



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 28/02/2023
PRESENT

WEB COPY

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL OP(MD) . No.3537 of 2023

1. Philip @ Arun Philip Raj,

2. Anto @ Anton Nallaiah,

3. Babu Alexander,

... Petitioners/Accused
No.3,4 & 5

Vs

The State rep.by
The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District.
Crime No.56 of 2022.

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu, Advocate

For Respondent : Mr.T.Senthil Kumar,
Government Advocate (Crl.Side)

For Intervenor : Mr.A.Sivasubramaniam, Advocate

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

PRAYER :- For Bail in Cr.No.56 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/A3 to A5 who are facing trial for the offence under Sections 147, 148, 294(b), 302 and 506(ii) IPC in S.C.No.314 of 2022 on the file of the learned IV Additional Sessions Judge, Tirunelveli in Crime No.56 of 2022 on the file of the respondent police, seek bail.

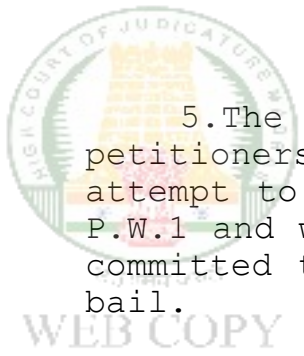
2.The case of the prosecution is that in the year 2016, Rajan and his wife Leela @ Selva Leela and their sons, namely, Selvaraj/A1, Prabakaran/A1 and Philip/A3 have attempted to murder one Perumal and in this regard, the de-facto complainant's brother



namely, Vaigundam lodged a complaint before the responder and FIR was registered in Crime No.78 of 2016. During the trial, the said accused persons threatened the witness/de-facto complainant that he should not give evidence in the Court. Further on 03.03.2022, the said Vaigundam gave evidence in chief against the said accused persons. On 10.03.2022, when the said Vaigundam was about to attend the Court for cross examination at about 09.45 hours, all the accused persons murdered him. Hence, the case came to be registered.

3.The learned Senior Counsel for the petitioners would submit that this is the second application for bail. He would further submit that on certain wrong instructions given by the respondent police, the earlier petition filed on the behalf of the petitioners in Crl.O.P.(MD)No.22769 of 2022 came to be dismissed on 22.12.2022. He would further submit that the fact remains that the first petitioner in the present petition alone was an accused in Crime No.78 of 2016 (S.C.No.57 of 2018) and he was convicted only for one year for the offences under Sections 147 and 342 of IPC by the learned Assistant Sessions Judge and against conviction, he had preferred Appeal in C.A.No.58 of 2022 on the file of the Principal Sessions Court, Tirunelveli and the sentence has also been suspended in Crl.M.P.No.10508 of 2022, dated 19.10.2022. Despite the sentence having been suspended for the first petitioner, he is in custody, in this case, from 14.03.2022. Further, the second petitioner/A4 is in custody from 14.03.2023 and the third petitioner/A5 is in custody from 10.03.2022. He would further submit that in respect of the petitioners 2 and 3, who are arrayed as A4 and A5, there is no previous case pending against them. He would further submit that the fact remains that the defence counsel was also threatened by the other side in the Court and memo has also been filed before the learned Trial Judge. He would further submit that if only the petitioners are granted bail, they would be able to come out to engage their counsel to effectively conduct the trial and thereby, he would seek for bail.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that it is a case of retaliatory murder. He would further submit that in this case, the petitioners and the victim side belong to the same community and due to previous motive there are cases. He would further submit that in the earlier case in Crime No.622 of 2022, the first petitioner was an accused and on the complaint given by one Vaigundam, a case was taken up for trial in S.C.No.57 of 2018 and after the said Vaigundam has given evidence in chief, the petitioners have murdered him and they have also wielded threat to the other witnesses also. He would further submit that if the petitioners are granted bail, there is every possibility of threatening the witnesses again and thereby interfering the administration of justice.



5.The learned counsel for the intervenor would submit that the petitioners are notorious offender and in the previous case of attempt to murder registered in Crime No.78 of 2016, Vaigundam was P.W.1 and when the case was posted for cross examination, they have committed the murder of Vaigundam and he would object for grant of bail.

6.In reply, the learned Senior Counsel for the petitioners would submit that as far as the first petitioner is concerned, he is not pressing this application. He would further submit that as far as the petitioners 2 and 3 are concerned, they are not having any bad antecedents and they are in judicial custody from 14.03.2022 (A4) and 10.03.2022 (A5).

7.Heard. Perused the materials available on record including the First Information Report.

8.Taking into consideration of the facts and submissions made by the learned counsels, this petition is dismissed as not pressed against the first petitioner is concerned. However, taking into consideration the fact that the petitioners 2 and 3 are not having any bad antecedents and that the period of incarceration, this court is inclined to grant bail to the petitioners 2 and 3, subject to the following conditions:

[a] Accordingly, the petitioners 2 and 3 are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned IV Additional District and Sessions Court, Tirunelveli, and on further conditions that:

[b] 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.

[c]after coming out on bail, the petitioners 2 and 3 shall also file an affidavit before the learned IV Additional District and Sessions Court, Tirunelveli, on the next hearing date, stating that they will co-operate for the speedy disposal of the trial.

[d] the petitioners 2 and 3 shall stay at Madurai and report before the Inspector of Police, Mattuthavani Police Station everyday at 10.30 a.m. and 07.30 p.m until further orders (other than the days when the case in S.C.No.314 of 2022 is listed for trial before the learned IV Additional District and Sessions Court, Tirunelveli.

[d] the petitioners 2 and 3 shall not commit any offences of similar nature.

[e] the petitioners 2 and 3 shall not abscond either during investigation or trial.



[f] the petitioners 2 and 3 shall not tamper with evidence or witness either during investigation or trial.

[g] On breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioners 2 and 3 in accordance with law as if the conditions have been imposed and the petitioners 2 and 3 released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

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

sd/-

28/02/2023

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28/02/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SJI

TO

1 THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, TIRUNELVELI.

2 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

3 THE INSPECTOR OF POLICE,
TIRUNELVELI TALUK POLICE STATION,
TIRUNELVELI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE INSPECTOR OF POLICE,
MATTUTHAVANI POLICE STATION, MADURAI.

+1. CC to M/S.PRABHU K Advocate SR.No.3036

ORDER

IN

CRL OP(MD) No.3537 of 2023

Date :28/02/2023

SA/SSS/SAR. /28.02.2023/4P/7C