



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation : 01.11.2021

Date of Judgment : 09.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.A(MD)Nos.226, 243 and 270 of 2021

WEB COPY

1.Crl.A(MD)No.226 of 2021:-

1.Maruthavel @ Pappadai

2.Sathyaraj

: Appellants / Petitioners /
A5 and A7 in charge sheet

Vs.

1.The Deputy Superintendent of Police,
Thoothukudi South,
Thoothukudi.

2.State rep. by
The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi.
(Crime No.533 of 2019)

: R1 and R2 / Respondents /
Complainants

3.P.K.Ramkumar

: R3 / Respondent / De-facto
complainant

Prayer: Criminal Appeal is filed under section 14(A) of the Schedule Caste/Schedule Tribes (Prevention of Atrocities)Amendment Act 2015, to set aside the order passed by the learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Thoothukudi, dated 21.04.2021 made in Crl.MP No.483 of 2021 and enlarge the appellants on bail.

2.Crl.A(MD)No.243 of 2021:-

1.M.Kanthavel

2.S.Thangam

: Appellants / Petitioners /
A11 and A18

Vs.

1.The Deputy Superintendent of Police,
Thoothukudi South Police Station,
Thoothukudi District.
In Crime No.533 of 2019)

: 1st Respondent/Complainant



2.P.K.Ramkumar

: R2/De-facto complainant

Prayer: Criminal Appeal is filed under section 14(A)(2) of the Schedule Caste/Schedule Tribes (Prevention of Atrocities) Amendment Act 2015, to set aside the order passed by the learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Thoothukudi, dated 15.03.2021 made in CrI.MP No.132 of 2021 in SC No.62 of 2020 and enlarge the appellants on bail.

3.CrI.A(MD)No.270 of 2021:-

Balasubramanian

: Appellant/A10

Vs.

1.The Deputy Superintendent of Police,
Thoothukudi South Police Station,
Thoothukudi District.

2.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.

(Crime No.553 of 2019)

: R1 and R2/Complainants

3.P.K.Ramkumar

: R3/De-facto complainant

Prayer: Criminal Appeal is filed under section 14(A)(2) of the Schedule Caste/Schedule Tribes (Prevention of Atrocities) Act 1989 & Amendment by Act 1/2016, to set aside the order passed by the learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Thoothukudi, dated 15.03.2021 made in CrI.MP No.133 of 2021 and enlarge the appellants on bail in connection with S.C.No.62 of 2020 on the file of the learned Special Court for Trial of cases Under Section SC/ST (POA) Act, Thoothukudi in Crime No.533 of 2019 on the file of the 2nd respondent Police.

For Appellants in

CrI.A(MD)No.226 of 2021 : Mr.T.Vadivelan

For Appellants in

CrI.A(MD)No.243 of 2021 : Mr.M.Jegadeesh Pandian

For Appellant in

CrI.A(MD)No.270 of 2021 : Mr.T.Lajapathi Roy

For R1 and R2

: Mr.K.Sanjai Gandhi

Government Advocate (CrI. Side)

For 3rd Respondent

: Mr.A.S.Vaigunth

**COMMON ORDER**

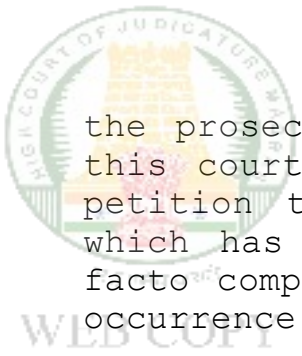
Crl.A(MD)No.226 of 2021 has been filed challenging the order of the learned Sessions Judge, Special Court for the Trial of cases under SC/ST (POA) Act, Thothukudi, made in Crl.MP No.483 of 2021 in SC No.62 of 2020, dated 21.04.2021, whereas Crl.A(MD) Nos.243 and 270 of 2021 have been filed challenging the orders, dated 15.03.2021 passed in Crl.MP Nos.132 and 133 of 2021 in SC No.62 of 2020, by the learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Thoothukudi and enlarge the appellants on bail.

2.Since common question of law and facts arise in all these appeals, heard jointly and common order passed.

3.The case of the prosecution is that on 21.08.2019 at 10.00 am, when the de-facto complainant and the deceased Sivakumar came to the District Court, Thoothukudi, for attending the case hearing, at that time, some of the identifiable persons proceeded towards them with deadly weapons and assaulted them and when the deceased tried to escape, all of them said to have surrounded the deceased and attacked him with deadly weapons, thereby caused severe injuries and subsequently, he died in the hospital.

4.It is a case of retaliation murder, as set out in the preamble portion. The alleged murder that took place was the 2nd murder in sequence of events, in which the deceased Sivakumar was involved in murdering one Athipalam. In respect of the murder case of the above said Athipalam, case was registered against the deceased Sivakumar, Kannan and one Murugan. The above said case was registered on the file of the Pudukottai Police Station and later, it was transferred to Sipcot Police Station. In that case, the Investigating Officer has filed final report and it has been tried by the 2nd Additional District and Sessions Judge, Tirunelveli. The present occurrence said to have been taken place, when the above said deceased Sivakumar along with the de-facto complainant and others was about to attend the trial proceedings.

5.In the counter that has been filed by the prosecution as well as the de-facto complainant, it has been stated the cases registered against these petitioners have been elaborately set out. It is also brought to the notice of this court that one of the accused in the above said murder case of Athipalam, namely Kannan has also been murdered. It is seen that this is the second murder that took place as retaliation to the murder of the said Athipalam. This is the back ground of this present case. In addition to that, Crime No.730 of 2019 has been registered against A2 for having threatened the prosecution witnesses No.2. Similarly another case in Crime No.176 of 2020 was registered by the Palayamkottai Police Station against A2 for having threatened

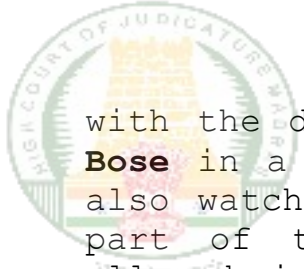


the prosecution witness No.1. A19 has been released on bail by this court and now, it appears that the prosecution has filed a petition to cancel the bail. This is the another circumstance, which has been projected by the prosecution as well as the de-facto complainant at the time of argument to show the background occurrence.

6.Now coming back to the cases that have been registered against these petitioners, it is alleged that A5 is involved in 13 cases among which, the present case is also included. A reading of the counter affidavit shows that most of the cases are involve the offence under Section 307 IPC. He has also involved in Crime No.223 of 2017, which involves the offence under SC/ST Act. Similarly against A7/Sathyaraj, 8 cases are pending among which the present case is one. So most of the cases appear to be hurt cases. Apart from that, he is also involved in another Crime No.319 of 2018 on the file of the Thisayanvilai Police Station for the offence under sections 147, 201, 294(b), 302, 323, 264, 449, 506(ii) IPC and section 3 of TNPPDL Act. Similarly A11/Kanthavel is involved in 4 cases, among which this present case is one and apart from that, two other hurt cases. Similarly A10/Balasubramaniyan is involved in 3 cases among which the present case is one. A19/Ramesh is also involved in criminal intimation and apart from the offence under SC/ST (POA) Act. So, these are the antecedents of the petitioners.

7.The main argument that has been advanced by the learned counsel appearing for the petitioners is that similarly placed persons namely A15 and A16 have been released on bail by this court, by order, dated 24.02.2020 made in CrI.A(MD)No.8 of 2020. So drawing attention of the above said order of this court, it has been submitted that these petitioners have been implicated in the crime, since because they happened to be the friends of the first accused. Except that, there are not having any motive against the deceased person or rivalry between those people. As mentioned above, the allegation of the prosecution against these petitioners is that they were watching the movement and facilitating the occurrence of murder, and for helping the accused persons to escape after the event. So according to the learned counsel appearing for the petitioners, since similarly placed persons have already been released on bail, there can be no impediment for entertaining these appeals also. He would further submit that the petitioners are ready to stay away from the native District and also ready to abide any of the condition that can be imposed by this court.

8.No doubt that the incarceration period is more than 300 days. When it is a case of retaliation murder and that too it was a case of retaliation process. Even though these petitioners have been arrayed as accused, it is the case of aid of the first accused and though they are not having any enmity



with the deceased. In the the celebrated words of Justice **Vivian Bose** in a like circumstance observed that those persons, who are also watching and guarding also serves. So the contention on the part of the petitioners that they had no direct involvement alleged in the murder, I am of the considered view that the backdrop facts and antecedents of the petitioners are the materials, which have to be taken into account, while deciding their bail.

9.No doubt, reading of the final report shows that murder was committed in the second attempt. In the first attempt all the people were watching the movement of the deceased. But due to some mistaken identity, they could not execute the first attempt. In the 2nd attempt, they succeeded. So this shows that there is a clear pre-planning and meeting minds of all the accused persons, who are involved in this occurrence. So the contention on the part of the petitioners that they are similarly placed along with the above said accused Nos.15 and 16, I am unable to convince that these petitioners are entitled to be released on bail. A bad avenger not only avenges badly, but also can become victim of retaliation. It is not only for their safety and security they must remain in prison during trial, but also in the interest of the witnesses in this matter and the accused person in the said murder case of Athipayam. The possibility of tempering witnesses, threatening witnesses and the possibility of dragging on the trial proceedings, the 2nd retaliation cannot be ruled out, as pointed out by the learned Additional Public Prosecutor appearing for the State. So, I am of the considered view that these petitioners must face the trial in custody. Absolutely, I find no merit in these appeals and the impugned orders passed by the trial court does not suffer from any illegality.

10.In fine, all the criminal appeals are **dismissed**.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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, the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The Sessions Judge,
Special Court for trial of cases
under SC/ST (POA) Act,
Thoothukudi.
2. The Deputy Superintendent of Police,
Thoothukudi South,
Thoothukudi.
3. The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Superintendent,
Central Prison, Palayamkottai, Tirunelveli.

Cr1.A(MD) Nos. 226, 243 and 270 of 2021
09.11.2021

KS (CO)
SB/NS (22.11.2021) 6P 6C