

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

THE HONOURABLE MR. JUSTICE A. D. JAGADISH CHANDIRA

Cr1.O.P.No.16672 of 2020

V.Vijayaraj

... Petitioner

Vs.

State rep. by

Inspector of Police,

Thandrampet Police Station

Thiruvannamalai District

(Crime No.450 of 2019)

... Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C., to enlarge the petitioner on bail in the event of his arrest in Connection with the Crime No.450 of 2019 pending on the file of the respondent police.

For Petitioner : Mr.Shanmuga Sundaram

Senior Counsel for Mr.A.Gopinath

For Respondent : Mr.C.Iyyappa Raj

Additional Public Prosecutor

ORDER

(This case has been heard through video conference)

The petitioner who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 174 Cr.P.C. @ 147, 148, 324, 364, 302 r/w. 201, 302 r/w 149 IPC, in Crime No.450 of 2019, on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution as per the defacto complainant viz., Anitha, wife of deceased Prakash is that her husband was taken by two unknown persons in the Motor cycle and later her husband's body was found lying dead in their agricultural field. Based on the complaint given by the defacto complainant / Anita, originally a case was registered under Section 174 Cr.P.C.. During the course of investigation, it came to light that the accused suspecting the victim / deceased had committed theft of motor cycle belonging to Al Vasantharaj, had kidnapped and taken the deceased to a Rice Mill

belonging to A1 / Vasantharaj and had indiscriminately assaulted the him with iron rod, sticks and conveyor belt resulting in him sustaining injuries and later succumbing to death. Thereafter, the accused have in order to screen the evidence had taken the body of the victim / deceased in a lorry and left it in the agricultural land belonging to the victim/ deceased. Thereafter, the case was altered to one under Section 147, 148, 324, 364, 302 r/w 201, 302 r/w 149 IPC. The petitioner is arrayed as A9. The allegation against the petitioner is that he being the brother of A1 / Vasantharaj had instigated the other accused to assault the victim / deceased.

3.Mr.Shanmuga Sundaram, learned Senior counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. The petitioner has been falsely implicated in this case since he happened to be the brother of A1 / Vasantharaj. He would submit that this is the 2nd application for anticipatory bail and the earlier application for anticipatory bail in CrI.O.P.No.11814 of 2020 was dismissed by this Court on 20.08.2020, on the ground that the investigation was pending and the custodial interrogation of the petitioner was required. The learned Senior Counsel further submitted that all the arrested accused have been enlarged on bail and the petitioner understands that the investigation has been completed and the respondent is ready with the final report and thereby there would not be any requirement for custodial interrogation of the petitioner. In view of the present change of circumstances, the petitioner has renewed the anticipatory bail application. The learned Senior Counsel would further submit that the petitioner has been implicated based on the confession stated to have been recorded from A1 / Vasantharaj. Even as per the confession, the petitioner is stated to have instigated A1 and the other accused to assault the victim / deceased and there is no allegation against the petitioner as if he attacked the victim / deceased. He would further submit that the petitioner understands that the Doctor who had conducted post mortem has also opined that the deceased is appeared to have died due to effects of Coronary Artery disease with evidence of soft tissue injuries. He would reiterate that since the investigation has been completed, there may not be any requirement for custodial interrogation of the petitioner.

4.The learned Senior counsel would further submit that since the alleged occurrence stated to have taken place within the Mill premises of the brother of the petitioner and the allegations are made against his brother and the employees, for having assaulted the victim/ deceased, the petitioner, without prejudice to the defence and contentions, is prepared to pay a sum of Rs.4 Lakhs, by way of demand draft, in favour of the wife of the victim/ deceased as ex-gratia amount. He would further submit that the petitioner also undertakes that by paying the amount as ex-gratia, the petitioner will not claim any special right or privilege during the trial. He would further submit that the petitioner has also filed necessary affidavit with regard to the same.

5.The learned Additional Public Prosecutor would vehemently oppose stating that the case of the prosecution is that the petitioner's brother viz. A1 / Vasantharaj's motor cycle went missing and the said Vasantharaj / A1 suspecting that the victim/deceased would have committed the theft of the motor cycle, had kidnapped the victim / deceased with the help of his employees and taken him to his Rice Mill, wherein, in the presence of the petitioner, A1 along with A2 to A5, who are his employees, assaulted the victim / deceased brutally, due to which, he sustained serious injuries and later died within the Mill Premises. Thereafter the accused A7 to A12, the employees of A1/ Vasantharaj, in order to screen the evidence, had taken the body of the victim/deceased from the Mill and left it in the sugarcane fields of the victim / deceased. The allegation against the present petitioner is that he had instigated A1 / Vasantharaj and his employees to assault the victim / deceased. A1 had confessed about the presence of the petitioner and the instigation made by the petitioner to assault the victim / deceased. He would submit that though the final opinion suggests that the deceased would appear to have died due to effects of Coronary Artery disease with evidence of soft tissue injuries, the death is consequent to the injuries sustained by the deceased on account of the assault of the accused by rods, sticks and conveyor belts. The post mortem report also discloses about the four external injuries on the body of the deceased. He would submit that the investigation has been completed and the final report is made ready, however, it is yet to be filed before the concerned Court.

6.Heard the learned Senior counsel appearing for the petitioner and the learned Additional Public Prosecutor. The affidavit filed by the petitioner has been taken on record.

7.In this case, petitioner has been roped based on the confession of A1 / Vasantharaj and even as per the confession, the allegation against the petitioner is that he had instigated the other accused to assault the victim / deceased. Considering the fact that all the arrested accused have been enlarged on bail and that the investigation has been completed and the respondent is ready to file the final report, this Court is of the opinion that the custodial interrogation of the petitioner may not be required and thereby this Court is inclined to grant anticipatory bail to the petitioner subject to the following conditions;

8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen (15) days from the date on which the copy of the order is made ready, before the learned Judicial Magistrate No.1, Thiruvannamalai, on condition that the petitioner shall 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and 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 petitioner shall deposit the demand draft for a sum of Rs.4 Lakhs drawn in favour of Anitha, wife of the deceased / victim, before the concerned Judicial Magistrate. The learned Judicial Magistrate shall handover the demand draft to the defacto complainant viz. Anitha wife of deceased / victim after proper verification.

[c] the petitioner shall appear before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter on every Monday at 10.30 a.m., until further orders.

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioner shall not abscond either during investigation or trial.

[f] 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].

[g] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

9.It is made clear that the observations made in the anticipatory bail order are only for the purpose of deciding this anticipatory bail petition and it will not have any bearing in the case during the trial and further by payment of the amount, the petitioner shall not claim any special right or defence during trial.

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

-sd/-
20/01/2021

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

TRUE COPY

TO

1 THE JUDICIAL MAGISTRATE NO.I,
THIRUVANNAMALAI.

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVANNAMALAI [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
THANDRAMPET POLICE STATION,
THIRUVANNAMALAI DISTRICT.

+1CC to M/S. A.GOPINATH Advocate on payment of necessary
charges SR NO.608

CRL OP.16672/2020

Date :20/01/2021

MK:29/01/2021



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