

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the First day of July Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL ORIGINAL PETITION No.11977 of 2022

AND

CRL. M.P. NO. 7334 OF 2022

JAYAMALA

[PETITIONER / ACCUSED]

Vs

THE STATE REPBY
THE INSPECTOR OF POLICE,
C-2 ELEPHANT GATE POLICE STATION,
CHENNAI.
CRIME NO. 916/2020

[RESPONDENT]

For Petitioner : M/S.R.SANKARASUBBU, Advocate for
M/S.MURALI LAW FIRM Advocate

For Respondent : M/S.V.MEGANATHAN, Govt. Advocate (Crl. Side)

For Intervener : M/S.W.M.ABDUL AZEEZ, Advocate

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who is arrayed as A-4 in Crime No.916 of 2020 on the file of the respondent police and in under incarceration for a long period of time, has come before this Court by filing this seeking bail. This is the third bail petition filed by the petitioner. The earlier two petitions for bail were dismissed by this Court vide order dated 27.10.2021 and 1.3.2022 in Crl. O.P. Nos.19071/21 and 4894/2022.

2. The crime was registered by the respondent police for the offences u/s 302, 380, 450, 120 (B) & 34 IPC and Sections 27 (3), 29 (B) and 30 of the Arms Act. The petitioner was arrested on 13.11.2020 and remanded to judicial custody and since then has been under incarceration.

3. The gist of the prosecution case is that it is a case of triple murder in which 9 persons are involved as accused of which the petitioner is arrayed as A-4. The case against A-4 is that she married one of the deceased and due to matrimonial discord, she left her matrimonial home and is residing at her parental home at Maharashtra. It is the further case of the prosecution that since the demand for money from the deceased by A-1 and A-2, who are the brothers of A-4, was not met, at the instigation of A-4 to A-6 and with the help of A-9, A-1 to A-6 went to the house of the deceased and gruesomely murdered the husband, father-in-law and mother-in law of A-4 by using a revolver, which has led to the registration of the complaint.

4. Learned counsel appearing for the A-4 submitted that the petitioner is in no way connected with the offence and has been falsely implicated in this case. It is the further submission of the learned counsel that overt act has been attributed only against A-1 and A-2 and there is no overt act insofar as the petitioner is concerned. It is the further submission of the learned counsel that the petitioner has been languishing in jail since 13.11.2020, for more than a year and a half and the petitioner being a lady, major part of the investigation being over and statements having been recorded from all the witnesses, who are to be arrayed as witnesses at the time of trial, holding the petitioner under confinement is an infringement of her right to life enshrined under Article 21 of the Constitution. Therefore, this Court, considering the right to life of the petitioner and also the long period of incarceration suffered by her, may grant bail to the petitioner by imposing stringing conditions. Learned counsel also submitted that co-accused had already been released on bail by this Court in CrI. O.P. No.415 and 4939 of 2021 and, therefore, similar relief may be granted to the petitioner as well.

5. Learned Government Advocate appearing for the respondent submits that merely because investigation has been completed and charge sheet has been filed would not be a circumstance to enlarge the petitioner on bail. It is the further submission of the learned Government Advocate that even while considering the earlier bail petition, it was submitted that investigation was over and charge sheet has been filed, yet the Court did not release the petitioner considering the gravity and depravity of the offence committed by the accused. There being no changed circumstance pointed out by the

petitioner, which would have a bearing on this Court reconsidering its earlier decision, the petition filed by the petitioner deserves to be dismissed.

6. Intervening petition has been filed by the intervenor, who is the sister of the husband of the petitioner, submitting that releasing the petitioner on bail would be detriment to the witnesses and it would also be not in the interest of the other members of the family. The gruesomeness with which the offence has been perpetrated, more so by the petitioner instigating A-1 and A-2 to attack her own husband would go to show that the petitioner would go to show that the petitioner would go to any extent to wipe out the entire family of the deceased. Therefore, it is submitted that the present petition be dismissed.

7. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. One of the main grounds, which would enure to the benefit of the accused while reconsidering grant of bail is that there should be some changed circumstance, which necessitates the Court to take a different view. In the case on hand, no changed circumstance has been brought to the notice of this Court to take a view different to the one already taken by this Court.

9. However, one of the main contentions raised by the learned counsel for the petitioner is that the petitioner is in custody for more than a year and a half and she being a lady the Court has to consider all the factors attendant thereto, including the completion of investigation while considering bail, as otherwise it will be infringing on the right to life of the petitioner and against Article 21 of the Constitution.

10. This Court is conscious of the fact that right to bail is an indefeasible right, but that is always is subject to just exceptions. While considering the grant of bail, the Court has to weigh the determinative factors which will have an impact on the entire case while considering the grant of bail to an accused. In the case on hand, the petitioner has been in custody for over a year and a half. But merely because the petitioner is a lady would not be a determining factor to consider the bail application leniently.

11. In the case on hand, the case of the prosecution is that at the instigation of the petitioner, her brothers, who are A-1 and A-2, had murdered the deceased. It is to be borne in mind that one of the deceased is her husband, while the other two deceased are her in-laws. The cold-bloddedness of the murder reverberates in the mind of this Court while considering her right to life vis-à-vis the right to life of the witnesses and other persons, who are associated with the

present case. When the allegation is of such a grievous nature that the wife had instigated her brothers to murder her husband, this Court should be slow in coming to the aid of such an accused, as any undue sympathy would have a detrimental effect on the life of the other persons connected with the case. This Court has to weigh the safety and security of the other persons connected with the case while considering the release of the petitioner from custody and in such a scenario, their safety and security definitely outweighs the grant of bail to the petitioner inspite of the contention of the petitioner that it is an infringement of the right to life of the petitioner guaranteed under Article 21 of the Constitution.

12. This Court is not impelled in any way by the contentions advanced on behalf of the petitioner and, accordingly, finding no merit and there being no change in circumstance, the present bail application is dismissed.

-sd/-

01/07/2022

This order, on being produced, be punctually observed and carried into execution by all concerned
TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI.

2 THE INSPECTOR OF POLICE,
C-2 ELEPHANT GATE POLICE STATION,
CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S.W.M.ABDUL AZEEZ Advocate on payment of necessary charges SR.NO. 10597

CRL OP.11977/2022

AND

CRL. M.P. NO. 7334 OF 2022

Date :01/07/2022

RW-14/07/2022