

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.05.2021

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

CRL.OP.No.9076/2021

1.Chenna Naicker @ Theivarasu
2.Govindan @ Govintharasu
3.Prabu
4.Kumar

... Petitioners

Versus

State rep.by
The Inspector of Police
Appakoodal Police Station,
Erode District,
Crime No.103/2021

....Respondent

Prayer:- Criminal Original Petition filed under Section 439 of the Code of Criminal Procedure seeking to enlarge the petitioners on bail in relating to the case registered as Crime No.103 of 2021 on the file of the respondent.

For Petitioners : Mr.C.Munusamy

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

The petitioners, who were arrested on 09.04.2021 and 10.04.2021 for the offences punishable under Sections 147, 148, 294(b), 323, 324 and 302 IPC in Crime No.103/2021, on the file of the respondent police, seek bail.

2. It is seen from the submissions that the defacto complainant's husband had died in a mysterious circumstances. Then she developed illegitimate intimacy with the deceased Palanisamy. It is alleged in the complaint that even during the life time of the husband of the defacto complainant, the said Palanisamy used to visit her home and helped her with money. There was a property dispute between the defacto complainant and the wife of the 1st petitioner and to resolve this property dispute, a Panchayat was arranged on 08.04.2021, at about 8.00 p.m and the defacto complainant attended the panchayat. During the panchayat, there was a discussion about the property dispute and the issue about illicit intimacy of defacto complainant with the deceased Palanisamy, where the petitioners said to have told her not to entertain the deceased, for which she

responded that the deceased would come and go. Then on the same day at about 9 p.m, all the accused persons came to her home, forming an unlawful assembly and started attacking the defacto complainant. While one Govindarasu attacked the defact complainant, deceased Palanisamy tried to ward off the attack and he stabbed one Suryakumar in his stomach. On seeing this, Prabu, Kumar and Chennanaicker / A4, A5 & A1 started attacking both the deceased and the defacto complainant. In this fight, Chennanaicker, took a stone found nearby and hit on the face of the deceased. As a consequence, the deceased had died.

3. The learned counsel appearing for the petitioners submitted that the petitioners are falsely implicated in this case. Assuming the case of the prosecution is true, it was the deceased who started stabbing the accused indiscriminately. However, the petitioners are in judicial custody from 09.04.2021 and therefore, he seeks bail to the petitioners.

4. On the other hand, the learned Additional Public Prosecutor strongly opposes this petition on the ground that the deceased was assaulted in a gruesome manner. Even his face could not be identified and the occurrence had happened due to property dispute between the defacto complainant and the wife of the 1st petitioner and he further submitted that there is life threat at the hands of the near and dear of the deceased to the petitioners.

5. Facts and circumstances of the case shows that admittedly the defacto complainant had illicit intimacy with the deceased, against the liking of her near relatives, who are the accused in this case and the fact that on the date of occurrence, when the accused Govindarasu attacked the defacto complainant, it was the deceased Palanisamy, who started attacking the accused with knife and caused injuries. In a way, he was responsible for the accused to exceed their right of private defence which resulted in ultimate death of the deceased. The petitioners are in judicial custody from 09.04.2021, this Court is inclined to grant bail to the petitioners.

6. Accordingly, the petitioners are ordered to be released on bail on each of them executing 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.I, Bhavani, Erode, and on further condition that:

- a) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.
- b) the petitioners shall report before the respondent police daily at 10.30 am., until further orders.
- c) the petitioners shall not abscond either during investigation or trial.
- d) the petitioners shall not tamper with evidence or witness either during investigation or trial.

e) On breach of any of the aforesaid conditions, the learned

Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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]**.

f) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

-sd/-

13/05/2021

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.I, BHAVANI, ERODE.

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
APPAKODAL POLICE STATION,
ERODE DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE. सत्यमेव जयते

+1 CC to M/S.C.MUNUSAMY Advocate on payment of necessary charges SR.NO.6145

WEB COPY

CRL OP.9076/2021

Date :13/05/2021

TA-17/05/2021