



WEB COPY

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

Reserved on : 04.02.2021

Pronounced on: 10.02.2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) . No.15827 of 2020

1. Kalaiselvi
2. Annapetchai

... Petitioners/ Expected Accused

Vs

State Rep.by
The Sub Inspector of Police,
Austinpatti Police Station,
Madurai District.
in Crime No.1747/2020.

... Respondent/Complainant

For Petitioners : Mr.C.Prabakaran, Advocate.

For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

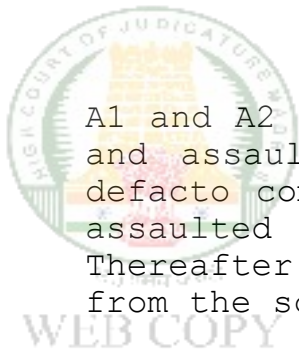
PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :- For Anticipatory Bail in Crime No.1747 of 2020 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners/A7 and A8, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 302, 324, 506(ii), 147, 148, 115, 120(b), 212 of IPC seek anticipatory bail.

2.The case of the prosecution is that on 15.09.2020 the defacto complainant Sivakumar son of the deceased while he was taking treatment at the Government Hospital, Thiruparankundram at about 09.30 pm., gave statement to the respondent police stating that during the year 2009 he got married to his relative Kalaiselvi and they have nine years old girl child. After marriage during the year 2013 they had some dispute between them and they were living separately. His estranged wife was residing with her parents from in the year 2014 the defacto complainant had filed divorce petition before the Family Court, Madurai . Thereafter a case in counter has been registered as regards the assault committed by both the families. This being the case on 15.09.2020 at about 7.45 pm., the petitioner Sivalingam was in the cement shop at that time



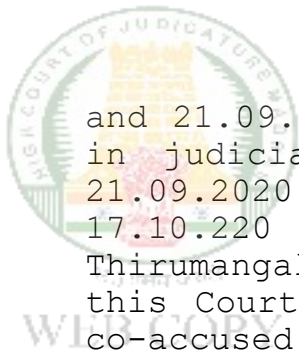
A1 and A2 came in a two wheeler picked up quarrel with their father and assaulted him using knife and cut him indiscriminately. The defacto complainant and his mother went to his but they were also assaulted and one Villager namely Mr.Palani was also assaulted. Thereafter the assailants namely A1 and A2 threatened them and fled from the scene of occurrence. Hence a case came to be registered.

3. On receipt of the complaint the Inspector of Police visited the scene of occurrence on the same day, prepared observation mahazhar, rough sketch, examined the witnesses, seized the two wheeler left by the assailants. On 16.09.2020 inquest was conducted and the body was sent for post mortem and the injured were examined. During examination the motive for assault was confirmed and thereafter during investigation it was found that earlier a case in counter was registered in Crime Nos.107 of 2015 and 108 of 2015 between the families of the defacto complainant and the assailants due to which A1 and A2 along with A3 to A10 conspired and planned to eliminate the deceased and also abetted the assailants. During investigation it was found that A3 and A5 were present near the scene of occurrence and A4 to A6 were ready with the two wheeler to facilitate their escape after the murder.

4. Hence the first alteration report was filed on 16.09.2020. Thereafter A3,5 and 6 were arrested on 21.09.2020. A1 and A2 were arrested on 23.09.2020. On the arrest of these accused confession was recorded and recoveries were made. In the confession the role played by each accused namely A2 to A10 who involved in the conspiracy and A11 to A13 who harboured the assailants and facilitated the assailants to escape from the case came to light. The two wheeler and the car used by the assailants were seized and thereafter the second alteration report was filed on 23.09.2020.

5. The learned counsel for the petitioners/A7 and A8 would submit that the first petitioner is the estranged wife of the defacto complainant and the second petitioner is his mother- in-law. He would also submit that the petitioners are innocent and they have been falsely implicated in this case. The deceased family and the assailants are close relatives. The marriage between the first petitioner and the defacto complainant took place in the year 2008 and in the year 2013 they got separated and in the year 2015 divorce petition filed, a case in counter has been registered in Crime Nos.107 and 108 of 2015, there was bitterness between both the families. The petitioners are roped on the charges of conspiracy. He would further submit that A1 to A10 who are family members and closely related to each others and their meeting each other and having conversations cannot be construed as conspiracy and in view of the same the petitioners cannot be stated as conspirators, hence he seeks anticipatory bail.

6. The learned Additional Public Prosecutor would submit that <https://hcdservices.hcdcourts.gov.in/hcdservices/> in this case were arrested on 24.09.2020,24.09.2020



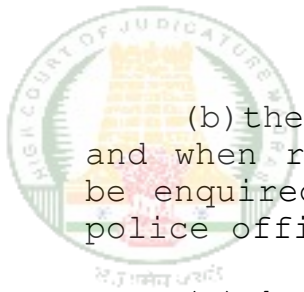
and 21.09.2020 and granted bail by this Court, A4 in this case was in judicial custody, A5 and A6 was arrested by this Court on 21.09.2020 and granted bail by this Court, A10 was arrested on 17.10.220 granted bail by the learned Judicial Magistrate, Thirumangalam, A11 was arrested on 12.10.2020 and granted bail by this Court. He would also submit that from the confession of the co-accused it is seen that A1 to A10 planned and committed the murder of the father of the defacto complainant and A11 to A13 promised to give money and arrange vehicles. Hence all the accused persons conspired together and committed the murder. Further the petitioners herein played a major role in committing the offence and also actively took part in the commission of offence. Hence he opposed to grant anticipatory bail to the petitioners.

7. It is seen that first petitioner is the estranged wife of the defacto complainant and the second petitioner is the mother-in-law. Both the family of the accused and the defacto complainant are close relatives. There has been some matrimonial discord from the year 2013 and the first petitioner and the defacto complainant are living separately. Divorce petition is pending between them. Thereafter there have been assault between both the families for which case in counter registered in Crime Nos.107 and 108 of 2015 pending and the petitioners have been roped in this case on the charge of conspiracy. Other conspirators are none other than the family members and the relatives. Conversation with the relatives and the family members cannot be construed as conspiracy. In the absence of any materials the petitioners herein have been arrayed as accused on the confession of the co-accused and no specific allegation has been levelled against them. It is also stated that the investigation is almost completed.

8. Taking into consideration the facts and circumstances of the case and also taking note of the fact that investigation is almost completed and some of the co-accused were granted bail, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

9. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Thirumangalam, Madurai District on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties, each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a) the petitioners and 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



(b) the petitioners shall report before the respondent police as and when required for interrogation. Further the petitioners shall be enquired by a women police officer or in the presence of women police officer.

(c) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioners shall not abscond 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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]***; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

10/02/2021

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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 JUDICIAL MAGISTRATE, THIRUMANGALAM, MADURAI DISTRICT.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.
3. THE SUB INSPECTOR OF POLICE,
AUSTINPATTI POLICE STATION, MADURAI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL OP(MD) No.15827 of 2020

Date : 10/02/2021

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