



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

Reserved on: 29.7.2021

Delivered on: 30.07.2021

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PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD)No.7438 of 2021
and
Crl.M.P. (MD)Nos.2575 & 2658 of 2021
in
Crl.O.P. (MD)Nos.8794 & 8575 of 2020

Crl.O.P. (MD)No.7438 of 2021

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.3951 of 2021
in CRL OP(MD)No.7438 of 2021

For Petitioner : Mr.R.Gandhi
for Mr.Murugan.A, Advocate

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

For Intervenor : Mr.Henri Tiphagne

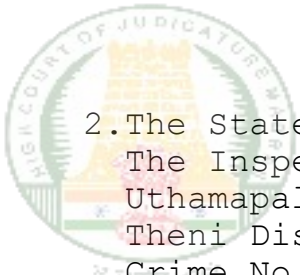
PRAYER : Petition filed under Section 439 Cr.P.C., for Bail in Crime No.147/2020 on the file of the respondent Police.

Crl.M.P. (MD)No.2575 of 2021

Selvendran ... Petitioner/Defacto complainant

Vs

1.R.Jeyaprabhu ...1st Respondent/Petitioner



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

...2nd Respondent/Complainant

Prayer: Petition filed under Section 439(2)Cr.P.C., to cancel the bail granted to the first respondent/Accused No.1 in CrI.O.P.(MD) No.8794 of 2020, dated 21.08.2020.

CrI.M.P. (MD)No.2658 of 2021

Selvendran

... Petitioner/Defacto complainant

Vs

1.Selvam @ Soopuselvam
2.Rajesh
3.Anandan
4.Sanjay @ Sanjaykumar

...Respondents 1 to 4/Petitioners 1 to 4

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

...5thRespondent/Complainant

For Petitioner
(in both Mps.)

: Mr.Henri Tiphagne

For R1

: Mr.D.Selvam

For R2

: Mr.Antony Sahaya Prabahar,
Government Advocate(CrI.side)

For R1 to R4

: No Appearance

For R5

: Mr.Antony Sahaya Prabahar,
Government Advocate(CrI.side)

Prayer:Petition filed under Section 439(2)Cr.P.C., to cancel the bail granted to the respondents 2 & 3/Accused No.4&5 in CrI.O.P.(MD) No.8575 of 2020, dated 18.08.2020.

COMMON ORDER

CrI.O.P.(MD)No.7438 of 2021 has been filed seeking bail to A8/Chokkar. CrI.M.P.(MD)No.3951 of 2021 has been filed by the defacto complainant as an intervenor for objecting to grant of bail to A8. CrI.M.P.(MD)Nos.2575 & 2658 of 2021 have been filed to cancel the bail granted to the respondents therein in CrI.O.P.(MD)Nos.8794 & 8575 of 2020. All these petitions are taken up together, heard and disposed of through this common order.



2.The case of the prosecution is that the deceased Ranjithkumar is an Advocate practicing in Uthamapalayam Court. The defacto complainant is his elder brother. The family of the defacto complainant entered into a sale agreement for purchase of coconut thope from one Rajakantham, on 14.11.2019. Thereafter, when they were ploughing the lands with the help of the tractor, the son of Rajakantham viz., Vijayan and the Advocates Jeyaprabhu, Chokkar, Mathan and other accused prevented them from ploughing and attacked them indiscriminately and in that incident, the defacto complainant sustained a cut injury in his shoulder. A case in Cr.No.239 of 2019 was registered against the accused. Vijayan and the Advocate Jeyaprabhu have been threatening the defacto complainant and his family members that they would be eliminated. While that being so, Advocates Jeyaprabhu, Chokkar, Mathan and Selvam and others have waylaid Ranjith Kumar and gave a threat that he and his family members would be eliminated within a month. The deceased brother Ranjith Kumar gave a complaint to the Cumbum police station and it was registered in CSR No.51 of 2020. Vijayan approached the Advocate Jeyaprabhu and offered a sum of Rs.6,00,000/- (Rupees Six Lakhs only) for murdering Ranjith Kumar. After receiving the amount, Advocates Jeyaprabhu, Chokkar, Mathan and Mayilammal and a gang leader Selvam @ Sooppu Selvam conspired in the office of Chokkar and decided to murder Ranjith Kumar. On 06.03.2020 at about 12.00 noon, the defacto complainant enquired Ranjith Kumar over phone as to where was he at that point of time. He replied that he was in Uthamapalayam Court. He went there and after some time, they left from the Court. Ranjith Kumar was riding a Splender Two wheeler bearing Registration No.TN-57-E-0133 towards Cumbum road. The defacto complainant and Sukumaran were following him. At about 03.30 p.m., near Govinthanpatti Poomalai Theatre, a red colour car came in a rash manner and hit against the Ranjith Kumar's two wheeler. As a result, he fell down. The occupants of the car Jeyaprabhu, Mathan, Selvam @ Sooppu Selvam, Rajesh, Anandhan, Pradhap and Sanjai came out of the car and attacked Ranjith Kumar indiscriminately with deadly weapons. When the defacto complainant and Sukumaran came near them, they escaped from the scene of occurrence. On the basis of the complaint, this FIR came to be registered.

3.The learned counsel for the petitioner/Chokkar submitted that he is innocent and he has been falsely implicated in this case as A8. He is an Advocate and Senior Citizen. There is no specific overt act attributed against him in the alleged murder of the deceased. He is implicated on the basis of the confessional statement of the co-accused. He is in judicial custody ever since his arrest on 30.09.2020, for a period of 10 months. He was detained under Goondas Act and that was quashed. The investigation in this case was completed and that was omitted to be mentioned when the earlier bail petition in Crl.O.P.(MD)No.3944 of 2021 was taken up for consideration on 16.04.2021. The case has been taken as ~~FIR No.38 of 2020~~. The petitioner is suffering from some heart disease and other ailments. He is prepared to abide by any



conditions imposed by this Court including appearance before the respondent police twice or thrice in a day and even prepared to file an affidavit stating that he will not file petition for relaxation of the condition till the disposal of the case. Therefore, he seeks bail to the petitioner.

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4. Petitions for cancellation of bail granted to Jeyaprabhu, Rajesh, Anandan, Sanjay @ Sanjaykumar have been filed alleging that after their release on bail, they started to give threat the defacto complainant and his family members. Not only that, they committed offences and case in Cr.No.84 of 2021 under Section 399 IPC and Sections 20 and 25(1A) of the Arms Act, 1959 came to be registered against the respondents Jeyaprabhu, Rajesh, Ananthan. Another case in Cr.No.133 of 2021 was registered against the respondents Jeyaprabhu, Rajesh. Therefore, the learned counsel for the petitioner/defacto complainant in petitions sought for cancellation of bail granted to these respondents and as the intervenor in bail petition in CrI.O.P.(MD)No.7438 of 2021, strongly opposed to release the petitioner/Chokkar on bail.

5. It is the submission of the learned counsel for the defacto complainant that the petitioner/Chokkar is the main accused and only in his Office, conspiracy to commit murder of the deceased was hatched. Other accused are actively involved in execution of conspiracy to murder the deceased. The petitioner through one Archana threatened a star witness Muthu Easwari in this case that if she give evidence against Chokkar and other accused, she would be eliminated like the deceased Ranjithkumar. It is his further submission that The conduct of the respondents Jeyaprabhu, Rajesh, Ananthan strengthens the apprehension of the defacto complainant that the accused would go to any extent to see that the witnesses will not speak against them and they get acquitted.

6. It is his further submission that earlier bail petition was dismissed on 22.04.2021 and there is no change in circumstances. The defacto complainant moved before the learned Principal District Judge, Theni for protection of witnesses under the Witness Protection Scheme 2018. Protection was given for certain duration and thereafter, there is no specific order with regard to the grant of protection. In the said circumstances, he prayed for dismissal of the bail petition filed by the petitioner/Chokkar and cancel the bail granted in favour of the respondents Jeyaprabhu, Rajesh, Ananthan.

7. The learned Government Advocate(Crl.side) appearing for the State also opposed bail petition filed by the petitioner/Chokkar and supported the case of the defacto complainant for cancellation of bail granted to the respondents Jeyaprabhu, Rajesh, Ananthan.

8. During the course of hearing, when the defacto complainant informed this Court about the witness protection scheme 2018 and there is not much effort had been taken under the scheme to protect



the witnesses, this Court on 20.07.2021 had directed the Registry to file a report as to whether,

i) Witness Protection Scheme, 2018 is notified

ii) Standing Committee has been created in each District.

iii) Witness Protection Fund is created in each District.

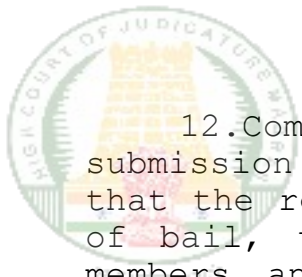
iv) Witness protection cell is created in each District.

v) Vulnerable witness Court rooms have been set up in each District.

9. Registrar General submitted a detailed report with regard to the implementation of the Witness Protection Scheme 2018. It will be discussed later. The settled position is, if the accused has threatened the witnesses, the Court can always refuse bail or cancel the bail already granted.

10. Coming to grant of bail to the petitioner/Chokkar, as submitted by the learned counsel for the petitioner/Chokkar, defacto complainant, and the learned Government Advocate (Crl.side) that except this petitioner, all other petitioners were granted bail. A10-Mayilammal is absconding. This petitioner was arrested on 30.09.2020 and he is in judicial custody till now. As rightly pointed out by the learned counsel for the petitioner/Chokkar that when the earlier petition was dismissed in Crl.O.P. (MD) No.3944 of 2021, this Court was not informed about the completion of investigation and filing of final report and taking cognizance in PRC.No.36 of 2020. The main ground which impelled this Court to dismiss the earlier petition was the threat alleged to have been made to the key witnesses and registration of case in Cr.No.718 of 2020. As seen from the status report filed by the learned Government Advocate (Crl.side), in Cr.No.718 of 2021, seven witnesses had been examined and material objects have been seized. It shows substantial part of the investigation has been completed. The petitioner is aged about 63 years and he is an Advocate. It is informed that the petitioner is suffering from heart disease and other ailments.

11. The learned counsel for the petitioner made a submission that the petitioner/Chokkar is prepared to abide by any condition including appearing before the respondent police twice or thrice in a day and file an affidavit that he will not file petition for relaxation of the condition. Taking note of the fact that investigation had already been completed, final report filed and the case had been taken on file in PRC.No.36 of 2020 and the fact that the petitioner is prepared to appear before the respondent police twice or thrice in a day and that he will not file a petition for relaxation of conditions, taking note of his age and health issues, this Court is inclined to grant bail to the petitioner with a condition that he must appear before the respondent police daily twice morning at 10.00 am., and evening at 05.00 pm., and file an affidavit that he will not file a petition for relaxation of the conditions until the disposal of this case.



12. Coming to cancellation of bail, it is seen from the submission made by the learned counsel for the defacto complainant that the respondents Jeyaprabhu, Rajesh, Ananthan after coming out of bail, they threatened the defacto complainant and his family members and that they involved in criminal offences. In this regard, copies of FIRs in Cr.No.84 of 2021 and Cr.No.133 of 2021 filed. It is seen from these FIRs that the case in Cr.No.84 of 2021 was registered under Section 399 IPC and Sections 20 and 25(1A) of the Arms Act against these respondents. In another case in Cr.No.133 of 2021, the respondents Jeyaprabhu, Rajesh were booked under Sections 147, 148, 294(b), 307, 324, 506(2) IPC and Section 25 (1A) of the Arms Act.

13. The learned counsel for the respondents submitted that these cases had been registered falsely against the respondents only with a view to see that their bail is cancelled. The defacto complainant is behind in filing of these cases. It is his further submission that the witness in Cr.No.147 of 2020 Muthu Easwari, whom accused Chokkar said to have threatened through Archana, is a known offender and she has several cases pending against her. She was set up to register case against Chokkar and Archana under Sections 195A, 506 (i) and 109 IPC. Therefore, he seeks dismissal of the cancellation of bail petition.

14. The Hon'ble Supreme Court has held in a case of **Dolat Ram Vs. State of Haryana** reported in **(1995) 1 SCC 349** that following supervening factors may justify the cancellation of bail:

- a. *Interference or attempt to interfere with the due course of administration of justice;*
- b. *Evasion or attempt to evade the due course of justice;*
- c. *Abuse of the concession granted to the accused;*
- d. *Possibility of the accused absconding;*
- e. *Likelihood of/actual misuse of bail.*
- f. *Likelihood of the accused tampering with the evidence or threatening witnesses;*
- g. *Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.*

15. There are allegations against these respondents/Jeyaprabhu, Rajesh, Ananthan that after their release on bail, they threatened the defacto complainant and his family members. Not only that they indulged in committing other criminal offences while on bail by abusing concession of bail granted to them in this case. Therefore, this Court is of the considered view that the defacto complainant has made out a case for cancellation of bail granted to the respondents/ Jeyaprabhu, Rajesh, Ananthan. Accordingly, bail granted to the respondents/ Jeyaprabhu, Rajesh, Ananthan in CrI.O.P.(MD) Nos.8794 & 8575 of 2021, dated 18.08.2020 and 21.08.2020 respectively is cancelled. The respondent police is directed to apprehend them and remand them for facing trial.



16. As regards implementation of witness protection scheme, Hon'ble Supreme Court in the case of **Mahender Chawla Vs. Union of India** held as follows:-

We, accordingly, direct that

(i) This Court has given its imprimatur to the Scheme prepared by respondent No.1 which is approved hereby. It comes into effect forthwith.

(ii) The Union of India as well as States and Union Territories shall enforce the Witnesses Protection Scheme, 2018 in letter and spirit.

(iii) It shall be the 'law' under Article 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject.

(iv) In line with the aforesaid provisions contained in the Scheme, in all the district courts in India, vulnerable witness deposition complexes shall be set up by the States and Union Territories. This should be achieved within a period of one year, i.e., by the end of the year 2019. The Central Government should also support this endeavour of the States/Union Territories by helping them financially and otherwise.

17. Hence, it is clear that Witnesses Protection Scheme 2018 came in to the effect forthwith and Union of India as well as the States, Union Territories shall enforce the scheme in letter and spirit. It shall be the law under Article 141/142 of the Constitution till the enactment of suitable Parliamentary and/or State Legislations on the subject. However, in this witness protection scheme 2018, there is a mention that this scheme shall come into force from the date of Government notification. This scheme provides:

a) a Standing Committee in each District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the Prosecution in the District as its Member Secretary.

b) There shall be created a fund called Witness protection Fund.

c) Witness protection cell has to establish for duly implementing the Witness Protection Order.

d) Specially designed vulnerable witness court rooms which have special arrangements live live videos links, one way mirror and screens apart from separate passages for witness and accused, with option to modify the image of face of witness and to modify the audio feed of the witness voice, so that he/she is not identifiable to be created.

This Court directed the Registry to file a report as to whether

i) Witness Protection Scheme, 2018 is notified

ii) Standing Committee has been created in each District.

iii) Witness Protection Fund is created in each District.

iv) Witness protection cell is created in each District.

v) Vulnerable witness Court rooms have been set up in each District.



18.As stated earlier, a report was filed by the Registrar General, High Court of Madras. It is seen from the report that the Registrar General had forwarded the copy of the witness protection scheme 2018 and the judgment in W.P.(Crl.)No.156 of 2016 dated 05.12.2018 to all the Principal District Judges with a direction to communicate the same to all the Judicial Officers under their jurisdiction, for enforcement of the said Witness Protection Scheme 2018 in letter and spirit. Registry also addressed a letter vide ROC.No.87353/2019/RG/F1, dated 28.07.2021, requesting the Additional Chief Secretary to Government, Home Department, Chennai to furnish reply to the queries raised by this Court and the reply is awaited.

19.With regard to the Centre for Examination of vulnerable and child witnesses it is submitted as follows:

As per the directions of the Hon'ble Supreme Court of India in C.A.No.1820 of 2017, dated 24.10.2017, the construction work of those Centres are under progress in various stages, the details of which are as follows:

a)Combined Court Building Campus at Tiruvannamalai was constructed and inaugurated on 04.11.2020;

b)Combined Court Building Campus at Karur, Salem, Trichy, Tiruvallur and Krishnagiri, construction works are under progress in various stages.

c)Combined Court Building Campus at Perambalur, Trichy and Sathuvachari (Vellore), proposals for construction have been forwarded to the Government for sanction of funds and the same were pending before the Government.

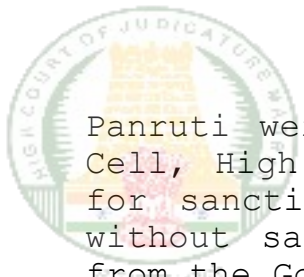
d)Combined Court Building Campus at Dharmapuri, Tiruppur and Namakkal, proposals pertaining to construction are under progress for obtaining approval of modified plan by inclusion of separate toilet provisions for the gents, ladies and transgenders.

e)Combined Court Building Campus in the rest of the Districts, the Engineer-in-Chief (Buildings) and Chief Engineer(Buildings), Chennai Region, Public Works Department, Chennai, were frequently reminded to submit necessary plan and estimate for construction and was lastly reminded on 15.07.2021.

20.With regard to vulnerable witness deposition centres under 15th Finance Commission Proposals, it is submitted as follows:

a)As per the directions of the Hon'ble committee for 15th Finance Commission Proposals, it was decided to setup 70 vulnerable Witness Deposition Centres in 61 places in the first phase of the 15th Finance Commission Grants for the year 2020-21.

b)The proposals to setting up of 2 Nos. of vulnerable Witness Deposition Centre each in the Combined Court Buildings at Villupuram and Trichy, 1 No. of Vulnerable Witness Deposition Centre each in the Combined Court Buildings at Tindivanam, Kallakurichi, Erode, Gobichettipalayam, Bhavani, Kanceepuram, Chegalpattu, Tambaram and



Panruti were obtained and forwarded to the 15th Finance Commission Cell, High Court, Madras for forwarding the same to the Government for sanction of funds and that the Government returned the same without sanction of funds stating that grants have been received from the Government of India under 15th Finance Commission Grants.

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21.It is seen from the report of the Registrar General, High Court of Madras that necessary efforts are being taken for implementation of the Witnesses Protection Scheme 2018. However, the Registry, after getting approval of the My Lord Hon'ble Chief Justice, is directed to take steps through Government to notify the scheme and implementation of other clauses like setting up a Standing Committee in each Districts, creation of witnesses protection fund, establishment of witnesses protection cell in each Districts etc. with the above observations, the report of the Registrar General, High Court of Madras is recorded.

22.It is seen from the proceedings of the learned Principal District Judge, Theni, dated 08.02.2021 that protection measure was ordered proportionate to the threat from 08.02.2021 to 07.04.2021. The learned Principal District Judge, Theni is directed to extend this witness protection measures till the disposal of this case by passing appropriate orders.

23.In the result, the cancellation of bail petitions in CrI.M.P.(MD)Nos.2575 & 2658 of 2021 in CrI.O.P.(MD)Nos.8794 & 8575 of 2020 filed by the defacto complainant/intervenor are allowed and the respondent police is directed to secure the accused/ Jeyaprabhu, Rajesh, Ananthan, forthwith.

24.The bail petition in CrI.O.P.(MD)No.7438 of 2021 filed by the petitioner/Chokkar is ordered with the following conditions:

the petitioner is ordered to be released on bail on his executing 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 learned Judicial Magistrate, Uthamapalayam, Theni District and on further condition that:

[a] 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 twice Morning at 10.00am., and evening at 05.00 pm., till the disposal of this case and he shall file an affidavit stating that he will not file any relaxation petition till the disposal of this case.

[c]the petitioner shall not abscond either during investigation or trial.



[d] the petitioner shall not tamper with evidence or witness 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]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

Sd/-
30/07/2021

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

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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, 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 PRINCIPAL DISTRICT JUDGE, THENI.
2. THE JUDICIAL MAGISTRATE,
UTHAMAPALAYAM, THENI DISTRICT.
3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT
4. THE SUPERINTENDENT, CENTRAL PRISON, SALEM.
5. THE INSPECTOR OF POLICE,
UTHAMAPALAYAM POLICE STATION, THENI DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



THE REGISTRAR GENERAL,
HIGH COURT, MADRAS.

COMMON ORDER MADE IN
CRL OP (MD) No. 7438 of 2021
and
Crl.M.P. (MD) Nos. 2575 & 2658 of 2021
in
Crl.O.P. (MD) Nos. 8794 & 8575 of 2020
Date : 30.07.2021

VB/VR/SAR.I/03.08.2021/11P/8C