



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.Nos.519 of 2021, 54 of 2022, 566 of 2021,
549 of 2021 and 664 of 2021

Shanmugam @ Nattamai	...Appellant in Crl.A.519 of 2021
Jagan @ Jagathish @ Kombar	...Appellant in Crl.A.54 of 2022
Jesus	...Appellant in Crl.A.566 of 2021
Gopinath	...Appellant in Crl.A.549 of 2021
Jayasuriyan @ Surya	...Appellant in Crl.A.549 of 2021

Vs.

State Rep by its
Deputy Superintendent of Police,
Kitchipalayam Police Station,
Salem - 636 015
(Cr.No.1182 of 2020)
2.Mrs.Jansirani

...Respondents 1 and 2/
Complainant/Defacto Complainant
in Crl.A.No.519/2021

1. The Assistant Commissioner of Police,
South Region (Law and order)
Salem City

2. State Rep by its
The Inspector of Police,
Kitchipalayam Police Station,
Salem City- 636 015
(Cr.No.1182 of 2020)

3. Mrs.Jansirani ...Respondents 1 to 3 in Crl.A.No.54/2022
and R2 & R3 in Crl.A.566 of 2021

The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Salem. ...R1 in Crl.A.No.566/2021

State Rep by
Inspector of Police,
Kitchipalayam Police Station,
Salem District
(Cr.No.1182 of 2020)



2.Mrs.Jansirani

...Respondents in CrI.A.No.549/2021

Deputy Superintendent of Police,
Salem District.

2. State Rep by
Inspector of Police,
Kitchipalayam Police Station,
Salem District
(Cr.No.1182 of 2020)

3.Mrs.Jansirani

...Respondents in CrI.A.No.664/2021

Criminal Appeal No.519 of 2021 is filed under Sections 14-A (2)of SC/ST (Prevention of Atrocities) Act, 1989 to set aside the order dated 13.09.2021 passed in CrI.MP.No.3107 of 2021 by the Principal District and Sessions Judge, Salem and enlarge the appellant on bail in Cr.No.1182 of 2020 on the file of the Ist respondent.

Criminal Appeal No.54 of 2022 is filed under Sections 14-A (2)of SC/ST (Prevention of Atrocities) Act, 1989 to set aside the order dated 25.11.2021 made in CrI.MP.No.4329 of 2021 by the Principal District and Sessions Judge, Salem.

Criminal Appeal No.566 of 2021 is filed under Sections 14-A (2)of SC/ST (Prevention of Atrocities) Act, 1989 to set aside the order dated 30.07.2021 made in CrI.MP.No.2348 of 2021 by the Principal District and Sessions Judge, Salem on bail in Cr.No.1182 of 2020 on the file of the 2nd respondent.

Criminal Appeal No.549 of 2021 is filed under Sections 14-A (2)of SC/ST (Prevention of Atrocities) Act, 1989 to call for the records pertaining to the bail dismissal order passed by the learned Principal Sessions Judge, i/c Ist Additional Sessions Judge, Salem in CrI.MP.3880 of 2021 dated 27.10.2021.

Criminal Appeal No.664 of 2021 is filed under Sections 14-A (2)of SC/ST (Prevention of Atrocities) Act, 1989 to set aside the order dated 01.12.2021 made in CMP.No.4750 of 2021 passed by the Principal Sessions Judge, (Special Judge for SC and ST Act cases), Salem.

For Appellants : Mr.Akhil Akbar Ali - CrI.A.519/2021
Mr.Anand
for Mr.R.L.DhilipanPandian in CrI.A.54/2022
Mr.T.Muruganantham - CrI.A.566/2021
Mr.Thenrajan - CrI.A.549/2021
Mr.S.Sureshkumar - CrI.A.664/2021



For respondent : Mr.S.Sugendran, GA (Crl.side)
for official respondents
Mr.R.Sankarasubbu for defacto complainant

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COMMON JUDGMENT

(The case has been heard through video conference)

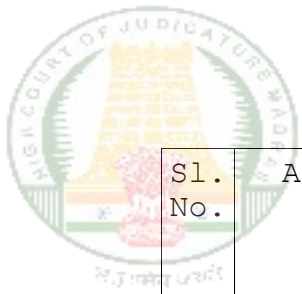
These appeals are filed against the dismissal of the bail orders passed by the Principal Sessions Judge, Salem in Spl.SC.No.6 of 2021.

2.The case of the prosecution is that the deceased/Chellathurai is a Rowdy element and gang leader and there was enmity between the said Chellathurai group and one Suryamoorthy group, due to the previous enmity on 22.12.2020 at about 7.30pm the said Chellathurai was proceeding in his car with his relative Valarmathi on Appar street, the defacto complainant also accompanied them, the accused who have come their in cars and two wheelers waylaid the car, in which the said Chellathurai was travelled and after dashing against the car and surrounded the car and attacked with Veecharuval (swords) and inflicted indiscriminate cut injuries over him and the said Chellathurai was taken to the hospital were the Doctors declared him as brought dead.

3.Based on the complaint given by the defacto complainant/Jansirani wife of the deceased/Chellathurai a case in Cr.No.1182 of 2020 was registered by the respondent/police for the offences under Section 147, 148, 341, 302, 427 of IPC and Section 3 of the TNPPDL Act 1992. During the course of investigation finding that the deceased belonged to the SC community, the respondent altered the case to one under Section 427, 419 r/w.34, 109, 120b, 147, 148, 149, 341, 302 IPc r/w.3(1) of TNPPDL Act and u/s.3(2)(5) of SC/ST Prevention of Atrocities Act.

4.The respondent after completion of investigation has filed the final report and the case is taken up in Spl.SC.No.6 of 2021 on the file Principal Sessions Judge, Salem.

5.The brief details of the appellants are hereunder :-



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Sl. No.	Accused Name	Date of arrest / surrender	Rank	Crl.MP.No. and order dated	Crl.A. in High Court
1	Shanmugam @ Nattamai	Arrested on 03.02.2021	A30	Crl.MP.310 7/21 13.09.2021	Crl.A.519/2021
2	Jagan @ Jagadish @ Komban	Arrested on 09.03.2021	A31	Crl.MP.432 9/21 25.11.2021	Crl.A.54/2022
3	Jesus	Arrested on 30.12.2020	A9	Crl.MP.234 8/21 30.07.2021	Crl.A.566/2021
4	Gopinath	Surrendered before J.M.I, Namakkal	A28	Crl.MP.388 0/21 27.10.2021	Crl.A.549/2021
5	Jayasuriya @ Surya	Surrendered before J.M.Omalur	A16	Crl.MP.475 0/21 01.12.2021	Crl.A.549/2021

6.Mr.Akil Akbar Ali, learned counsel appearing for the appellant in Crl.A.No.519 of 2021 would submit that the appellant is ranked as A30 in this chargesheet and this is the third appeal for bail. He would submit that the earlier appeals in Crl.A.No.196 of 2020 was dismissed 29.06.2021 and Crl.A.No.323 of 2020 was dismissed on 05.07.2021. He would further submit that the allegation against the appellant is that he had rendered financial assistance to the other accused to murder the deceased/Chellathurai. Even as per the prosecution, the appellant was not present in the scene of occurrence and he has been implicated based on the confession statement of one Swamidass, who is the appellant's son in law who has been ranked as A14 in this case. He would submit this Court, while dismissing the earlier appeal on 05.07,2021 had directed the trial Court to complete the trial within a period of six months, Subsequently, this Court in Crl.O.P.No.9025 of 2021 dated 23.06.2021 has granted bail to one Surya @ Suriyamoorthy who is arrayed as A16 in this case. The said Suriya @ Suriyamoorthy is stated to be the leader of the rival gang of the deceased Chellathurai and he has got 21 previous cases against him.



Apart from that, the appellant's son-in-law Swamidoss based on whose confession the appellant has been implicated in this case has been granted bail by this Court in C.A.No.468 of 2021 dated 21.10.2021. The learned counsel would further submit that the appellant also hails from Dalit community. Taking into consideration, the change of circumstances after the earlier dismissal of the appeal/bail, the appellant moved a fresh application for bail in CrI.MP.No.3107 of 2021 before the Principal Sessions Court, Salem and the Trial Court, without taking into consideration, the change of circumstances, and also without taking into consideration the fact that the co accused who have graver overtacts and against whom several cases are pending have been granted bail had dismissed the bail application of the appellant. He would further submit that the appellant is in continuous detention from 03.02.2021. He would further submit that the appellant is aged about 76 years and he is suffering from Coronary Artery disease for the past 12 years and he has also undergone Coronary Angioplasty stenting to LAD during December 2014, he has been presently under medication. Since, he is under treatment, the appellant has been shifted to Central Prison, Vellore for better treatment. However, due to his age related ailments and illness he is suffering badly and his health is deteriorating day by day. He would submit that the appellant is prepared to abide by any stringent condition that may be imposed on him and he would pray for allowing the Appeal.

7.Mr.Anand, learned counsel appearing for the appellant in C.A.No.54 of 2022 would submit that the appellant is arrayed as A31 in the charge sheet and the allegation against the appellant is that he conspired with the other accused to commit the murder of the deceased. The appellant has been implicated based on the confession of one Chinnavan who is arrayed as A6 in this case. Even as per the prosecution, the appellant was not present at the scene of occurrence. The incident is not an off shoot of communal rivalry. But even as per the prosecution, it is on account of gang rivalry. He would further submit that A6, on whose confession the appellant was implicated in this case, has been ordered to be released on statutory bail under Section 167 (2) Cr.P. He would submit that main accused in this case A12, who is stated to be a gang leader Suriya @ Suriyamoorthy, against whom there are specific overtacts and 21 previous cases pending against him has been granted bail by this Court in CrI.O.P.No.9025 of 2021 on 23.06.2021. He would further submit that the appellant has not suffered any previous conviction in respect of the other pending cases and in some of the cases he has been implicated based on the confession of co-accused. He would submit that the petitioner is in custody from 25.11.2021.

8.Mr.T.Murugananthan, learned counsel appearing for the



appellant in Crl.A.No.566 of 2021 would submit that the appellant has been arrayed as A9 in this case. He would submit that the allegation against the appellant is that he was present at the scene of occurrence and he along with the other accused inflicted injuries on the victim with Veecharuval (swords). He would submit that at the time of arrest on 23.12.2020, the appellant had suffered several injuries and during his confinement, the appellant was also affected by Covid and his lungs are severely damaged. He would submit that though the Trial court had dismissed the bail application stating that the appellant has got 9 previous cases, similarly placed accused A12, against whom there are 21 previous cases has been granted bail by this Court. He would further submit that the appellant also hails from the Scheduled Caste community. Even as per the prosecution, the murder has not been committed on account of any communal rivalry, it had happened only on account of gang rivalry. He would submit that the appellant is in continuous detention for more than a year and the appellant is not in any way responsible for delaying the trial.

9.Mr.Thenrajan, learned counsel appearing for the appellant in Crl.A.No.549 of 2021 would submit the appellant is arrayed as A28 in this case and his name does not find place in the FIR and he was not present in the scene of occurrence and he has been implicated in this case based on the confession of one A14/Swamidass, that he supplied weapons to Swamidoss to commit the murder of the deceased. He would submit that the appellant is not at all involved in this case and the said Swamidass has been granted bail. The learned counsel would further submit that the he voluntarily surrendered before the Judicial Magistrate No.I, Namakkal on 28.12.2020 and he is in custody for more than a year and he would submit that he has no bad antecedents.

10.Mr.C.Prabakaran, learned counsel appearing for the appellant in C.A.No.664 of 2021 would submit that appellant has been arrayed as A16 in this case and the averment against the appellant is that he had driven a Swift car and intercepted the vehicle of the deceased and dashed against his car and later got down from the car and assaulted the victim with Veecharuval (Swords) along with the other accused. He would submit that the appellant voluntarily surrendered before the Judicial Magistrate, Omalur on 28.12.2020 and he is in custody for more than one year and he would submit the appellant is not responsible for delaying the trial and he has no bad antecedents.

11.In reply, Mr.S.Sugendran, learned Government Advocate (Crl.Side) would submit that this it is a case where the victim who belongs to the scheduled caste community was done to death in a brutal manner in the presence of his wife and one relative.



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The accused intercepted the car belonging to the deceased while he was just moving his car with his relative and the defacto complainant was walking along the car in a Street. At that time, the named accused have intercepted the car and surrounded the victim and have indiscriminately cut the deceased with Veecharuval (swords) causing multiple injuries on the body of the deceased. He would submit that the motive for the occurrence is that the deceased and the accused belongs to two rival gangs in Kichipalayam area and that to exhibit their supremacy, the accused have committed the murder. He would submit that some of the accused have been detained under Act 14, and the detention orders have also been quashed by this court. He would further submit that the investigation has been completed and the final report had been filed and the case has been taken up in Spl.S.C.No.6 of 2021. He would submit that one Palanisamy/A8 who has been granted bail has subsequently, involved in murder case and the bail granted to him has been cancelled. In respect of yet another accused Illayaraja/A20, who has been granted bail he has threatened one of the witnesses and he is presently absconding. He would submit that the other accused who have been released on bail are not regularly appearing before the Court and thereby, the respondent is unable to proceed further in this case. He would vehemently oppose for grant of bail to the appellants.

12.Mr.Sankarasubbu, learned counsel appearing for the defacto complainant would submit that it is a case where the defacto complainant's husband Chellathurai was done to death in front of her eyes. The deceased/Chellathurai belongs to Dalit community and the accused who have enmity against the deceased/Chellathurai have waylaid him while he was traveling in his car and have brutally attacked him inflicting multiple injuries with Veecharuval (swords) and he was taken to the hospital where he was declared brought dead. He would submit that the accused belongs to rival gang and they are notorious persons and if bail is grant to them, there is every chance of the accused threatening the witnesses and interfering with the administration of justice. Further, one Palanisamy/A8 who has been granted bail, subsequently committed murder of one Vinoth Kumar and the case in Crime No. 450 of 2021 has been registered against him by the respondent/police. He would submit that Vinoth Kumar is the relative of the deceased/Chellathurai.

13.At this juncture, the learned Counsel Mr.Anand appearing for the appellants would submit that the appellants are in custody for more than a year and they cannot be faulted for any wrong committed by any other person. He would submit that the appellants are in no way responsible for the delay in trial. He would submit that the appellants are prepared to abide by any stringent condition and they undertake to cooperate with the



progress of trial.

14. The Assistant Commissioner/I.O., Salem is present before this Court and he has filed separate counters in all the appeals. Heard the learned counsel appearing for the parties and perused the materials available on record. This Court had earlier directed the Prison authorities to give a report about the medical/health condition of the appellants viz., Shanmugam @ Nattamai and Jesus. The Superintendent, Central Prison, Vellore, The Superintendent, Central Prison, Coimbatore and The Superintendent, Central Prison, Salem and the Doctor, Vellore Prison have appeared before this Court through video conference. This Court enquired them.

15. Insofar as the appellant in Crl.A.519 of 2021 is concerned, this Court while dismissing the appellant's appeal in Crl.A.No.323 of 2021 had directed the trial Court to complete the trial, however, subsequent to the dismissal of the earlier appeal, this Court had granted bail to A16/Surya @ Suryamoorthy in this case, against whom 21 previous cases are pending. The allegation against the Suryamoorthy is that he was present in the scene of occurrence and he is stated to have inflicted injuries on the deceased. The appellant had been implicated based on the confession of his son-in-law who has been arrayed as A14 in this case. The said A14 has been granted bail in Crl.A.468 of 2021 on 21.10.2021. The appellant is in prison for the past one year and it is also stated that he is suffering from Coronary Artery Disease and he has also undergone Coronary Angioplasty - Stenting to LAD. The appellant cannot be held responsible for delaying trial. This Court is of the opinion that the appellant has made out the case for grant of bail.

16. Insofar as the appellant in Crl.A.No.54 of 2022, the allegation against him is that he conspired with the other accused who committed the murder of the deceased. Even as per the prosecution he was not present at the scene of occurrence and he has been implicated in this case based on the confession of one Chinnavan who is arrayed A6 in this case. The said Chinnavan has been released on bail, though, the prosecution has submitted that the appellant has got 9 previous cases, A12 in this case who is the rival gang leader and against whom there are 21 previous cases, has been granted bail by this Court in Crl.O.P.No.9025 of 2021 on 23.06.2021. The appellant is in custody from 09.03.2021. This Court is of the opinion that the appellant has made out the case for grant of bail.

17. Insofar as appellant in Crl.A.No.566 of 2021 is concerned, the allegation against him is that he was present at the scene of occurrence and he had inflicted injuries on the deceased. It is stated that the appellant has got 9 previous



cases. It is stated that the main gang leader who is arrayed as A12 in this case against whom there are 21 previous cases has been granted bail by this Court. It is also stated that at the time of arrest, the appellant had sustained injuries and he is also affected by Covid and suffering from serious lung infection. This Court is of the opinion that the appellant has made out the case for grant of bail.

18.Insofar as the appellant in CrI.A.No.549 of 2021 is concerned, he has been implicated in this case based on the confession A14/Swamidoss, that he supplied weapons to the accused. It is stated by the appellant that the said Swamidoss/A14 on whose confession the appellant has been implicated has been granted bail by this Court in C.A.No.468 of 2021 dated 21.10.2021. It is further stated that the appellant voluntarily surrendered on 28.12.2020 before the Judicial Magistrate No.I, Namakkal and there is no previous case against the appellant. This Court is of the opinion that the appellant has made out the case for grant of bail.

19.Insofar as the appellant in CrI.A.No.664 of 2021 is concerned, the allegation is that he had driven Swift car and dashed against the car of the victim and thereafter, along with the other accused got down from the car and assaulted the victim with Veecharuval (Sword). It is stated that the appellant has no previous case and he voluntarily surrendered before the Judicial Magistrate, Omalur on 28.12.2020 and he is in custody for more than a year. It is stated that the appellant is not responsible for delaying the trial. In this case as stated above, the persons against whom there are several previous cases have been granted bail. This Court is of the opinion that the appellant has made out the case for grant of bail.

20.The counsel for the appellants in unison submitted that the appellants are in continuous detention for almost a year and they are not responsible for the delay in trial and they also submitted that the appellants are ready to abide by any stringent conditions that may be imposed on them.

21.In view of the above, this Court is inclined to grant bail to the petitioner subject to the following conditions:-

(a) Accordingly, all the appeals stands allowed and the appellants are ordered to be released on bail on condition to execute their own bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each before the Superintendent of the concerned prison/Jailor concerned, in which the appellants have been confined and thereafter, on their release, the Appellants shall furnish two sureties, each for a like sum to the satisfaction of the learned Principal Sessions Judge, Salem



within 15 days from the date of commencement of the Court's normal functioning, failing which the bail granted by this Court shall stand dismissed automatically and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the appellants shall stay at Coimbatore and report before the Inspector of Police, Race Course Police Station, daily at 10.30a.m. and 5.30p.m. until further orders.

(d) the appellants shall not enter into the jurisdictional limits of respondent Police.

(e) The appellants shall appear before the trial Court on the next date of hearing i.e., on 11.02.2022 (Friday).

(f) the appellants shall not commit any offences of similar nature;

(g) the appellants shall not abscond either during trial;

(h) the appellants shall not tamper with evidence or witness during trial;

(i) on breach of any of the aforesaid conditions, the learned Sessions Judge/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 Sessions Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

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

With the above directions, this Criminal Original Petition stands ordered.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Salem.
2. The Superintendent, Central Prison,
Salem.



3. The Superintendent, Central Prison,
Madurai.

4. The Principal Session Judge,
(Special Case for SC/ST Act Cases)
Salem.

5. The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Salem.

6. The 1st Additional Sessions Judge,
Salem.

7. The Deputy Superintendent of Police,
Kitchipalayam Police Station,
Salem.

8. The Assistant Commissioner of Police,
South Region (Law and order)
Salem City.

9. The Inspector of Police,
Kitchipalayam Police Station,
Salem District.

10. The Inspector of Police,
Race Course Police Station,
Coimbatore.

11. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.7162

+1cc to Mr.M.Subash, Advocate, S.R.No.7130

+1cc to M/s.Akhil Akbar Ali Association, S.R.No.7160

+1cc to Mr.R.L.Dhilipan Pandian, S.R.No.7578

Crl.A.Nos.519 of 2021, 54 of 2022,
566 of 2021, 664 of 2021 and 549 of 2021

(CO)
RGA(08/02/2022)