



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.17822 of 2021

Rajasekar

...Petitioner/Accused No.1

Vs

1.The Deputy Superintendent of Police,
Tiruchirappalli,
Tiruchirappalli District.

..1st Respondent/Investigating Officer

2.The Inspector of Police,
Samayapuram Police Station,
Samayapuram, Tiruchirappalli District.
(Crime No.449 of 2021)

..2nd Respondent/Complainant

3.Senthil Kumar

..3rd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to direct the 1st Additional District and Sessions Judge (PCR) Trichirappalli, Trichirappalli District to consider and dispose of the bail application filed by the petitioners in Crime No.449 of 2021 on the file of the second respondent herein on the same day of their surrender.

For Petitioner : Mr.C.Suresh Kannan
For R1 & R2 : Mr.M.Sakthi Kumar
Government Advocate
For R3 : Mr.P.Venkatesan

ORDER

Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2 and Thiru.P.Venkatesan, learned counsel for the defacto complainant.

2. The petitioner has filed this petition for directing the jurisdictional Special Court to consider and dispose of his bail petition on the same day of surrender.

3. When the matter was taken up for hearing, the learned counsel appearing for the victim submitted that in view of Section 18 and Section 18(A) of the SC & ST (POA) Act, there is a bar against grant of anticipatory bail. The said bar cannot be overcome by filing a petition under Section 482 of Cr.P.C. He would submit that law should be allowed to take its normal course and that no indulgence can be shown in favour of the petitioner. The learned



counsel took me through the averments set out in the FIR and submitted that this criminal original petition deserves to be dismissed.

4.The learned Government Advocate appearing for the respondents 1 & 2 also supported the stand of the defacto complainant.

5.I carefully considered the rival contentions and went through the materials on record. This is not a case in which the defacto complainant had been hospitalised. I am also not granting the relief of anticipatory bail to the petitioner. Section 18 and 18(A) of the Act come in the way of granting anticipatory bail. In the case on hand, all that I am directing is only to permit the petitioner to surrender before the jurisdictional Special Court and direct the concerned Court to dispose of the petitioner's application on merits and in accordance with law. There is no positive direction by the court below to grant bail. Before the court below, the defacto complainant also has to be heard. This is because, Section 15(A) of the SC & ST (POA) Act mandates that no relief can be granted to the accused behind the back of the victim. That is why, whenever the directions under Section 482 of Cr.P.C., are issued, the petitioner is called upon to comply with the statutory mandate set out in Section 15(A) of the Act.

6.Our penal jurisprudence is premised on the presumption of innocence. Till an accused is found guilty, subject to contrary prescription in the relevant statute, he is presumed to be innocent. Article 21 of the Constitution of India is an inseparable part of law relating to bail. In common law tradition, Habeas Corpus Petitions take precedence over other matters. When a person's liberty is involved, if the facts justify, the High Court exercising its inherent power under Section 482 of Cr.Pc can always direct the jurisdictional special court to dispose the bail petition on the same day. The counsel for the defacto complainant is labouring under a misconception. It is not as if in every case arising under SC/ST (POA) Act such directions are issued for the asking. If the injured has not been discharged from hospital or if offences like Section 302 or 307 are involved or if the petitioner is having any bad antecedent, invariably, the petition under Section 482 of Cr.PC is dismissed. As already noted, it is for the jurisdictional special court to take a call in the matter. After hearing the counsel for the accused and the defacto complainant and the State, the court below can certainly dismiss the bail petition. Its hands are in no way tied. The only direction given by the High Court is for speedy disposal. Thousands of such orders have been passed earlier. I do not know why the counsel for the defacto complainant is taking exception.

7.Taking note of the overall facts and circumstances and in the interest of justice, this Criminal Original Petition is disposed of

<https://hccr.courtservice.gov.in/hccrweb> giving directions:-



(1)the petitioner shall surrender before the jurisdictional Court on 29.11.2021.

(2)the jurisdictional Court shall accept the surrender and dispose of the petitioner's bail petition on the same day of surrender on merits and in accordance with law.

(3)The petitioners' counsel gives an undertaking that the defacto complainant will be notified about the proposed surrender of the petitioners on 29.11.2021. Such an intimation will be sent through registered post by tomorrow itself. The respondents 1 and 2 are also directed to give notice of hearing to the third respondent.

Sd/-

Assistant Registrar (A.S.)

// True Copy //

/ /2021

Sub Assistant Registrar(CS-IV)

skm

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 1st Additional District and Sessions Judge (PCR)
Trichirappalli, Trichirappalli District.

2.The Deputy Superintendent of Police,
Tiruchirappalli, Tiruchirappalli District.

3.The Inspector of Police,
Samayapuram Police Station,
Samayapuram, Tiruchirappalli District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

1CC TO MR. C.SURESH KUMAR, ADVOCATE SR 34675

Crl.O.P (MD)No.17822 of 2021
16.11.2021

GC/SKN(19.11.2021) 3P 6C

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