



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Orders Reserved on : 23/02/2021

Orders Pronounced on: 11/03/2021

PRESENT

The Hon'ble Mr. Justice M.NIRMAL KUMAR

CRL OP(MD) . No.2740 of 2021

Fernandas Gearge

... Petitioner/1st Accused

Vs

The State Rep. by
The Inspector of Police,
Mathur Police Station,
Pudukkottai District.
(Crime No.367 of 2020).

... Respondent/Complainant

For Petitioner : Mr.S.Ravi, Advocate.

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

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

PRAYER :-

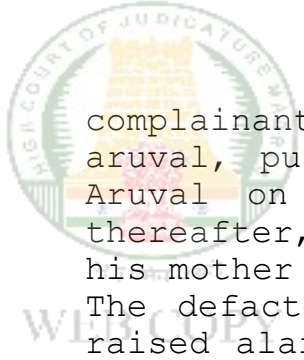
For Bail in Crime No.367 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The petitioner/A2, who was arrested and remanded to judicial custody on 08.12.2020, for the offences punishable under Sections 452 & 397 of IPC., in Crime No.367 of 2020, on the file of the respondent Police, seeks bail.

3. The gist of the case is that the defacto complainant is residing with his wife, son and mother at Ramasamy Nagar, Mathur, Pudukkottai District. On 06.12.2020 at about 8.45 p.m., the petitioner along with other accused persons came to the house of the defacto complainant and knocked the door, when the defacto

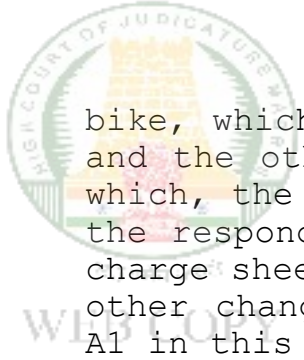


complainant opened the door, at that time 3 persons armed with aruval, pushed the defacto complainant, threatened him by placing Aruval on his neck, two of them had caught hold of him, and thereafter, entered into the house and snatched away the chain from his mother and Thali Chain and the chain with dollar from his wife. The defacto complainant pushed them and attempted to run out and raised alarm, seeing the same, the neighbours came there. Sensing trouble, the three persons ran away from the scene of occurrence, leaving back the two wheeler viz., TVS Sport, bearing Registration No.TN-61-F-8050, in which they have come.

3.1. Thereafter, a complaint was lodged by the defacto complainant. The respondent police had come to the scene of occurrence, prepared observation mahazar, enquired the witnesses and taken the bike, which was left by the accused. The owner of the bike - Tamil Inian was enquired, who disclosed that his friend Fernandas George, the petitioner herein, had taken the bike for the reason that he has to visit his friend, who was in the hospital, on 06.12.2020 and thereafter, the bike was not returned to him. The said Tamil Inian had identified the petitioner herein and also the other accused Marimuthu. The Police enquired them and the petitioner herein admitted the offence, from his pocket he produced the Thali chain, which he snatched from the defacto complainant's wife. Thereafter, the two accused were arrested. From their confessions, the 3rd persons involved in the offence was found to be Mohammed Yasik / A1 in this case, who was apprehended on 08.12.2020 at about 4.30 p.m., near Mathur Roundana Bus stop and on his arrest, he produced the gold dollar of the defacto complainant's wife. All the three accused were remanded to judicial custody. After examining the witnesses and preparation of documents, completed the investigation and filed the charge sheet, which was taken on file in P.R.C.No.2 of 2021. The case is pending trial.

4. On perusal of the records it is seen that this is the second bail application filed by the petitioner. Earlier, the petitioner's bail application in CrI.O.P.(MD)No.667 of 2021 was dismissed by this Court on 08.02.2021 finding that the investigation in this case completed and charge sheet has been filed, which was taken in P.R.C.No.2 of 2021 and issued direction to the trial Court to complete the trial within a period of four months. Now, the petitioner has filed the 2nd bail application mainly on the ground that the co-accused in this case Mohammed Yasik / A1 was granted bail by this Court in CrI.O.P(MD)No.1256 of 2021, on 02.02.2021.

5. The learned counsel appearing for the petitioner would submit that the petitioner has been falsely implicated in this case and his name does not find in the FIR and he is having no bad antecedents. He would further submit that this Court, by order dated 08.02.2021 had dismissed the earlier bail application filed by the petitioner finding that in this case, the Investigating Officer had recovered gold chain from this petitioner; dollar from A1 and also on the evidence of Tamil Inian, who is the owner of the



bike, which was used for commission of the offence. The petitioner and the other accused while escaping had left the bike and through which, the accused were traced. Further, finding that in this case, the respondent police has completed the investigation and filed the charge sheet, the earlier bail application was dismissed. The only other change of circumstances, according to the petitioner is that A1 in this case was granted bail by this court on 02.02.2021.

6. The learned Government Advocate (crl.side) appearing for the respondent Police, on instructions, would submit that the petitioner and other two accused armed with aruval had knocked the door of the defacto complainant, who is peacefully living with wife, son and mother and when the defacto complainant opened the door, the accused placing the aruval on his neck, threatened for life, snatched away the chain from the defacto complainant's mother and thereafter, they entered another room and snatched away the Thali Chain from the defacto complainant's wife. The defacto complainant showed resistance and raised alarm. The petitioner and the accused had left the scene of occurrence leaving back the bike. From the bike, the accused was traced, arrested and from them, gold chain and dollar were recovered, on the very next day. The investigation in this case was completed and charge sheet filed before the committal court within the stipulated time. The hard work and sincerity of the Investigating Officer has to be appreciated and there are few witnesses in this case and the respondent would produce the witnesses before the trial Court, without any delay and complete the trial within the stipulated time and prayed for dismissal of the bail application.

7. This Court perused the materials, case diary and the order of this Court made in CrI.O.P.(MD)No.1256 of 2021, in which A1 was granted bail. Earlier, when the CrI.O.P.(MD)No.1256 of 2021 came up for hearing, the learned counsel for the Petitioner / A1 had projected that there was a civil dispute between the petitioner and the family of the defacto complainant and the petitioner herein was working as a driver in a van of the defacto complainant for Aadalum Padalum stage performance and due to which, he has been falsely implicated. Considering the same, the other Bench of this Court had granted bail. For this reason, the case diary was called for and perused.

8. From the case diary, there is nothing to show that the petitioner was employed as driver with the defacto complainant. Further, the defacto complainant does not own vehicle. The confession of the accused does not contain any such theory. Further, the learned Government Advocate (crl.side) who appeared for the state in CrI.O.P.No.1256 of 2021 had not refuted and denied the same and had only submitted that the gold chain and dollar were recovered in this case and the investigation completed, charge sheet filed. Based on such submission, bail was granted to A1. The theory propounded by A1 is completely false and is not supported with any material. The Government Advocate, who appeared for the



State in Crl.O.P(MD)No.1256 of 2021, had not effectively putforth the case. Whether it was accidental or by design is not known.

9. Be that as it may. This Court, on perusal of the case diary, finds that the petitioner along with other two accused armed with aruval, entered into the house of the defacto complainant, committed heinous crime, investigation completed, charge sheet filed and recording the same, this Court had dismissed the earlier bail application of the petitioner in Crl.O.P.(MD)No.667 of 2021 on 08.02.2021, Thereafter, there is no change of circumstances to entertain this petition. Hence, this Criminal Original Petition is dismissed.

sd/-
11/03/2021

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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 INSPECTOR OF POLICE,
MATHUR POLICE STATION,
PUDUKKOTTAI DISTRICT.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
3. THE OFFICER IN-CHARGE,
DISTRICT PRISON,
PUDUKKOTTAI.

ORDER
IN
CRL OP(MD) No.2740 of 2021
Date :11/03/2021

MPK
TE/JC/SAR-III : 16/03/2021 : 4P/4C