



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

Orders Reserved on : 07/01/2021
Pronounced on : 22/03/2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL OP (MD) Nos.2408 to 2410 of 2021
and
CRL OP (MD) No.2412 of 2021

Murugan .. Petitioner/A4
in CrI.OP (MD) Nos.2408 & 2409/2021

Muthuraj .. Petitioner / A6
in CrI.OP (MD) No.2410 & 2412/2021

Vs.

State; through its
Inspector of Police,
CBI Police Station, New Delhi
RC.0502020S0008 of 2020
in CrI.OP (MD) Nos.2408 & 2412/2021
RC.0502020S0009 of 2020
in CrI.OP (MD) Nos.2409 & 2410/2021 ... Respondent/Complainant
in all the petitions

PRAYER: Criminal Original Petitions are filed under Section 439 of the Code of Criminal Procedure, praying to grant bail to the petitioners in RC.0502020S0008 of 2020 and RC.0502020S0009 of 2020, on the file of the respondent Police.

In all the petitions:

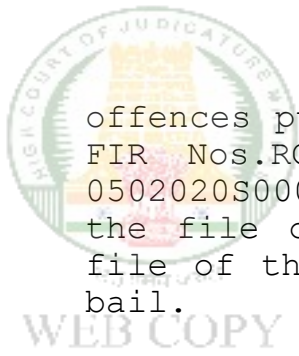
For Petitioners : Mr.T.A.Ebenezer, Advocate

For Respondent : Ms.L.Victoria Gowri
Assistant Solicitor General of India
Special Public Prosecutor For CBI Cases

For Intervener : Mr.T.Lajapathi Roy, Advocate

COMMON ORDER

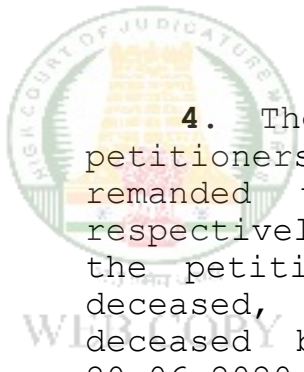
The petitioners/A4 and A6 were arrested and remanded to judicial custody on 01.07.2020 and 03.07.2020 respectively for the
<https://hcservices.ecourts.gov.in/hcservices/>



offences punishable under Sections 302, 342, 201 r/w 109 of IPC, in FIR Nos.RC.0502020S0008 of 2020 & RC.0502020S0009 of 2020 and 0502020S0009 of 2020 and RC.0502020S0008 of 2020, respectively, on the file of the respondent Police, in S.C.No.470 of 2020, on the file of the 1st Additional District Sessions Judge at Madurai, seek bail.

2. For the sake of convenience, deceased Bennicks is referred as D1 and deceased Jeyaraj is referred as D2.

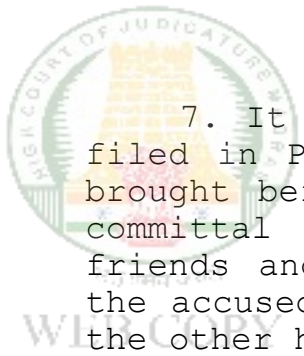
3. The case of the prosecution is that one P.Jeyaraj and his son Bennicks were in police custody at Sathankulam Police Station, Thoothukudi District in the evening of 19.06.2020 and during the intervening night of 19.06.2020 and 20.06.2020 and their subsequent death in judicial custody in the intervening night of 22.06.2020 and 23.06.2020. Initially both the cases were registered by CBCID Police, Thoothukudi in Crime No. 02 of 2020. Thereafter the investigation transferred to the file of the respondent pursuant to the Notification No. G.O.(2D)No.150, Home(Police VIII) Department dated 29.06.2020 issued by the Government of Tamil Nadu and subsequent Notification No.228/16/2020- AVD.II dated 06.07.2020 issued by the Government of India. In pursuance to the First Information Report registered in Crime No. 312 of 2020 for the offences punishable under Sections 188, 269, 294(b), 353 and 506(ii) of IPC by the Sathankulam Police Station the deceased Jeyaraj and Bennicks were remanded to judicial custody in the Sub Jail, Kovilpatti on 20.06.2020. While being so on 22.06.2020, one of the prisoner suffered breathlessness followed by another who complained of fever and they were sent to Government Hospital, Kovilpatti on 23.06.2020. The duty doctor informed that the medical treatment failed and the prisoner died. On the complaint lodged by the Duty Doctor, Government Hospital, Kovilpatti First Information Report registered in Crime No. 650 of 2020 for the offences under Sections 176(1A)(i) of Cr.P.C., by the Inspector of Police, Kovilpatti(East) Police Station, Thoothukudi District. Inquest was conducted by the learned Judicial Magistrate No.1, Kovilpatti, who found multiple injuries on the body of the deceased Jeyaraj and Bennicks. Thereafter autopsy was conducted by a Board of three doctors from Forensic Medicine and Toxicology Department of Tirunelveli Medical College, Tirunelveli, and they gave opinion that the deceased would appear to have died of complications of blunt injuries sustained. Thereafter the Honourable Division Bench of Madras High Court has taken *Suo Motu* Writ Petition in W.P.(MD)No.7042 of 2020, ordered investigation by CBCID. Accordingly CBCID took up investigation in Crime No. 2 of 2020 and altered the offences under Sections 302, 342 and 201 of IPC., r/w 109 of IPC. The police officials of the Sathankulam Police Station were arrayed as accused and remanded to judicial custody on 01.07.2020. Thereafter by the virtue of the G.O the respondent has taken the entire investigation and registered a fresh First Information Report.



4. The learned counsel for the petitioners submitted that petitioners are arrayed as A4 & A6 and they were arrested and remanded to judicial custody on 01.07.2020 and 03.07.2020 respectively. The main allegation against the petitioners is that the petitioners had signed in the false complaint against the deceased, further they caught hold the deceased and beaten the deceased between 7.30 p.m., on 19.06.2020 to 3.00 a.m., on 20.06.2020. The learned counsel for the petitioners further submitted that no such occurrence had taken place in the Police Station, as alleged by the respondent. As SHO, he registered a case in Crime No.312 of 2020, on the complaint given by A4 / Murugan, Head Constable and he further submitted that in this case, investigation completed, charge sheet filed and the case is now ripe for trial. The petitioner being responsible police officer, will not interfere with the prosecution and tamper witnesses and will not evade justice. Further, the petitioners to instruct their counsel to prepare for defence, for the trial they need bail. Keeping the petitioners in custody and conducting trial would cause great prejudice to the petitioners.

5. The learned counsel appearing for the interveners submitted that the intervener in this case is the mother of D1 and wife of D2. It is submitted that the petitioners herein are the Investigating Officers in Crime No.312 of 2020 and they are directly responsible for keeping an illegal detention of D1 and D2, on 19.06.2020. Further, they brutally attacked and tortured them, while in custody. The C.C.T.V recordings obtained from the scene of occurrence ie., the place near the shop of D1 and D2 would clearly prove that there was no commotion and rolling on the floor, thereby, having abrasions on them is false. Further, it is seen that D2 alone was taken by the police and thereafter, D1 followed along with his friend in the motor bike, on the contrary in Crime No.312 of 2020, it is recorded as though both D1 and D2 were taken custody together, which itself would show that a false FIR has been registered. Being a responsible Police Officer, the petitioners ought not to have registered such an FIR. On the other hand, they conspired with other accused in taking away the life of D1 and D2.

6. The learned counsel would further submit that the learned Judicial Magistrate, Kovilpatti, during his enquiry under Section 176(1A)(i) of Cr.P.C., he was hurled and threatened by the Police personnel present in the Police Station "உன்னால ஒன்னும் புடுங்க முடியாதா" and further, the police personnel not co-operating with the enquiry and failed to produce the documents. With great difficulty, the enquiry Magistrate conducted enquiry and latter, he had sent a report to the Division Bench of this Court, which is part of the records. Further, the petitioners had failed to appear before the enquiry, when they were summoned and latter, they were arrested by the CB-CID.

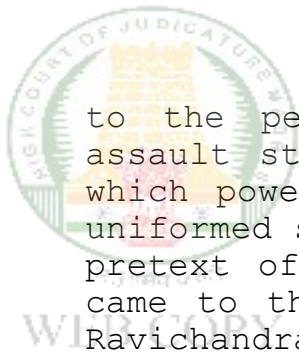


7. It is his further submission that the charge sheet has been filed in P.R.C.No.208 of 2020 and on 10.12.2020, the accused were brought before the learned Chief Judicial Magistrate, Madurai, for committal proceedings, at that time, the accused had met their friends and relatives, made hindrance free phone calls and one of the accused was seen shouting in the phone, demanding some money on the other hand and failure to do it, he threatened the person on the other end that he would face the consequence. The defiance shown by the accused before the committal court would clearly show that how menacing they are, if they are let out on bail, no witness will come forward to depose freely. Further, the main witnesses Revathi and Beulah in this case are the subordinates to the petitioners, hence, the learned counsel strongly opposed the bail petitions.

8. The learned Assistant Solicitor General of India, appearing for the respondent would submit that the earlier petition of the petitioners were dismissed by this Court by a detailed order, on merits, and there is no fresh ground after the earlier order of dismissal. During investigation conducted by CBI so far, complicity of the petitioners/accused along with other charge sheeted accused persons are *prima facie* established. In view of sufficient evidence oral, documentary as well as scientific/forensic available charge sheet filed against them, the competent Court has already taken cognizance of offence against all the accused persons, including the petitioners/accused herein. As per the evidence collected during investigation conducted so far, the accused/petitioners are the prime accused, they have been found to be involved in brutal torture of deceased Bennicks and Jeyaraj and the submission of a false complaint against both the deceased leading to registration of a false case in Crime No.312 of 2020 in Sathankulam Police Station, by tampering of records, for the purpose of creating records for detaining deceased Bennicks and Jeyaraj in the illegal custody at Sathankulam Police Station in the evening of 19.06.2020 and during the intervening night of 19 / 20.06.2020. More over, further investigation in the case to unearth the larger conspiracy and on other aspects are still pending under Section 173(8) Cr.P.C and therefore, release of the accused, at this juncture, would be detrimental to the interest of ongoing further investigation by CBI as well as upcoming trial in the case. Hence, the Assistant Solicitor General of India, strongly opposed the petitions.

9. I have heard the learned counsels appearing on either side and carefully perused the materials available on record.

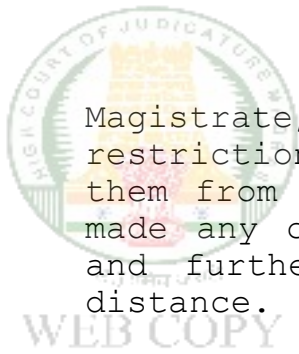
10. On perusal of the records, it is seen that D2 was taken to Police Station by the Police personnel at Sathankulam, on 19.06.2020, for the lucid comments he said to have made on 18.06.2020, when the shops were asked to down their shutters, due to COVID-19 Pandemic restrictions. This lucid comments had been exaggerated by the persons in the nearby, who informed to one of the persons in the nearby, who used to come there regularly, which was informed



to the personnels in the Police Station and the vengeance for assault started brooming and thereafter, in the guise of enquiry, which power is given to the Law Enforcing Authorities and for the uniformed services. The personnels in the uniformed service on the pretext of enquiry, picked up Jeyaraj / D2. D2's son Bennicks/D1 came to the Police Station in a motor bike along with his friend Ravichandran, by that time, the police personnel started assaulting D2 and he was crying with pain. It is natural that D1, being the son, got agitated and entered into the Police Station and questioned the police about the brutal attack made to his father. It is a known fact that no policemen would be willing to be questioned how brazen there act may be and that to when such things happened within the Police Station. The Police Station is at their complete control and it is at their mercy the public can go in and come out without any humiliation and any scratch.

11. In this case, Bennicks/D1 questioned his father's assault, D2 had gone to rescue of his father instinctively he pushed some of the Policemen to save his father from the assault, as a result of which, one of the Police personnel Shirt's Collar was pulled and torn and another Policeman was pushed towards the table, which enraged the policemen. Thereafter, both D1 and D2 were beaten black and blue mercilessly. The Inspector, who latter came also added fuel to the fire and he ordered that all the Policemen in the Police Station to teach lesson to D1 and D2. The family members of D1 and D2, though were present near police station, they were not allowed to enter the Police Station. In fact, one of the police personnel, who was standing as guard not allowed anybody into the Police Station, even the said Revathi, Para Constable who reached the Police Station late was not allowed inside during the beatings, latter allowed to report before the Inspector. The beating continued throughout the night on 19th and 20th.

12. During the entire period none of the family members or no legal assistance were given to D1 and D2. In fact, the pain and humiliation was such then D1 and D2 refused even to take food, which was also given forcibly with beating. It was Revathi, who gave some water to D1 and D2, when they were bleeding with pain. Thereafter, they were taken to Dr.Vinila for Fitness Certificate to remand, which were given by the said Doctor, which is surprising. The injuries on all over the bodies clearly covered with dhoties and shirts, which were apparently visible. As per Section 54 of Cr.P.C., the accused have to be examined. There are witnesses to state that dhoties of D1 and D2 were bloodstained and thereafter, there was change of dhoties and shirts. It is surprising that these injuries have missed the sight of the Doctor who is said to have examined D1 and D2. Further, D1 and D2 were not in a position to sit, due to the injuries and assault on their buttocks, which is also spoken by the witnesses. Thereafter, on getting the fitness for remand, they were produced before the remanding Magistrate viz., Judicial Magistrate, who in his statement to the Enquiry



Magistrate, Kovilpatti, submitted that due to COVID-19 Pandemic restrictions, the accused were placed at a distance and he enquired them from a distance quite far and at that time, the accused not made any complaint about the assault made by the police personnel and further there was an advocate present, who was also at a distance.

13. The accused were remanded by following the procedures under Section 167 Cr.P.C. Section 41 not properly followed. Further, it is strange to find that till D1 and D2 were taken to Sub-Jail, Kovilpatti, the injuries sustained by them in the Police Station, at the hands of the accused was not observed and noted down. In the Prison Register, the injuries are clearly recorded. Further, the Prison Doctor, who examined D1 and D2 on the next day in the prison finding the health condition grave, gave medical advice. The non-observation of the inquiries by the concern, will not absolve the accused of their brutality. Admittedly, in this case, D1 and D2, when they were taken to Police Station, had no injuries and thereafter, they have been in complete custody of the Police personnel, till they were produced before the Sub-Jail. In the Sub-Jail, the injuries have been recorded. Hence, it is for the petitioners and the police personnel of Sathankulam Police Station to give explanation for the injuries found on D1 and D2. The deceased died of complication of blood injuries sustained. The proforma for health screening of prisoners on admission to jail, Wound Certificate and the Postmortem Certificate produced would show that there have been injuries on both D1 and D2. There is no explanation for the same. The petitioners are police personnels 'on duty' on the fateful day. It is seen that the Hon'ble Apex Court, time and again deprecated such kind of brutal violence and the 3rd degree method adopted. The Judgment relied on by the counsel for the petitioners is not applicable to the facts of the present case.

14. The Hon'ble Apex Court, more than two decades ago, in the case of ***D.K.Basu Vs. State of West Bengal*** reported in ***[(1997) 1 SCC 417]*** dealt with the custodial violation by the law enforcing authorities, referring to various cases, reports and proceedings, had given guidelines. Further, the Law Commission in 130 Report recommended the insertion of Section 114-B of Indian Evidence Act that in prosecution of the Police Officer for an alleged offence of having caused bodily injury to a person, if there was evidence that the injury was caused during the period when the person was in the custody of the police, the Court may presume that the injury was caused by the police officer having the custody of the person during that period. Unfortunately, the suggested amendment is yet to be incorporated in the statute. Thereafter, it is further observed as follows:-

"Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of a crime but it must be remembered that the law does



not permit use of third degree methods or torture of accused in custody during interrogation and investigation with that view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purpose full to make the investigation effective. By torturing a person and using their degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No. society can permit it.

How do we check the abuse of police power? Transparency of action and accountability perhaps are tow possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personal handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable form of interrogation."

15. Further, making serious objections, with regard to custodial death, it has been observed as follows:-

"Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution required to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture of cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchanism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal court of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicted



undertrials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. "

16. This Court is of the view that fake encounters are taking place in remote and public place and custodial death are while in custody. Both are similar and no law of land, authorize such illegal and inhuman act. Further, the Law Enforcement Agency in this case have become law breakers, which lead to death of two persons, who are wiped out from their families. D1 and D2 are not hardened criminals and have no criminal history. In view of the same, this Court is not inclined to grant the relief of bail to the petitioners. According, the Criminal Original Petitions stand dismissed.

17. It is made clear that the above observations/discussions made are only for the limited purpose of disposing of the bail applications and that the trial to be conducted on its merits, without in any way being influenced by the observations made in these petitions.

sd/-

22/03/2021

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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 SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
2. THE INSPECTOR OF POLICE,
CBI POLICE STATION, NEW DELHI.
3. THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL OP(MD)Nos.2408 to 2410/2021 &
CRL OP(MD)No.2412 of 2021

Date :22/03/2021

MPK

TE/SMA : 25/03/2021 : 8P/4C

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