



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
RESERVED ON : 08/04/2022
PRONOUNCED ON : 18/05/2022
PRESENT

WEB COPY

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.4980 of 2022

Raghu Ganesh

... Petitioner/Accused-3

Vs

State Rep.by
The Additional Superintendent,
CBI, SCU-V, SC II,
New Delhi,
(Crime No.0502020S0008/2020
Crime No.0502020S0009/2020).

... Respondent/Complainant

J.Selvarani

... Intervene Petitioner/Wife
/Mother of Deceased

For Petitioner : M/s.Elangovan.K., Advocate.
For Respondent : Ms.L.Victoria Gowri
Assistant Solicitor General of India,
for CBI cases
For Intervenor : M/s.V.Rajiv Rufus, Advocate

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

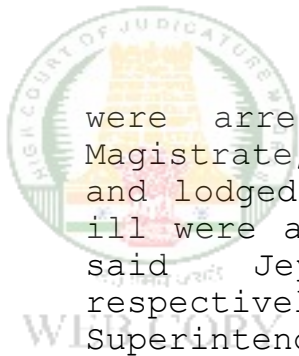
For Bail in Crime No.0502020S0008/2020 and Crime No.
0502020S0009/2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/Accused No.3, who was arrested and remanded to judicial custody on 07.07.2020, for the offences punishable under Section 120-B r/w Sections 302, 342, 201, 182, 193, 211, 218 r/w 34 I.P.C., in Crime No.0502020S0008/2020 and Crime No. 0502020S0009/2020, on the file of the respondent police, seeks bail.

2.The facts not in dispute are as follows:

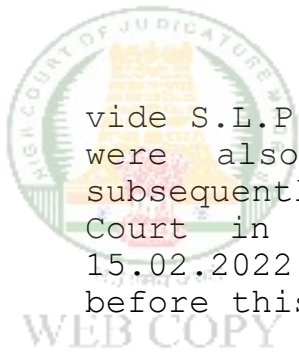
(i) The petitioner, who was then working as Sub-Inspector of Police in Sathankulam Police Station, registered a case in Cr.No.312 of 2020 for the offences punishable under Sections 188, 269, 294(b), 353 and 506(ii) I.P.C., against two persons viz., Jeyaraj and Benniks, who are father and son respectively; that both the persons



were arrested and were produced before the learned Judicial Magistrate, sathankulam and they were remanded to judicial custody and lodged in Sub Jail, Kovilpatti; that both the persons who fell ill were admitted in the Government Hospital, Kovilpatti; that the said Jeyaraj and Benniks died on 23.06.2020 and 22.06.2020 respectively; that on the basis of the complaint lodged by the Superintendent of Sub Jail Kovilpatti, two F.I.Rs came to be registered in Cr.No.649 and 650 of 2020, under Section 176(1A)(i) Cr.P.C.; that a team of Doctors, who conducted postmortem have given their opinion that both the deceased would appear to have died of complications of blunt injuries sustained; that in the meanwhile, this Court has taken *suo motu* writ petition in W.P.(MD)No.7042 of 2020 and directed the CBCID to conduct the investigation and on the basis of the said direction, two F.I.Rs came to be registered in Cr.No.1 and 2 of 2020 and the offences were altered to under Sections 302, 342, 201 r/w 109 I.P.C. ; that subsequently, the investigation was transferred to CBI, the respondent herein and two F.I.Rs., came to be registered; that after completing investigation, the CBI has laid a final report against 9 accused including the petitioner herein under Sections 120(B) r/w 302, 342, 201, 182, 193, 211, 218 I.P.C., r/w 34 I.P.C., and the case was taken on file in the Court of the Chief Judicial Magistrate, Madurai; that subsequently, the case was committed to the Principal Sessions Court, Madurai and the case was taken on file in S.C.No.470 of 2020; that the case was then made over to Ist Additional District and Sessions Court, Madurai and that the case is now pending on the file of the said Court.

(ii) Meanwhile, the intervenor Selvarani who is none other than the wife and mother of the deceased Jeyaraj and Benniks, has approached this Court by filing a writ petition in W.P.(MD)No.3665 of 2021 for issuance of a writ of Mandamus, directing the trial Court to conclude the trial within a stipulated period and this Court, vide order dated 18.03.2021, has directed the learned I Additional District and Sessions Judge, Madurai to conduct the trial expeditiously and dispose of the case in S.C.No.470 of 2020 within a period of six months from the date of receipt of copy of that order and that subsequently at the request of the learned I Additional District and Sessions Judge, Madurai, further period of five months was granted by this Court for the disposal of the said case vide order dated 17.12.2021.

(iii) It is not in dispute that the petitioner had earlier filed a bail application before the Principal District Court, Madurai in CrI.M.P.No.4196 of 2020 and the same was dismissed on 05.10.2020, that the petitioner has then approached this Court seeking bail in CrI.O.P.(MD)Nos.11324 and 11355 of 2020 and the same were dismissed on 03.11.2020, that subsequently, the petitioner moved bail applications in CrI.O.P.(MD)Nos.14877 and 14878 of 2021 before this Court and the same were also dismissed on 22.03.2021, that the petitioner has then approached the Hon'ble Supreme Court

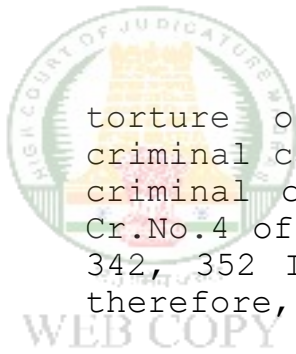


vide S.L.P.(Crl)Nos.3762 and 3763 of 2021, seeking bail and the same were also dismissed on 07.09.2021, that the petitioner has subsequently filed another application for bail before the trial Court in Crl.M.P.No.3 of 2022 and the same was dismissed on 15.02.2022 and that thereafter, the above petition came to be filed before this Court seeking bail.

3.It is also not in dispute that the petitioner had approached the Hon'ble Supreme Court challenging the order of this Court passed in W.P.(MD)No.3665 of 2021, dated 18.03.2021, directing the trial Court to dispose of the case within six months and the same was also ordered to be dismissed on 07.09.2021, that the petitioner has filed a petition under Section 207 Cr.P.C., seeking discharge in Cr.M.P.No.165 of 2021 and the same was ordered to be dismissed, that the Criminal Revision filed by the petitioner in Crl.R.C.(MD)No.274 of 2021 was dismissed on 03.09.2021 and that the Special Leave Petition filed before the Hon'ble Supreme Court was also dismissed on 03.12.2021.

4.The petitioner's case is that after the lapse of almost 185 days, the trial Court has examined only 22 witnesses out of 105 witnesses, that the testimony of P.W.20 Ravichandran clearly exonerates the petitioner that he was not present at the scene of occurrence, that though the prosecution has been relying on the statement of L.W.10 - Ms.Revathi, the prosecution has been wilfully delaying the examination of the said witness, that though the prosecution has taken a stand that the important witnesses are yet to be examined and if the petitioner is released on bail, he will tamper the evidence, they have not even attempted to examine the said witnesses, even after the lapse of 6 months from the date of dismissal of their bail application by the Hon'ble Apex Court and the trial could not be completed in six months as mandated by this Court, that almost one year has lapsed since the order of this Court in W.P.(MD)No.3665 of 2021, that though further six months time was granted for completion of trial, the trial is nowhere close to completion, that the petitioner has been confined in custody for more than 20 months and that therefore, it would be illegal to retain the petitioner under custody until the completion of trial.

5.The respondent has filed their objections, wherein it has been stated that more than 22 witnesses have already been examined despite all the adversaries of the spread of Covid-19 pandemic and resultant lock down for a considerable period, that there is absolutely no change in circumstances since the dismissal of the earlier application by this Court and thereafter by the Hon'ble Apex Court, that considering the gravity of the offences and the position of the petitioner being the Sub-Inspector of Police, there is a reasonable apprehension that the witnesses are likely to be tampered, that during investigation conducted by CBI, complicity of the petitioner/accused was fully established, that the petitioner



torture of the deceased persons, after registration of false criminal case against them, that the petitioner is involved in other criminal case of similar nature and is facing a criminal case in Cr.No.4 of 2020 of Thoothukudi CBCID for the offences under Sections 342, 352 I.P.C., and 174 Cr.P.C. and the same is pending and that therefore, the petitioner is not entitled to be enlarged on bail.

6.The case of the intervenor is that even during the enquiry conducted by the Judicial Magistrate, the petitioner was under suspension, but the police personnel attached to Sathankulam Police Station deliberately hindered the judicial enquiry and had gone even to the extent of abusing the Judicial Magistrate during the enquiry, that this Court has initiated *suo motu* contempt against the concerned Police Officers and is pending, that the petitioner is highly influential with no regards for the rule of law and would go to any extent to escape from the clutches of law, that if the petitioner is released now, he will certainly abscond and escape from the reach of law, that since the witnesses include the subordinates of the petitioner, the petitioner would be easily reaching them and threatening them and that therefore, the petitioner is not entitled to be released on bail.

7.Admittedly, the petitioner's earlier applications for bail were dismissed by this Court and lastly by this Court in Crl.O.P. (MD)Nos.14877 and 14878 of 2020, dated 22.03.2021 and the Special Leave Petition before the Hon'ble Supreme Court was also dismissed on 07.09.2021.

8.Before entering into further discussion, let us consider the legal position. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and another*** reported in ***(2004)7 Supreme Court Cases 528***, which was also referred by the learned trial Judge in the impugned dismissal order. In that case, the accused had earlier made several applications for grant of bail which were rejected by the High Court and also some such rejections have been confirmed by the Hon'ble Supreme Court. Subsequently, the High Court has granted bail to the accused therein and when the same was challenged before the Hon'ble Supreme Court by the brother of the deceased therein, the above decision came to be rendered by the Hon'ble Apex Court, wherein, it has specifically been held that in cases, where earlier applications have been rejected, there is a further onus on the Court to consider the subsequent application for grant of bail by noticing the grounds on which earlier applications have been rejected and after such consideration, if the Court is of the opinion that the bail has to be granted, then the said Court will have to give specific reasons why in spite of such earlier rejection, the subsequent application for bail should be granted. It is necessary to refer the concluding paragraphs of the said judgment hereunder:

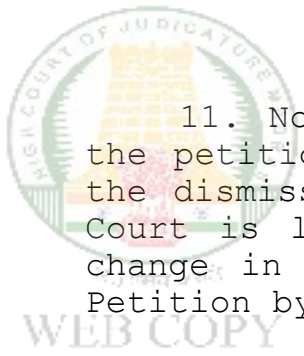


"20. Before concluding, we must note though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26th July, 2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character.

21. For the reasons stated above, we are of the considered opinion that the High Court was not justified in granting bail to the first respondent on the ground that he has been in custody for a period of 3 years or that there is no likelihood of the trial being concluded in the near future, without taking into consideration the other factors referred to hereinabove in this judgment of ours."

9. The learned Counsel for the petitioner would submit that the petitioner has been in judicial custody from 07.07.2020 for the past more than 23 months, that despite the directions of this Court for early disposal, the trial Court has examined only 22 witnesses out of 105 witnesses and hence, the trial is not likely to be concluded in the near future and that therefore, it would be illegal to retain the petitioner under custody until the completion of trial.

10. As rightly contended by the learned Assistant Solicitor General of India appearing for the respondent CBI and the learned Counsel for the intervenor, the Hon'ble Supreme Court in **Kalyan Chandra Sarkar's case**, has specifically observed that the mere fact that the accused has undergone certain period of incarceration (three years in that case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail.



11. No doubt, as rightly contended by the learned Counsel for the petitioner, the present bail application which was filed after the dismissal of the Special Leave Petition by the Hon'ble Supreme Court is legally maintainable, but the applicant has to show the change in circumstances since the dismissal of the Special Leave Petition by the Hon'ble Supreme Court.

12. The learned Counsel for the petitioner would rely on a judgment of the Allahabad High Court in **Anokhi Lal Vs. State of U.P. In Criminal Misc. Bail Application No.6869 of 2019, dated 30.03.2022** wherein the learned Judge, by observing that there is no possibility to conclude the trial in near future and the period of incarceration since 15.04.2018, has granted bail. But as rightly pointed out by the learned Assistant Solicitor General of India, the said case was for the offences under Sections 498-A and 304-B I.P.C. and under Section 3 / 4 of Dowry Prohibition Act, that the petitioner therein is not a direct family member of the in-laws of the victim and he is a cousin brother of the husband of the victim, that the main accused mother-in-law has already been granted bail and that the petitioner has been in judicial custody from 15.04.2018, the High Court has granted bail.

13. The learned Counsel for the petitioner has also relied on a recent decision of the Hon'ble Supreme Court in **Jagjeet Singh and Other Vs Ashish Mishra @ Monu and another** reported in **2022 Live Law (SC) 376**, wherein the Hon'ble Supreme Court has held as follows:

"40. Having held so, we cannot be oblivious to what has been urged on behalf of the Respondent Accused that cancellation of bail by this Court is likely to be construed as an indefinite foreclosure of his right to seek bail. It is not necessary to dwell upon the wealth of case law which, regardless of the stringent provisions in a penal law or the gravity of the offence, has time and again recognised the legitimacy of seeking liberty from incarceration. To put it differently, no accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the **Unlawful Activities (Prevention) Act, 1967**, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under **Article 21** of the Constitution.

41. We are, thus, of the view that this Court on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the



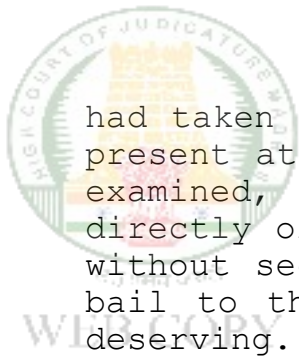
merits of the case; (iii) denial of victims' right to participate in the proceedings; and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Respondent Accused of his legitimate right to seek enlargement on bail on relevant considerations."

14. In that case, when the farmers were returning their homes after their protest was over, the petitioner/accused therein along with other accused allegedly drove the vehicles into the crowd and as a result of which many farmers and other persons were crushed by the said vehicles and that 8 persons were killed and nearly 10 persons suffered major and minor injuries. The main accused therein moved an application for bail before the Lucknow Bench of the Allahabad High Court and the High Court has granted regular bail. When the said order was challenged, the Hon'ble Supreme Court, by observing that the High Court has taken into account several irrelevant considerations, whilst simultaneously ignoring judicial precedents and established parameters for grant of bail, has set aside the bail order and remitted the matter to the High Court for a fresh consideration.

15. In the case on hand, the learned Counsel for the petitioner has canvassed two reasons of his continuous incarceration from 07.07.2020 and the failure of the trial Court to complete the trial as directed by this Court, as the special reasons or the change in circumstances, which enable the petitioner to approach this Court again for bail.

16. As rightly pointed out by the learned Counsel for the intervenor, this Court in its order passed in W.P.(MD)No.3665 of 2021, by observing the conduct of the then police with whom the investigation was pending, has held that the above case is not a usual murder case, but a highly sensitive and high-stakes case of double murder, which warrants earlier and expeditious disposal of the same.

17. The learned Assistant Solicitor General of India would submit that the petitioner alone has foisted a false case against the deceased persons, as if they were violating the Covid-19 lock down rules, that the petitioner was very much present at the occurrence place and that the petitioner and the other accused had indulged in custodial torture. She would further submit that the first accused has been conducting the case as party-in-person, that all the other eight accused have engaged advocates individually and they were taking their own time for completing the cross-examination, that normally it would take one day for single witness to complete the chief and cross-examination, but at the same time, it would take 2 to 4 days to complete the chief and cross-examination of some material witnesses, that the evidence of P.W.2



had taken four days, that the material witnesses who were allegedly present at the occurrence time in the police station are yet to be examined, that some other witnesses cited in the final report are directly or indirectly attached with the police department and that without securing the evidence from the material witnesses, granting bail to the accused at this stage would be highly unsafe and not deserving.

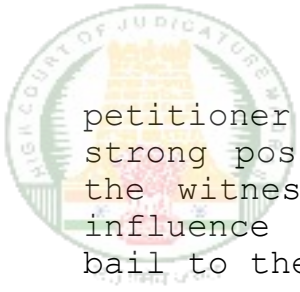
18.The learned Counsel for the petitioner would contend that P.W.20 Ravichandran in his evidence clearly exonerated the petitioner by giving evidence that the petitioner was not at all present at the scene of occurrence, but as rightly contended by the learned Assistant Solicitor General of India, it is premature at this stage to consider the evidence of a particular witness and it is for the trial Court to decide after examining all the witnesses.

19.As rightly contended by the learned Assistant Solicitor General of India and the learned Counsel for the intervenor, the petitioner has not shown any fresh or additional ground that was not available while earlier application for bail was dismissed. Moreover, the petitioner has not shown any specific reason as to why the bail should be granted inspite of earlier rejections. As rightly pointed out by the learned Assistant Solicitor General of India and the learned Counsel for the intervenor, the regular functioning of the Subordinate Court was not permitted and there was no physical hearing of the cases for certain period, during the Covid-19 pandemic period.

20.The petitioner has raised bald and vague allegations that the prosecution has willfully delayed the examination of L.W.10-Revathy and some other witnesses alleged to be the material witnesses, but it is not the specific case of the petitioner that the prosecution has been dragging or protracting the trial. The petitioner has not shown any reason or material or the circumstances to infer that the prosecution has been adopting delaying tactics and is procrastinating the trial.

21.It is evident from the records that the learned Counsel for the accused submitted before the trial Court that the witnesses may be examined in Court on physical hearing. Considering the above and also the Covid-19 restrictions and consequent directions of this Court, the trial Court cannot be found fault with for not completing the trial within the time stipulated.

22.Considering the seriousness and the gravity of the offences alleged and also the facts that the petitioner has not shown any valid or acceptable change in circumstances since the dismissal of the Special Leave Petition by the Hon'ble Apex Court and that the petitioner has not assigned any specific reason why inspite of rejection of earlier applications, bail should be granted to him and



petitioner was working in the concerned police station, there is a strong possibility that the petitioner may intimidate or influence the witnesses and tamper with the evidences, which is likely to influence the ongoing trial, this Court is not inclined to grant bail to the petitioner.

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23. In the result, the Criminal Original Petition is dismissed.

sd/-

18/05/2022

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23/05/2022

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 SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
- 2 THE ADDITIONAL SUPERINTENDENT,
CBI, SCU-V, SC II,
NEW DELHI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.K.ELANGO VAN, Advocate (SR-4701[I] dated 18/05/2022)

ORDER

IN

CRL OP(MD) No.4980 of 2022

Date :18/05/2022

RS/SVR/SAR.2 (20.05.2022) 9P-5C