



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A. (MD) .No.246 of 2022

Vikki @ Vignesh

... Appellant/Petitioner/Accused

Vs.

1.The Deputy Superintendent of Police,
Thoothukudi South Police Station,
Thoothukudi.

(Crime No.533 of 2019). ... 1st Respondent/Respondent/
Complainant

2.P.K.Ramkumar

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Appeal filed under Section 14A(2) of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, as amended by Act 1 of 2016, to call for the records relating to Cr.M.P.No.571 of 2021, dated 23.07.2021 on the file of the learned Sessions Judge, Special Court for Trial Cases under the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, Thoothukudi and set aside the same and grant bail to the appellant.

For Appellant : Mr.G.Prabhu Rajadurai

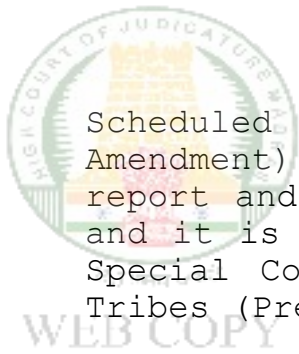
For R - 1 : Ms.M.Aasha
Government Advocate (Crl. Side)

For R - 2 : Mr.A.S.Vaigunth

JUDGMENT

This Appeal is directed as against the order passed in Cr.M.P.No.571 of 2021, dated 23.07.2021 on the file of the learned Sessions Judge, Special Court for Trial Cases under the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, Thoothukudi, thereby dismissed the petition seeking bail.

2.The case of the prosecution is that the deceased had committed a murder of the first accused's brother. Due to that enmity, on 21.08.2019, when the deceased came to the Court to attend a case, the first accused along with other accused waylaid him and committed murder. The first respondent registered the F.I.R in Crime No.533 of 2019 for the offences under Sections 147, 148, 341, 294 (b), 302, 506(ii) and 120(b) of I.P.C and Section 3(2)(v) of the



Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Amendment) Act, 1989. After completion of investigation, filed final report and the same has been taken cognizance in S.C.No.62 of 2020 and it is pending trial on the file of the learned Sessions Judge, Special Court for Trial Cases under the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, Thoothukudi.

3.The appellant is arraigned as Accused No.13 and he was arrested and remanded to judicial custody on 22.08.2019. The appellant filed a petition in Cr.M.P.No.571 of 2021, dated 23.07.2021 on the file of the learned Sessions Judge, Special Court for Trial Cases under the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, Thoothukudi for bail and the same was dismissed on 23.07.2021. Aggrieved by the same, the present Criminal Appeal is filed.

4.The learned counsel appearing for the appellant would submit that there is no specific overt act as against the appellant to attract the major offences as alleged by the prosecution. The appellant was arrested and remanded to judicial custody on 22.08.2019 and the co-accused, those who are standing in same footing, namely Accused Nos.15 and 16 were granted bail by this Court in Crl.A(MD)No.8 of 2020, by an order dated 24.02.2020 and they are regularly appearing before the trial Court and as such, the appellant may also be granted bail and he will attend all hearings of the trial proceedings. He would further submit that even according to the prosecution, the appellant was standing in his two-wheeler and watching the arrival of the accused and as such, he had no specific overt act in the alleged occurrence. In support of his contention, he relied upon the Judgment of the Honourable Supreme Court of India in the case of **Jagjeet Singh and others Vs. Ashish Mishra @ Monu and another [2022 Live Law (SC) 376]**, wherein the Honourable Supreme Court of India 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 (See Union of India v. K.A. Najeeb, (2021) 3 SCC 713, ¶ 15 & 17)."

5. Heard the learned counsel appearing for the appellant, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

6. On a perusal of the records revealed that except Accused Nos. 15 and 16, others were not granted bail and they are incarceration and this Court already directed the trial Court to proceed with the trial and complete the same within the stipulated time. As far as the appellant is concerned, he had very bad antecedents and so far he involved in four cases including the present case. The other co-accused are closely related to the appellant and all are habitual offender and every year they committed one murder case. The appellant has got direct involvement in the brutal murder of the deceased. He is the close relative of the first accused and conspired with all other persons to murder the deceased on 09.08.2019 near FCI Roundana, Thoothukudi and they attempted to murder the deceased. Fortunately, it was failed and again on 21.08.2019, the appellant conspired with other accused and brutally murdered the deceased. In fact, the two-wheeler was driven by the appellant in which A.4 and A.9 came as pillion riders to cause murder of the deceased. The two-wheeler bearing Registration No. TN-69-M-4389 was recovered and as such, the appellant had a vital role in the present murder case. Further, it revealed that the Accused No. 21 absconded and the case has been split up by the trial Court and given separate S.C.No.195 of 2019. In fact, A.19, who was enlarged on bail, had threatened the witnesses and separate case has been registered against him in Crime No.730 of 2019 on the file of the Tuticorin South Police Station. After completion of investigation in that case filed final report and the same has been taken cognizance and it is pending for trial in S.C.No.97 of 2020 on the file of the Special Court for the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, Thoothukudi.

7. The appellant had involved in the following criminal cases:-

"1. Pudukottai Police Station Crime No.145 of 2017 under Sections 147, 294(b), 323 and 506(ii) of I.P.C.

2. Sawerpuram Police Station Crime No.22 of 2019 under Section 29 of I.P.C.

3. SIPCOT Police Station Crime No.116 of 2018 under Sections 107, 147, 148, 294(b), 307, 324 and 56(ii) of I.P.C.

4. South Police Station Crime No.533 of 2019 under Sections 147, 148, 341, 294(b), 302, 506(ii) of I.P.C



read with Section 34, 109 of I.P.C and 3(2)(v) SC/ST (Prevention of Atrocities) Act, 2015."

8.The Honourable Supreme Court of India repeatedly held that while considering the application for bail, the factors to be borne in mind as follows:-

- "(i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) Nature and gravity of the accusation;
- (iii) Severity of the punishment in the event of conviction;
- (iv) Danger of the accused absconding or fleeing, if released on bail;
- (v) Character, behaviour, means, position and standing of the accused;
- (vi) Reasonable apprehension of the witnesses being influenced; and
- (vii) Danger, of course, of justice being thwarted by grant of bail."

9.Further, another accused viz., A.2 had daringly threatened the defacto complainant inside the Court campus, in which another F.I.R has been registered in Crime No.176 of 2020 on the file of the Inspector of Police, Palayamkottai Police Station, Tirunelveli and the investigation is pending. The present murder is nothing but retaliation murder since the brother of the defacto complainant was murdered due to previous murder. That apart, in the first attempt, the accused persons were watching the movement of the deceased and on the second attempt they executed murder in a day light.

10.Considering the nature of gravity of the day light murder committed by the accused persons in public nearby Thoothukudi Court campus and South Police Station, that too, it is a case of retaliation murder and the severity of the punishment in the conviction and the danger of the accused absconding or fleeing, if he is released on bail, this Court is not inclined to grant bail to the appellant. Accordingly, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

26/04/2022

Sub Assistant Registrar(CS)

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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 Sessions Judge,
Special Court for Trial Cases under the
Scheduled Caste/Scheduled Tribes
(Prevention of Atrocities) Act,
Thoothukudi.
- 2.The Deputy Superintendent of Police,
Thoothukudi South Police Station,
Thoothukudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Superintendent of Prison,
Central Jail, Palayamkottai.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-20777[F] dated 25/04/2022)

**CRL.A. (MD) .No.246 of 2022
22.04.2022**

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