



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.R.C. (MD)No.154 of 2017

WEB COPY

1.Sudhakar

2.Bose @ Bojan @ Balamuruganantham

:Petitioners/Respondents/

Petitioners/Accused Nos.1 & 2

Vs.

The State Rep. by
The Deputy Superintendent of Police,
Kodaikanal,
Dindigul District,
(Crime No.145 of 2016)

: Respondent/Petitioner/
Respondent/Complainant

PRAYER: The Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the Crl.M.P.No.87 of 2017 in Crl.M.P.No.2438 of 2016, dated 04.02.2017 on the file of the Principal Sessions Judge, Dindigul District in Crime No.145 of 2016, on the file of the respondent and set aside the same.

For Petitioner : Mr.C.Mayil Vahana Rajendran

for Mr.P.Banuprasath

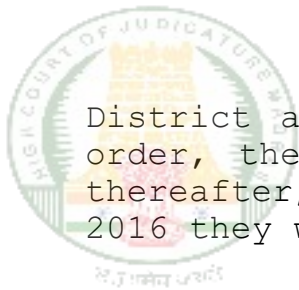
For Respondent : Mr.E.Antony Sahaya Prabahar

Government Advocate (Crl.side)

ORDER

This Criminal Revision Case is directed against the order, dated 04.02.2017 in Crl.M.P.No.87 of 2017, on the file of the Principal Sessions Court, Dindigul.

2. The revision petitioners are arrayed as accused Nos.1 & 2 in Cr.No.145 of 2016, on the file of the respondent police. Initially, the said case has been registered against the revision petitioners for the offences punishable under Sections 294(b) and 323 of IPC. During the time of investigation, the section of law has been altered into Sections 294(b), 323 of IPC r/w Section 3(1) (r)(s) of SC/ST (POA) Amendment Act, 2015. After altering the section of law as stated above, the revision petitioners filed a direction petition before this Court praying to direct the learned Principal District and Sessions Judge, (Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Dindigul District to accept the surrender of the petitioners and consider the petitioners' bail application and to grant bail on the date of surrender itself. This Court, by order, dated 29.09.2016 had directed the petitioners to surrender before the Principal



District and Sessions Judge, Dindigul District. Obeying the said order, the petitioners were surrendered before the said Court and thereafter, vide order, dated 18.10.2016 made in Crl.M.P.No.2438 of 2016 they were enlarged on bail.

3. In the meanwhile, the defacto complainant, who was the victim in the alleged occurrence taking treatment in the hospital, was passed away and due to the death of the defacto complainant, the section of law had again altered as 294(b), 323 and 302 of IPC r/w Sections 3(1)(r)(s) and 3(2)(v) of SC/ST (POA) Act, 2015. Only in the said circumstances, the respondent in this Criminal Revision Case filed a petition in Crl.M.P.No.87 of 2017 before the Principal Sessions Court, Dindigul District praying to cancel the order, dated 18.10.2016, wherein, the revision petitioners are granted with bail.

4. The learned Principal Sessions Judge, Dindigul after perusing the arguments advanced by either side, by order, dated 04.02.2017 allowed the application made in Crl.M.P.No.87 of 2017 and cancelled the bail granted in favour of the revision petitioners. Aggrieved over the said order, the petitioners are before this Court praying to set aside the order, dated 04.02.2017 made in Crl.M.P.No.87 of 2017.

5. I have heard Mr.C.Mayil Vahana Rajendran, learned counsel appearing for the revision petitioners and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Crl.side) appearing for the respondent. I have also perused the records carefully.

6. Now, on going through the impugned order passed by the Courts below, it appears that due to altering of offence under Section 302 of IPC it requires for the Investigating Officer that he has to proceed with the investigation in all aspects and laid the final report and therefore, if the petitioners/accused are on bail, it would cause much prejudice to the investigation and therefore, the bail granted already in favour of the petitioners is liable to be cancelled.

7. In this occasion, it would relevant to see the judgment of our Hon'ble Apex Court in **Pradeep Ram Vs. State of Jharkhand and another** reported in **2019 (4) CTC 575**, wherein, the Hon'ble Apex Court has held as follows:-

"In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance, where after grant of Bail to an Accused, further cognizable and non-bailable offences are added:

(I) The Accused can surrender and apply for Bail for newly added cognizable and non-bailable offences. In event of refusal of Bail, the Accused can certainly be arrested.

(ii) The Investigating Agency can seek order from

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the Court under Section 437(5) or 439(2) of Cr.P.C., for arrest of the Accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the Accused, who has already been granted Bail after cancellation of his Bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person, who has already been granted Bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier Bail.

(iv) In a case where an Accused has already been granted Bail, the Investigating Authority on addition of an offence or offences may not proceed to arrest the Accused, but for arresting the Accused on such addition of offence or offences it need to obtain an Order to arrest the Accused from the Court which had granted the Bail."

8. Now, on considering the said submissions with relevant records, this Court is of the view that the order passed by the Courts below is well within the law already laid down by our Hon'ble Apex Court.

9. In otherwise, in respect to granting of bail, our Hon'ble Apex Court in the judgment in ***Dataram Singh Vs. State of Uttar Pradesh and another*** reported in ***(2018) 1 Supreme Court Cases (Cri) 675***, had observed as follows:-

"A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society."

Therefore, as per the observation of our Hon'ble Apex Court, there is no doubt that the grant or denial of bail is entirely the discretion of the Judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of



decisions rendered by the Supreme Court and by every High Court in the Country.

10. In the said circumstances, as far as this petition is concerned, it is not in dispute on either side that the death of the defacto complainant would occur after four months from the date of occurrence. Therefore, it is obvious, the death is may or may not due to the attack made by the petitioners. But, without considering the said aspect, the learned Principal Sessions Judge, Dindigul cancelled the bail and thereby, the Criminal Revision Case is arises before this Court.

11. The learned Government Advocate (Crl.side) appearing on behalf of the respondent would submit that while at the time of admitting the Criminal Revision Case, vide order, dated 21.02.2017 in Crl.M.P(MD)No.1520 of 2017, this Court had stayed the order passed by the Principal Sessions Judge, Dindigul and in view of the same, the petitioners are appeared before the Principal District Court, Dindigul and as of now, the case pertains to the revision petitioners has been committed to the Court of Sessions and pending for trial.

12. The said submission made by the learned Government Advocate (Crl.side) would reveal the fact that further custodial interrogation of the petitioners is not at all necessary in this Case. Further, due to the reasons that the investigation has already been completed, confirming the order, dated 04.02.2017 is nothing but violating the rights of the accused. Accordingly, I am of the view that the present situation now arises in this case is sufficient to hold that the petitioners are entitled to enlarge on bail.

13. Accordingly, in the light of the above, this Criminal Revision Case is allowed by setting aside the order of the Principal Sessions Court, Dindigul, dated 04.02.2017 made in Crl.M.P.No.87 of 2017.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal Sessions Judge,
Dindigul District.

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



2.The Deputy Superintendent of Police,
Kodaikanal,
Dindigul District.

3. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer, (2C)
Criminal Section
Madurai Bench of Madras High Court, Madurai

Crl.R.C. (MD) No.154 of 2017
11.08.2021

MMS (CO)
KB(24.08.2021) 5P 6C