of the deceased/Srinivasan.

11.His core contention is that the investigation is at the preliminary stage. Serious allegations have been made. According to the complainant, it is a case of brutal murder and only second post-mortem would bring the truth out. This Court ordered a second post mortem to be done either on 9.5.2021 or 10.5.2021. He, therefore, called upon this court to adjourn these proceedings to 12.5.2021. He would also submit that this Court had to bear mind that in the very same brick chamber premises, as many as five deaths had occurred in unnatural circumstances. He also submitted that the occurrence on 12.4.2021 cannot be lost sight of. On the said day, the appellants herein have abused the deceased by referring to his community. He would also point out that it has now been conclusively established that there was a serious dispute between the management and Srinivasan as regards the settlement of gratuity and provident fund dues. He, therefore, submitted that since the investigation is still pending and a new investigation officer has just now taken over, this Court may sustain the order passed by the Special Court and dismiss these appeals.

12.I carefully considered the rival contentions and went through the materials on record. I must observe at the very outset that as of now, the case against the appellants is only one under Sections 306 and 352 IPC read with Section 3(1)(r), 3(1)(s) and 3(2)(v) of SC/ST (POA) Act and as of now, there is no case of murder registered against the appellants herein. Therefore, the case on hand will have to be treated, not as a case of murder, but only attracting the offences mentioned above. Of course, if tomorrow the second alteration report is filed based on subsequent inputs and the offence under Section 302 is also added, certainly the bail granted to the appellants can be cancelled, if there are materials implicating the appellants. It is not as if the appellants can go scot-free merely because bail is granted now.

13.Now, the question that arises for consideration is whether the appellants have made out a case for grant of bail.

14.The provisions under section SC/ST Act have been added only on the strength of the additional complaint given by Manonmani. In her first complaint, there is absolutely no reference to any of abuse on her husband by referring to his caste. In the second complaint, there is a reference to an occurrence said to have taken place on 12.4.2021.

15.The learned counsel appearing for the appellants firmly asserts before me that on 12.4.2021, Srinivasan came to the

office of the chambers in a drunken condition and picked up unnecessary quarrel. There is a legitimate dispute as regards the quantum of dues to be payable to Srinivasan. Therefore, the other persons have persuaded Srinivasan to leave the premises and come later in a sober condition. It is further submitted by the learner counsel appearing for the appellants that the entire CCTV footage has been handed over to the police.

16. It is stated in the complaint that the deceased Srinivasan was a Labour Union Leader. Even assuming that he had been abused by referring to his community and if later, the abused person commits suicide, that may not straight-way attract the offence punishable under Section 306 IPC. As rightly pointed out by the learned counsel for the appellants, a Labour Union Leader, who is conscious of his rights, will not take such abuse lying down and he would have definitely lodged a complaint immediately, but no such complaint was given by Srinivasan. More than anything else, the third accused Mohan, against whom serious allegations have been made in the complaint, also belongs to the very same Scheduled Caste Community.

17. It is also denied that there was a call either from the appellants or from Mohan to the mobile phone of the deceased on the fateful day i.e., 17.4.2021 3:00 a.m., or 4:00 a.m., and till date no definite material has been brought forward to substantiate this claim.

18. The occurrence had taken place within the premises of RKB brick chambers, but it is spread over 40 acres. It is also pointed out there is a compound wall only on one side. Therefore entering the premises is not difficult at all. It is also submitted that the appellants herein took over the management of RKB chambers only in the year 2011. Earlier, it was under the management of somebody else. Though in the second complaint, the names of four others have been mentioned, it is now fairly stated by the prosecution that three of them namely Thangaraj, Neethi and Sathish were found dead prior to the year 2008. Thangaraj died in the year 2000. Neethi died in the year 2005. Sathish died in the year 2008.

19. According to the appellants' counsel, Pandian was not an employee, but, owner of the adjacent land and due to domestic issues, he had committed suicide in the backside of the chambers. No allegation has been made that the management of RKB chambers was responsible for any of these unnatural deaths. In any event, the appellants herein cannot be fastened with any blame for what had happened before they took over the management. Even for the death of Pandian, the appellants herein had not been charged. Therefore, by throwing such vague allegations, the right of the appellants to get bail cannot be

denied.

20.It is true that the investigation was transferred to CBCID. That was done only to instil confidence in the mind of the victim's family. Likewise, the second post mortem was ordered only to allay any of the apprehensions which they could have entertained. Transfer of investigation or the order for conducting second post mortem, cannot, by themselves, lead to an adverse inference against the appellants herein. Merely because, the victim, through her counsel voices her strong suspicion that cannot dissuade this Court from granting bail to the appellants herein. As I already observed, if during the course of investigation, any material is obtained implicating the appellants herein for the offence of murder, certainly the prosecution can move this Court for cancellation of bail.

21.The appellants' counsel, on instructions, submits that even though their stand is that the victim was entitled only to Rs.60,000/-, as a measure of goodwill, they would deposit a sum of Rs.1,25,000/- within a period of one week to the credit of Crime No.3 of 2021 on the file of the Inspector of Police, CBCID South Police Station, Nagapattinam.

22.It is open to the victim/intervenor to withdraw the said amount without prejudice to her right to claim higher amount. In other words, the withdrawal of this amount will not foreclose the right of the victim Manonmani. Therefore, this Court is inclined to grant bail to the appellants subject to the following conditions:-

(a) Accordingly, the appellants are ordered to be released on bail on condition to execute a bond each 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, Sirkali 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 appellants shall not commit any offences of similar nature;

(d) the appellants shall not abscond either during investigation or trial;

(e) the appellants shall not tamper with evidence or witness either during investigation or trial;

(f) on breach of any of the aforesaid

conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the appellants in accordance with law as if the conditions have been imposed and the appellants 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];

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

23. Accordingly, the orders impugned in the appeals are set aside. These appeals are allowed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssk/klt

To

1. The Principal District and Sessions Judge,
Nagapattinam.
2. The Inspector of Police,
CBCID - South Police Station,
Nagapattinam.
3. The Inspector of Police,
Thirvenkadu Police Station,
Nagapattinam.
4. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.

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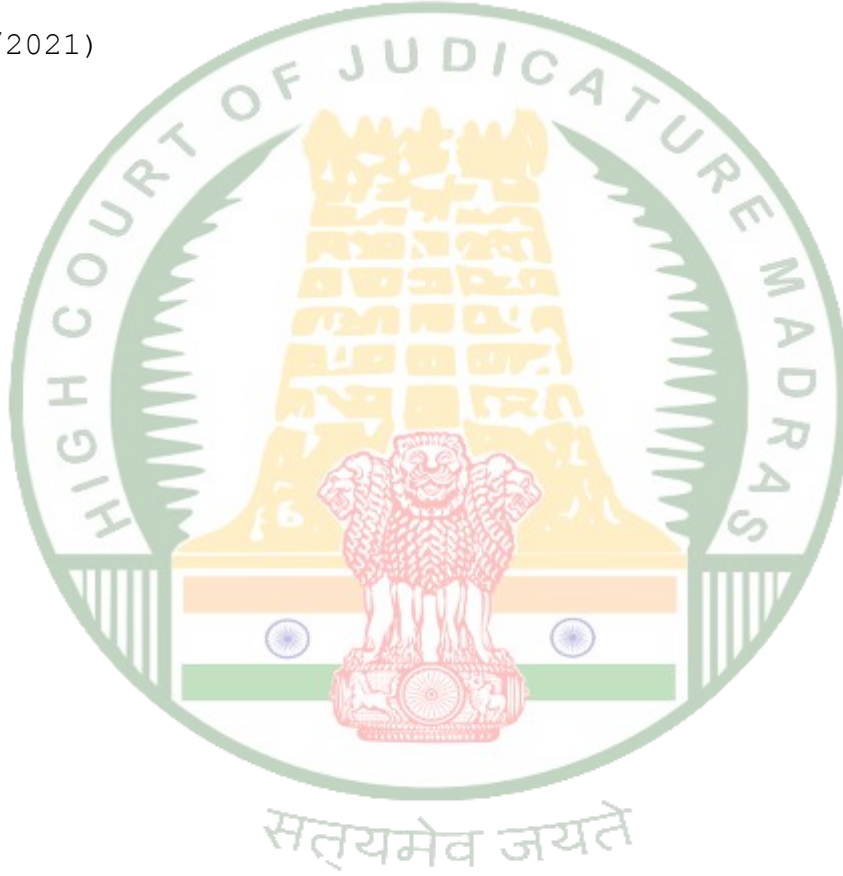
The Superintendent,
Sub Jail,
Nagapatinam District.

+6cc to Mr.Arun Anbumani, Advocate SR.No.6020 & 6021 (27202 & 27201)

+1cc to Mr.R.Sankarasubbu, Advocate SR.No.6039 (27203)

Criminal Appeal Nos.243 & 244 of 2021

LN(CO)
GMY(11/05/2021)



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