



WEB COPY

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

Reserved on : 05.02.2021

Pronounced on: 17.02.2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.470 of 2021

S.Chokkar ... Petitioner/Accused No.8

Vs

The State rep.by
The Inspector of Police,
Uthamapalayam Police Station,
Theni District.
Crime No.147/2020.

... Respondent/Complainant

Selvendran ...Petitioner/Defacto Complainant
in CRL MP(MD)No.720 of 2021
in CRL OP(MD)No.470 of 2021

For Petitioner : Mr.S.Muthukumar, Advocate.

For Intervenor : Mr.Henri Tiphagne, Advocate

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

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

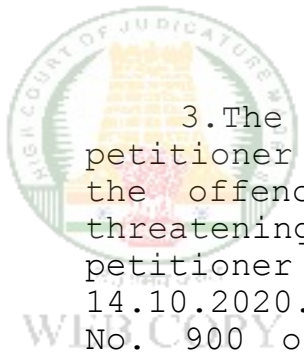
PRAYER :-

For a Bail in Crime No. 147 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/A8, who was arrested and remanded to judicial custody on 30.09.2020 for the offences punishable under Sections 147,148,149,120(b), 109 and 302 of IPC on the file of the respondent police seeks bail.

2. The case of the prosecution is that due to previous enmity on 06.03.2020 at about 03.30 pm.,the petitioner herein along with other accused conspired and abetted in the murder of the deceased with deadly weapons and caused his death. Hence the complaint.



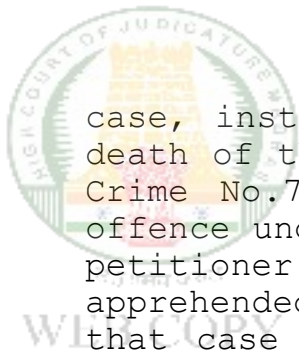
3.The learned counsel for the petitioner would submit that the petitioner was arrested on 30.09.2020 in Crime No. 718 of 2020 for the offences under Sections 195(A), 506(i) and 109 of IPC for threatening the witnesses in Crime No. 147 of 2020. Thereafter the petitioner was detained under Act. 14 in C.No.57 of 2020 dated 14.10.2020. The petitioner challenged the detention order in HCP(MD) No. 900 of 2020 and the same was set aside by this Court on 18.01.2021. He further submitted that the petitioner is in jail from 20.09.2020. The petitioner being an Advocate had rendered his professional service to the assailants and others in this case. The petitioner never involved in any such offence and he has been falsely implicated in this case. The petitioner never present in the scene of occurrence. The petitioner is roped in this case on the strength of conspiracy. He would also submit that the deceased was suspended by the Bar Council of Tamil Nadu for his professional misconduct as he has got several cases against him. The petitioner also relied on the following decisions:

i) ***Sanjay Chandra-vs- CBI*** -for the proposition once charge sheet is filed custody may not be necessary for further investigation.

ii) ***Prabhakar Tewari -vs- State of U.P*** and another in ***SLP (Crl.) No.9209 of 2019 in C.A.No. 153 of 2020***, where it is held that the offence alleged no doubt in grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail.

iii) Delhi High Court order in bail application No.2038 of 2020 wherein it is stated that it is settled law that the purpose of incarceration during trial is not punitive and incarceration is to be limited to caused where it is absolutely essential.

4. The learned counsel for the intervenor would submit that the petitioner herein is A8. The occurrence took place on 06.03.2020. The petitioner could not be apprehended. The petitioner has got four previous cases. There is a dispute with regard to the sale deed executed by the mother of A9 in favour of the deceased in Uthamapalayam Taluk. A9 in this case had engaged other accused in this case to do away the life of the deceased. In order to take back the coconut grove he conspired with other accused persons and engaged hirelings who committed the murder in a broad day light. He further submitted that earlier to this occurrence on 16.11.2019 first attempt was made on the deceased and the case in Crime No. 239 of 2019 was registered by Gudalur South Police Station for the offences under Sections 147, 148, 447, 294(b), 342, 323, 324, 506(ii) and 307 of IPC. Since the police did not take any action which emboldened the deceased to commit the offence again on 10.02.2020. The police in connivance with the other accused persons had not registered a



case, instead issued CSR No.51 of 2020 dated 10.02.2020. After the death of the deceased on 16.03.2020, case came to be registered in Crime No.773 of 2020 by the Cumbum South Police Station for the offence under Sections 120(b), 147, 148, 341, 294(b), 506(ii) of IPC. The petitioner being an Advocate had been absconding and unable to be apprehended. Only after the petitioner threatening the witnesses in that case the case was registered and the petitioner was detained under Act.14 and he was arrested in this case. The defacto complainant sent a representation to the Superintendent of Police on 12.10.2020 seeking protection under the Witness Protection Scheme 2018. The learned counsel for the intervenor apprehend that not only the defacto complainant but also other witnesses are targeted, if the petitioner is released on bail there will not be a fair trial. He would submit that the deceased had obtained stay against his suspension and he continued his legal practice and attended the Court on the date of occurrence.

5. The learned Government Advocate(Crl.Side) would submit that there are totally 12 accused in this case and the petitioner herein is arrayed as A8. A1, A2 and the deceased are advocates. On 06.03.2020 when the deceased was returning back home after attending Court he was waylaid in the public road in the broad day light. A3 to A7 had attacked him with deadly weapons and deceased died on the spot. The deceased had purchased coconut grove from the mother of A9. A9 has also filed a civil suit. A9 conspired with other accused who are hirelings namely A3 to A7 and decided to do away the life of the deceased and he was murdered in broad day light. The petitioner being an advocate could not be apprehended. Earlier to the occurrence two cases has been registered for attacking the deceased in Crime No. 239 of 2019 and 773 of 2020. Further the petitioner has threatened two of the witnesses for which a case has been registered in Crime No. 718 of 2020. The petitioner was detained under Act.14 and subsequently the same was quashed. The petitioner had already threatened the witnesses and if the petitioner is released on bail, safety of the witness would become questionable. He further submitted that even before securing all the accused persons the respondent had completed investigation had filed charge sheet and same is pending committal in PRC No. 36 of 2020. Further the lower Court had issued summons to the accused persons involved in heinous offence of murder who were not arrested against which the petitioner had filed a petition before this Court questioning the Magistrate issuing summons referred the matter to the Honourable Division Bench which is still pending. In the mean while the petitioner was arrested in this case only on 09.12.2020, hence he strongly opposed grant of bail to the petitioner.

6. The defacto complainant had submitted copies of the petition submitted to the competent authorities namely standing committee, Principal District and Sessions Judge, Theni, Member Secretary, Superintendent of Police as per the witness protection scheme.

<https://hccourts.gov.in/lcservices>



format and now the process is going on under the witness protection scheme and protection are sought for five witnesses namely Renuka, Karunanithi, Selventhiran, Mutheswari and K.Sudheshi and further the threat analysis report is yet to be made ready by the competent authorities. Further this petitioner's office has been used by other accused for the purpose of conspiracy and abetment in commission of offence. The petitioner, deceased, A1 and A2 are advocates. It is very pity to note that noble profession of advocate has come to such low level, wherein their involvement in the commission of offence are not in much difference with the other accused. The defacto complainant has also filed petition before the State Human Rights in 5079 of 2020 against the Deputy Superintendent of Police, Uthamapalayam, Chinnakannu, Inspector of Police, Cumbum (south) Inspector of Police, Cumbum (North) seeking protection. He further submitted that it is apathy that even before apprehension of all the accused, in this case investigation was completed and charge sheet was filed and summons were also issued to some of the accused including the petitioner which is against the guidelines issued by the Hon'ble Supreme Court of India in the case of **Indra Mohan Goswami and another-vs- State of Uttaranchal and others** reported in **(2007)12 Supreme Court Cases 1** wherein it is held that there cannot be straight jacket formula for issuance of warrants as a general rule, but in cases, where an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrant should be followed. In this case, the petitioner is involved in heinous offence and threatening the witnesses. It is also seen that some of the accused who have come out on bail are now absconding and Non Bailable Warrant is pending against them. The citations referred by the petitioner are not applicable to the facts and circumstances of the above case.

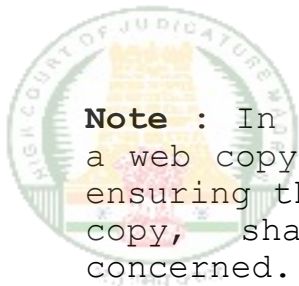
7. Taking into consideration the heinous offence committed by the petitioner and also taking note of the fact that some of the co-accused are still absconding and Non Bailable Warrants are pending against some of the accused, this Court is not inclined to grant bail to the petitioner.

8. In the result, the petition stands dismissed.

sd/-
17/02/2021

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/ /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.

WEB COPY

TO

- 1.THE INSPECTOR OF POLICE,
UTHAMAPALAYAM POLICE STATION,
THENI DISTRICT.
- 2.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.470 of 2021
Date :17/02/2021

AAV
TK/PN/SAR.2/22.02.2021/5P/4C