



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2021

CORAM:

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THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.541 of 2021

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| 1. Diraviyam | |
| 2. Thamizhselvan | ...Appellants/A1 & A2 |
| | Vs. |
| 1. The Deputy Superintendent of Police,
Vedaranyam. | |
| 2. The Inspector of Police,
Vedaranyam Police Station,
Nagapattinam District. | ...Respondents |
| 3. Balakrishnan | ...Respondent3/
Defacto Complainant |

Prayer: Criminal Appeal Case filed under Section 14 A(1) and 3 of SC/ST (PoA) Act, 2015, to set aside the order in Crl.M.P.No.2914 of 2021 dated 06.10.2021 passed by the learned District and Sessions Judge, Nagapattinam and consequently enlargement of the petitioners on bail in Crime No.561 of 2021 on the file of the Inspector of Police, Vedaranyam.

For Appellants	:	Mr.T.Ayyasamy
For Respondent	:	Mr.S.Sugendran
		Govt. Advocate (Crl.Side) for R1&R2
		Mr.P.Vijendran for R3

JUDGMENT

The criminal appeal has been filed against the dismissal of the bail application by the learned District and Sessions Judge, Nagapattina, dated 06.10.2021 in Crl.M.P.No.2914 of 2021.

2 The case as per the defacto complainant Balakrishnan is that on 05.09.2021 at about 10.00 p.m. his brother Manoharan had gone out of his house after quarrelling with his wife and that at around 10.30 p.m., since there was rain, he had taken shelter near a shop situated near Madhakovil Hundiyaal. At that time, the accused had come and questioned his brother who he was, since his brother was in inebriated condition, he was unable to understand what was spoken by him. At that time, one of the accused had punched his brother on his cheek and his brother has taken an iron rod from the nearby Welding Shop and that the accused had snatched the iron rod from him and assaulted his brother and when his brother raised alarm the accused had abused him in filthy language and left the place.

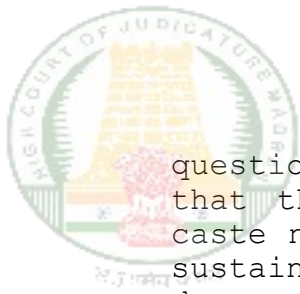


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Coming to know about the incident, his brother's son David had taken his brother to the Government Hospital and after giving first aid he was brought him back home. On the next day morning, he had seen injuries on his brother's face and thereafter he had taken his brother to Government Hospital at Vedaranyam and admitted him as inpatient. Since his brother was unable to speak, the defacto complainant had given the complaint to the police. Based on his complaint, the case was registered in Crime No.561 of 2021 against the accused for the offence under Sections 294(b), 324 and 506(ii) of IPC. Later, on further investigation, the offence under Section 307 IPC r/w 3(2)(v) SC/ST (PoA), 2015 was also included. The accused were arrested on 09.09.2021 and remanded to judicial custody on the same day. Thereafter, during pendency of the investigation, the victim was referred to Nagapattinam Medical College and Hospital and referred to Thiruvavarur Medical College and Hospital and not responding treatment succumbed to the injuries and died on 08.09.2021 and thereafter the offence under Section 307 has been altered to 302 of IPC. The accused had filed the petition for bail and the learned District and Sessions Judge, Nagapattinam, by order dated 06.10.2021 dismissed the same, against which present appeal has been filed.

3 The learned counsel appearing for the appellants/accused would submit that the incident had happened at the night hours and the appellant and the deceased were in inebriated condition and at that time due to quarrel, the incident had occurred. It is an unfortunate incident and that the appellants do not have any intention to cause injuries on the deceased. Even as per the FIR, the deceased is stated to have attempted to assault the accused with an iron rod taken from the nearby Welding Shop. He would further submit that even as per the original FIR, nothing has been stated by the defacto complaint that the incident had happened since the victim belonged to the oppressed community and also the defacto complainant in his original complaint has not stated that the accused had abused the deceased filthily calling him by his caste name. The learned counsel would further submit that later the offence was altered including the provisions of the SC/ST (PoA) Act and thereafter, since the deceased succumbed to the injuries, the offence under Section 307 IPC was altered to 302 IPC. He would further submit that the petitioners are in custody from 09.09.2021 and the major part of the investigation has also been completed and charge sheet has been filed and the case has been taken on file in Spl.S.C.No.38 of 2021 and thereby would pray to allow the appeal and enlarge the petitioners on bail.

4 Mr.S.Sugendran, learned Government Advocate (Crl.Side) appearing for the respondents 1 & 2 would submit that the deceased Manoharan belongs to oppressed community and that on 05.09.2021 after quarrelling with his wife he had gone out and had taken shelter below the shop situated near Madha Church Hundiyaal and at that the time the accused who had come there



questioned him who he was and there was quarrel between them and that the accused had abused the deceased calling him by his caste name and had assaulted him with iron rod due to which, he sustained injuries on head, cheek and shoulders. Thereafter the deceased was taken to the Government Hospital and after first aid, he was sent back to home and since he was having pain, on the next day, he was taken to the Government Hospital at Vedharanyam from there he was referred to Government Medical College Hospital, Nagapattinam and thereafter referred to Thiruvavarur Medical College and Hospital for higher treatment, where he succumbed to the injuries. He would further submit that the accused knowing fully well that the deceased belongs to oppressed community had abused him filthily by uttering his caste name and he would object for grant of bail to the appellants.

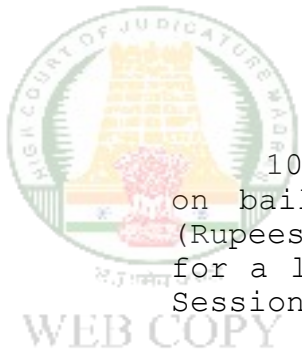
5 Mr.P.Vijendran, learned counsel appearing for the third respondent/defacto complainant would submit that it is the case where the accused knowing well that the victim belongs to the oppressed community had purposely assaulted him by calling his caste name. The accused have inflicted grievous injuries on the deceased resulting in his death. He would further submit that as per the statistics of Crime Report Bureau, offences against the persons belonging to the oppressed community are now in the raise and the Court has a duty to protect the interest of the persons belonging to the oppressed community.

6 Heard Mr.T.Ayyasamy, learned counsel appearing for the appellants, Mr.S.Sugendran, the learned Government Advocate (Crl.Side) appearing for the respondents 1 & 2 and also Mr.P.Vijendran, learned counsel appearing for the third respondent and perused the materials available on record.

7 In this case, even as per the complaint, the incident had occurred at night hours when the accused as well as the deceased have taken shelter from rain in the near by shop. The accused have stated to have questioned the deceased, who was in inebriated condition, and he has attempted to assault the accused with the iron rod taken from the nearby Welding Shop and the appellants are stated to have snatched it and assaulted him and there seems to be no pre meditation. Further in the Complaint, nothing had been stated as if the appellants have abused the deceased by calling his caste name.

8 In view of the above and taking into consideration the fact that the investigation has been completed in this case and the case has also been taken on file in Spl.S.C.No.38 of 2021 and posted to 21.12.2021 for framing of charges. This Court is of the opinion that bail may be granted to the appellants.

9 In view of the, the criminal appeal stands allowed and the order dated 06.10.2021 passed in Crl.M.P.No.2914 of 2021 by the learned District and Sessions Judge, Nagapattinam, is hereby set aside.



10 Accordingly, the appellants are ordered to be released on bail on their executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties, each for a like sum to the satisfaction of the learned District and Sessions Judge, Nagapattinam, and on further conditions 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 appellants shall report before the trial Court daily at 10.30 a.m. until further orders and the appellants shall not enter into the jurisdictional limits of second respondent police station.

[c] the appellants shall not abscond either during investigation or trial.

[d] the appellants 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 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].

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

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Judge, Nagapattinam.
2. The Deputy Superintendent of Police, Vedaranyam.
3. The Inspector of Police, Vedaranyam Police Station, Nagapattinam.
4. The Public Prosecutor, High Court of Madras.

Copy to :1. The Superintendent of Jail, Sub Jail, Nagapattinam.

2.The District Munsif-cum-Judicial Magistrate, Vedaranyam.

3.The Section Officer,Criminal Section,High Court,Madras

+1 cc to Mr.T.Ayyasamy, Advocate Sr.NO. 64058

+1 cc to Mr.P.Vijendran, Advocate Sr.NO. 64280 (23.02.2022)

Cr1.A.No.541 of 2021

ssv(CO)

A.SK(06.12.2021)