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Crl.O.P.No.6959 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.No.6959 of 2023

1. Ganesan

2. Suresh (Pandiyan)

... Petitioners

Vs.

The State represented by,
The Inspector of Police,
Mallur Police Station,
Salem District.

(Crime No.35 of 2023).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioners/accused on bail, in connection with the
Crime No.35 of 2023, pending investigation on the file of the respondent
Police.

For Petitioners : Mr.B.Sundarapandiyan

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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ORDER

The petitioners, who were arrested and remanded to Judicial custody on 31.01.2023, for the offence punishable under Sections 147, 148, 294(b), 323 and 341 r/w 307 of IPC @ Sections 147, 148, 294(b), 323 and 341 r/w 302 of IPC, in connection with Crime No.35 of 2023, registered on the file of the respondent police, seek bail.

2. The case of the prosecution as per the de-facto complainant, Sumathi is that there already exists civil dispute between the de-facto complainant's family and the accused family. While so, there was a quarrel between them while erecting an electric pole in the common pathway, which was in dispute and during such time, both the parties attacked each other, in which, the accused have assaulted the de-facto complainant's husband with spade, resulting in which, he sustained grievous injuries. Based on the complaint given by the de-facto complainant, a case in Crime No.35 of 2023 came to be registered for the offence punishable under Sections 147, 148, 294(b), 323 and 341 r/w 307 of IPC and later, the husband of the de-facto complainant died, without responding to the treatment, thereby, the case has



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been altered to one under Sections 147, 148, 294(b), 323 and 341 r/w 302 of IPC. Hence, the case.

3. Learned Counsel for the petitioners submitted that the petitioners, who are the neighbours of the de-facto complainant, are innocent persons and there already exists a civil dispute between them. He further submitted that on 30.01.2023, the de-facto complainant and her family attempted to shift the electric pole to the common pathway, which was in dispute and when it was questioned by the petitioners, there arose a dispute between them, during such time, the incident had happened. He further submitted that there is no intention or motive on the part of the petitioners to commit murder of the deceased and it has happened unfortunately during the quarrel. He also stated that the *de-facto* complainant and party are the aggressors, who have assaulted the petitioners and the incident had happened while exercising a right of private defence, whereas the petitioners have also sustained injuries and based on the complaint given by A2, a case in Crime No.36 of 2023 has been registered against the *de-facto* complainant and her family members. He further submitted that the petitioners are in custody from 31.01.2023 and they are ready to abide by any stringent conditions that may



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be imposed by this Court. Hence, he prays for grant of bail to the petitioners.

4. Learned Government Advocate (Crl. Side) appearing for respondent submitted that due to the dispute with regard to the shifting of electric pole to the common pathway, which was in dispute, the accused have assaulted the husband of the *de-facto* complainant with spade, due to which, he sustained grievous injuries and later, the victim died in the hospital, without responding to the treatment. He also stated that it is the case and a case in counter. Hence, he vehemently opposed to grant bail to the petitioner.

5. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the respondent and perused the entire materials available on record.

6. Taking into consideration the facts and circumstances of the case, the submissions made by either side and also considering the period of incarceration undergone by the petitioners, this Court is inclined to grant bail to the petitioners with certain condition.



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7. Accordingly, the petitioners are ordered to be released on bail on their executing a separate bond for a sum of **Rs.10,000/- (Rupees Ten thousand only)** with **two sureties**, for a like sum to the satisfaction of the **learned Judicial Magistrate No.V, Salem**, and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

[b] the petitioners shall stay at Villupuram and report before the Inspector of Police, Villupuram Town Police Station, at 10.30a.m., for a period of four weeks and thereafter, report before the respondent Police everyday at 10.30a.m., until further orders;

[c] the petitioners shall not abscond either during investigation or trial;

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial;

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court



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in *P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]*;

[f] If the accused thereafter abscond, a fresh FIR
can be registered under Section 229A IPC.

28.03.2023

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To

1. The Judicial Magistrate No.V,
Salem.
2. The Inspector of Police,
Mallur Police Station,
Salem District.
3. The Central Prison,
Salem.
4. The Inspector of Police,
Villupuram Town Police Station,
Villupuram.
5. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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