



Crl.R.C(MD) No.944 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.R.C(MD)No.944 of 2022

1.Thirumalaikumar

2.Kali

... Revision Petitioners

Vs.

The State Rep. by
The Inspector of Police,
Shencottah Circle,
Puliyarai Police Station,
Tenkasi District

... Respondent

Prayer : This Criminal Revision has been filed under Section 397 and 401 of Criminal Procedure Code, to call for the entire records pertaining to the order passed by the learned Additional District and Sessions Judge, (FTC), Tenkasi in CrI.M.P.No.242 of 2022 in S.C.No.142 of 2018 dated 21.07.2022 and set aside the same and consequently release the petitioners on bail.

For Petitioners : Mr.R.Anand
For Respondent : Mr.S.S.Madhavan
Government Advocate



Crl.R.C(MD) No.944 of 2022

WEB COPY

ORDER

This Criminal Revision Case has been filed to call for the entire records pertaining to the order passed by the learned Additional District and Sessions Judge, (FTC), Tenkasi in Crl.M.P.No.242 of 2022 in S.C.No.142 of 2018 dated 21.07.2022 and set aside the same and consequently, release the petitioners on bail.

2. When the matter is taken up for hearing, the learned counsel for the petitioners seeks permission of this Court to withdraw this Criminal Revision Case insofar as the first petitioner is concerned.

3. In view of the same, this Criminal Revision Case is dismissed as withdrawn insofar as the first petitioner is concerned.

4. The brief facts of the case as follows:-

The second petitioner along with other 8 persons is facing charges under Sections 279, 338, 304(A) IPC @ 120(b) and 302 IPC in S.C.No.142 of 2018 and the case was posted for the examination of witnesses. The witnesses stated that



Crl.R.C(MD) No.944 of 2022

they have been threatened by the accused persons and one of the witnesses in the above said case, namely, Hariharan was murdered by co-accused, namely, Udayakumar, Balakrishnan, Mahesh, Sangili and Navaskhan. In respect of the above said murder, a case in Crime No.11 of 2017 was registered for the offences under Section 147, 148, 452, 294(b), 302, 506(2) IPC @ 120(b), 147. 148. 452, 294(b), 302 and 506(2) IPC.

5. After completion of investigation formalities, final report has been filed before the concerned Court and the same was taken on file in S.C.No.141 of 2018. On 18.01.2021, the witnesses, namely Subbulkashmi and Subbiah were present before trial Court for giving evidence and the accused persons remained absent. Therefore, cancellation application was moved by the prosecution. The accused persons, namely, Udayakumar, Maridurai, Balakrishnan, Kottursamy, Thirumalaikumar and Kali trespassed into the house of the witness - Subbiah and they threatened him and tried to kill him and murder Subbiah on 16.06.2022, over which, a case in Crime No.151 of 2022, was registered for the offences under Sections 147, 342, 294(b), 307 and 506(2) IPC.



Crl.R.C(MD) No.944 of 2022

WEB COPY

6. According to the prosecution, if the accused persons are allowed to be at liberty, then it is not possible for the prosecution to produce the witnesses before the trial Court. The accused persons threatened the witnesses and they violated the conditional order. Therefore, the Inspector of Police, Shenkottai Police Station filed the above petition for cancellation of bail and that was resisted by the accused persons. After elaborate consideration, the trial Court partly allowed the petition, which was dismissed against the respondents/accused 4 to 7 and 10 and the same was partly allowed against the respondents/accused 1, 2, 3 and 8. Insofar as the second petitioner is concerned, bail granted in Crl.O.P(MD).No.19961 of 2016, dated 10.03.2016 was cancelled. Challenging the above said dismissal order, this revision Petition has been filed.

7. The sequence of events shows that in the year 2015, there was a murder of 6 persons by hitting the lorry. According to the second petitioner, it is a case of accident. Now, the trial is pending and in the above said case, one Hariharan is the prime witness. He was murdered by the accused persons, for which, a case in Crime No.11 of 2017, was registered and in the case also, the trial is pending. For the occurrence said to have taken place, one of the witnesses, namely, Subbiah



Crl.R.C(MD) No.944 of 2022

was criminally intimidated and attempted to be killed, for that, a case in Crime No.151 of 2022 was registered.

8. The bail application in Crime No.151 of 2022, filed by the second petitioner was heard by me and the same was dismissed and the present revision has also been heard by me. The learned counsel for the second petitioner submitted that the co-accused, namely, 4 to 7 and 10 are released on bail and the same benefit must be extended to this second petitioner also, because he must also be treated equally with the co-accused.

9. Mr.M.Madhavan, learned Government Advocate (Crl.side) submitted that departmental action has been initiated against the Inspector of Police for failure to file a revision against the dismissal order.

10. It appears that no revision has been preferred against the dismissal order. Whatever it may be, “parity” principle cannot be extended to this petitioner.



Crl.R.C(MD) No.944 of 2022

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11. But the principle can be adopted, only if all the accused are standing in the same footing. Considering the circumstances, the role that has been played by them, must be taken into account.

12. From the year 2015, the trial is pending and pending trial, another murder taken place in the year 2017 and that is also pending in the trial stage. The learned counsel for the petitioner by relying upon the e-Courts statement would submit that on the date of alleged commencement of trial, the prosecution witnesses were not present and the second petitioner was arrested in Crime No. 151 of 2022 and till now, he is in judicial custody. Even though the above said Subbiah is not an eyewitness in the above said occurrence and as per the e-Court statement, only L.W.7 was present before trial Court.

13. The learned Government Advocate (Crl.side) has produced the dates and events. The actual dispute is between the two groups that the second petitioner, namely, Kali is taking lease of Fishery Rights of Ananthakulam Pond. Later, in the year 2015, the fishery rights were taken by the defacto complainant



Crl.R.C(MD) No.944 of 2022

and he become leaseholder. Because of the above said motive, trouble arose between the two groups. Subsequently, on 26.06.2015, there was a fight between the parties, due to which, the first accused group people poisoned the pond and in continuation of enmity, many occurrences had happened.

14. In view of the above, this Court does not find any merits in the revision and does not find any illegality or infirmity in the order passed by the trial Court. Therefore, this revision is liable to be dismissed.

In the result, this Criminal Revision Case is dismissed.

27.10.2022

Index : Yes/No
Internet : Yes/No
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To:-

Additional District and Sessions Judge, (FTC), Tenkasi



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Crl.R.C(MD) No.944 of 2022

G.ILANGOVA,N,J

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ORDER MADE IN
Crl.R.C.(MD)No.944 of 2022

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