

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 26.02.2021]

[Pronounced on : 19.04.2021]

CORAM :

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.12933 of 2020

1.RAJA

2.AYUPKAN

...Petitioners/Accused

Vs.

State, represented by
The Deputy Superintendent of Police
Mannargudi Sub Division
Mannargudi Town Police Station
Thiruvarur District.
Crime No.247 of 2018

... Respondents

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioners on bail in connection with S.C.No.75 of 2018, pending trial on the file of Sub Court, Mannargudi, Thiruvarur District.

For Petitioners : Mr.R.Sankarasubbu

For Respondents : Mr.C.Iyyappa Raj
Additional Public Prosecutor
Assisted by Mr.T.Shunmugarajeswaran
Government Advocate (Crl. Side)

ORDER

The petitioners, who were arrested and remanded to judicial custody on 12.05.2018 for the offences punishable under Section 454, 395 IPC and Section 25(1)(b) and 27(1) of the Arms Act, 1959, in Crime No.247 of 2018 on the file of the respondent police, seek bail.

2.The case of the prosecution as per the defacto complainant viz. Govindarajan is that he is the Branch Manager of Tamil Nadu Merchantile Bank limited, Aseham Branch, Mannargudi and that on 07.05.2018 around 1.15 p.m two persons came to the bank and asked for an application to take demand draft for a sum of Rs.15,000/-, when the Manager informed them that only the account holders can avail the demand draft facility from that Bank, they left the bank saying that they will bring the account holder. They had again come at 1:55 pm and started filling the application, at that time the clerk and sub staff had gone out for lunch. Around 2.55 p.m. two persons came near him and by wielding a gun three more persons entered the bank and by threatening the manager and other staff members and by shooting at the Manager the accused/ petitioners along with other accused had

robbed cash to the tune of Rs.5,58,550/- and taken away five packets containing mortgaged gold jewellery weighing 84 grams valued at Rs.2,51,000 and escaped from the bank by using the car driven by A2 who was waiting outside the bank. Based on the complaint, the respondent police arrested A1 to A3 on 12.05.2018 and A5 and A6 were arrested on 10.05.2018. the respondent after completing investigation filed the final report against the accused for offences under section 455, 120(B), 397 r/w 395 r/w 34 IPC and under section 25(1)(b) and 27(1) of the Arms Act, 1959. Thereafter, the case was committed to the court of sessions and pending in SC.No. 75 of 2018 on the file of the Assistant Sessions Judge, Sub Court, Mannarkudi.

3.Learned counsel for the petitioner would submit that the petitioners are innocent and they have been falsely implicated in this case. He would submit that this is the third application for bail and the earlier application for bail filed by these petitioners in CrI.O.P.No.17540 of 2018 was dismissed by this court on 18.07.2018. He would further submit that the petitioners are in custody for more than 2 ½ years. He would further submit that earlier one of the accused in this case named Sudalaimani, applied for bail in CrI.O.P.No.5122 of 2019 and this court by order dated 27.02.2019 dismissed the application for bail and directed the trial court to complete the trial in S.C.No.75 of 2018 within a period of six months from the date of receipt of a copy of the order. He would further submit that this court recently by order dated 04.08.2020 in CrI.O.P.No.10811 of 2020 granted bail to one of the co-accused viz. Coolmani @ Manikandan, taking into consideration the long period of incarceration from 10.08.2018. The petitioners are similarly placed as that of the accused Coolmani @ Manikandan and thereby the petitioners are entitled to bail. He would further submit that right to speedy trial is constitutional guarantee granted to a citizen under Article 21 of the Constitution of India. He would further submit that though this court while dismissing the bail application of a co-accused Sudalaimani by order dated 27.02.2019 in CrI.O.P.No. 5122 of 2019 had directed that the trial Court to complete the trial within a period of six months from the date of receipt of the copy of the order, however the trial has not been completed and the petitioners are languishing in jail for a long period. He would further submit that the petitioners are not terrorists and they are not charged for offence invoking life sentence. He would further submit that even taking into consideration the entire evidence on record, the petitioners could at the most be found guilty for having received the stolen property warranting a conviction for three years and in this case the petitioners have suffered incarceration for more than 2 ½ years. In support of his contention learned counsel would also rely upon the judgement of the Hon'ble Apex Court in **Hussain and another V. Union of India** in CrI.A.No.509 of 2017 dated 09.03.2017 and would submit that the Hon'ble Apex Court had held that petitioners languishing in jail for long duration on account of delay in trial are entitled to bail, as speedy trial is a fundamental right implicit in Article 21 of the Constitution and the Hon'ble Supreme Court has held that the High Courts may issue directions to Subordinate Courts that bail applications be disposed of normally within a week and Magisterial trials, where accused are in custody,

be normally concluded within six months and Sessions trials where accused are in custody be normally concluded within two years and that since in this case the petitioners are in custody for more than 2 ½ years, the petitioners are entitled to bail. He would further submit that the petitioners at no point of time were responsible or reason for delay in the trial and that in **Hussainara Khatoon & Ors vs. Home Secretary, State of Bihar reported in 1979 AIR 1360, 1979 SCR(3) 169**, the Hon'ble Apex court has held that speedy trial is the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. He would further submit that this court having directed the trial court to complete the trial within a period of six months from 04.08.2020, right has accrued on the petitioner for grant of bail after expiry of six months from that date. He would reiterate that the petitioners are languishing in jail for about 2 years and 10 months and that no other case is pending against them before any other court.

4. Learned counsel also relied on the judgement of the Hon'ble Apex Court in **Sagar Tatyaram Gorkhe and another V. The State of Maharashtra** in Criminal Appeal No.7947 of 2015;

"4. The charges against the accused are, undoubtedly, serious. However, as observed in the earlier order of this Court dated 4th May, 2016 such charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In our previous order dated 12th July, 2016 passed in the present matter the statement made on behalf of the State that the trial would be completed within a period of six months has been recorded."

5. He would further submit that in this case, the prosecution consented to complete the trial within six months and that they have not concluded the trial and the petitioners at no point of time were responsible for delay in the trial. He would further submit that the petitioners having been in custody for more than 2 years and 11 months are entitled to bail.

6. Per contra, learned Government Advocate (Crl. Side) would vehemently oppose stating that it is a case of broad daylight bank robbery using arms. In this case the petitioners along with other accused entered into a bank during business hours and by firing at the manager and the other staff and customers present in the bank with unlicensed gun robbed a cash of Rs.5,58,550/- and 84 grams of gold jewellery worth Rs.2,51,000/-. He would further submit that the petitioners and other accused were arrested and from them the cash, gold jewellery and the weapons were recovered. The cartridge with bullets were recovered from the first petitioner and in this case the prosecution has proceeded with the trial without any delay and the prosecution at no point of time was responsible for the delay in the trial. The prosecution has also let in cogent evidence to prove the case and that in this case after completion of the evidence on the

ends of this prosecution, the case now stands posted for examination

of defence witnesses and the petitioners are delaying in producing the witnesses. The delay is only on account of the COVID-19 Pandemic situation and on the part of the accused and it is not attributed to the prosecution. The learned Government Advocate would further submit that the case of the petitioner cannot be equated with the case of the accused Coolmani @ Manikandan. The allegations against the Coolmani @ Manikandan is that he had supplied gun to the other accused. However he would submit that though Coolmani @ Manikandan was granted bail, he absconded after release on bail and thereby the trial got delayed and later with great difficulty Coolmani @ Manikandan was arrested and now he is now in custody. He would further submit that though the liberty of a citizen is a fundamental right, as far as the facts of this case is concerned, the case has now reached the final stage and the case now stands posted for production of witnesses on the request of the defence and it is the duty of the petitioners to produce their witnesses and if bail is granted to the petitioner at this stage, there is every possibility of the petitioners /accused absconding and thereby the progress of trial will be derailed and thereby would vehemently oppose for grant of bail.

7. Heard the counsels. Perused the materials on record.

8. Admittedly, the petitioners were arrested on 10.05.2018 and they are in custody for more than 2 years and 10 months. While disposing the bail application of an co-accused viz. Sudalaimani in CrI.O.P.No.5122 of 2019 dated 27.02.2019, this Court had directed the trial Court to complete the trial in S.C.No.75 of 2018 within a period of six months from the date of receipt of a copy of the order. Thereafter, this Court vide order dated 04.08.2020 granted bail to one of the co-accused viz. Coolmani @ Manikandan in CrI.O.P.No.10811 of 2020.

9. Taking into account the long period of incarceration suffered by the petitioners from 10.05.2018 and also taking into consideration the earlier directions to complete the trial withing 6 months, this Court is inclined to grant bail to the petitioners subject to the stringent conditions:

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each, with two sureties each (out of which one surety should be a close relative and one should be a Government servant) for a like sum to the satisfaction of the Sub-Court, Mannargudi 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 petitioners on their release from prison shall report before the trial Court on every working day at 10.30 a.m. and report before the respondent police every day at 6.00 p.m. until further orders.

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

(e) the petitioners shall not abscond during trial;

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

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

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

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

-sd/-

19/04/2021

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 SUB COURT, MANNARGUDI.

2. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

3. THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4. THE DEPUTY SUPERINTENDENT OF POLICE
MANNARGUDI SUB DIVISION
MANNARGUDI TOWN POLICE STATION
THIRUVARUR DISTRICT.

CC to M/S.R.SANKARASUBBU Advocate on payment of necessary charges

CRL OP.12933/2020

Date :19/04/2021

TK/19.04.2021

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