



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Criminal Jurisdiction )

Date : 25/01/2021

PRESENT

**The Hon`ble Mr.Justice M.NIRMAL KUMAR**

**CRL OP(MD) . No.88 of 2021**

Hakkim

... Petitioner/Accused No.2

Vs

The State rep.by  
The Sub Inspector of Police,  
Thenkarai Police Station,  
Periyakulam, Theni District.  
Crime No. 1977 of 2020.

... Respondent/Complainant

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel for  
M/s.Ajmal Associates,

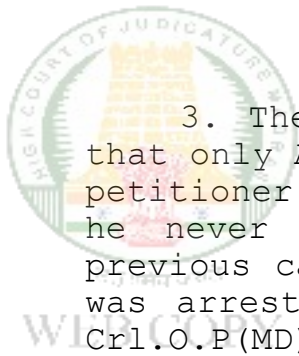
For Respondent : Mr.K.Suyambulinga Bharathi,  
Government Advocate (Crl.Side)

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

ORDER : The Court made the following order :-

The petitioner/A2, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 302 and 109 of IPC seeks anticipatory bail.

2. The case of the prosecution is that due to previous enmity between the petitioner and the brother of the defacto complainant regarding running a mutton stall, A1 attacked the deceased with wooden log and A2 instigated A1 to kill the brother of the defacto complainant. Due to which, the petitioner assaulted the brother of the defacto complainant on chest with his hand, in which he fell down and immediately he was taken to hospital, where he was declared dead.



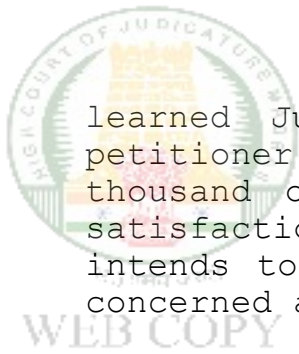
3. The learned Senior Counsel for the petitioner would submit that only A1 in this case said to have attacked the deceased and the petitioner being A2 was not present in the scene of occurrence and he never attacked the deceased. He would also submit that no previous case is pending against the petitioner and A1 in this case was arrested and released on bail by this Court on 21.01.2020 in Crl.O.P(MD) No.316 of 2021, hence he seeks anticipatory bail.

4. The learned Government Advocate(Crl.Side) would submit that there are two accused in this case. He would also submit that there was some enmity between the petitioner and A1 regarding running of mutton stall. The deceased was running a chicken stall and in lieu of Diwali the deceased had opened mutton stall, which created motive between the deceased and the petitioner. A1 was working under A2. On the date of occurrence the deceased along with two other persons namely Mulka Shathik and Kadhar Meeran Mydeen received a information that that deceased father-in-law was attacked by both the deceased in the scene of occurrence, rushed to the spot and rescued the father -in-law. At the instigation of the petitioner herein A1 assaulted the deceased with his hand on his chest, thereafter the deceased was taken to Periyakulam Government Hospital, where he was declared dead. He would also submit that there are three eye witnesses to the said occurrence and awaiting for viscera report.

5. It is seen that the petitioner has been roped in this case on the strength of 109 of IPC. It is also seen that A1 in this case was arrested and released on bail by this Court on 21.01.2020 in Crl.O.P(MD) No.316 of 2021. The petitioner herein was running a mutton stall and the deceased was running a chicken stall. On the eve of Diwali the deceased had opened Mutton stall which affected the business of the petitioner. Hence the petitioner along with A1 had planned to do away the life of the deceased and there was a wordy quarrel with regard to the same, in which A1 attacked the deceased with his hand on the chest. Thereafter the deceased had vomiting and swooned, taken to Government Hospital, Periyakulam at 6.30 pm., where he was declared dead. The petitioner said to be present in the scene of occurrence when the deceased was attacked. Admittedly no weapon was used, hence it is seen that the petitioner had not gone near the deceased and no overt act attributed against the petitioner except the words that " அவனை அடித்து கொல்லுங்கடா". Further the occurrence is said to have taken near the residence of A1 where the deceased had gone and picked up a fight usual.

6. Taking into consideration the facts and circumstances of the case this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the



learned Judicial Magistrate, Periyakulam 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 to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned 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 report before the respondent police daily at 10.30 a.m., until further orders.

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioner shall not abscond 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 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]***; and;

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

sd/-  
25/01/2021

/ TRUE COPY /

/ /2021  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE,  
PERIYAKULAM.

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



2.-DO- THRO'THE CHIEF JUDICIAL MAGISTRATE,  
THENI DISTRICT.

3 THE SUB INSPECTOR OF POLICE,  
THENKARAI POLICE STATION,  
PERIYAKULAM, THENI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.AJMAL ASSOCIATES, ( SR-490[I] dated 27/01/2021)

ORDER

IN

CRL OP(MD) No.88 of 2021

Date :25/01/2021

AAV

AE/KV/SAR-I (01/02/2021) 4P / 6C