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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 27/04/2023

PRONOUNCED ON : 14/06/2023

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.6308 of 2023

Raghu Ganesh

... Petitioner/Accused No.3

Vs

State represented by,

The Additional Superintendent of Police,

CBI/SCU-V, SC II,

New Delhi,

Crime No. 0502020S0008/2020 and

Crime No. 0502020S0009/2020).

... Respondent/Complainant

J.Selvarani

... Intervene Petitioner/Deceased wife
in Crl MP(MD)No.6570 of 2023

For Petitioner : Mr.Ka.Ramakrishnan

For Respondent : Mr.C.Muthusaravanan

Special Public Prosecutor
for CBI cases

For Intervenor : Mr.V.Rajiv Rufus, Advocate

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

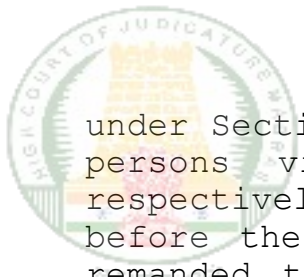
PRAYER :-

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.

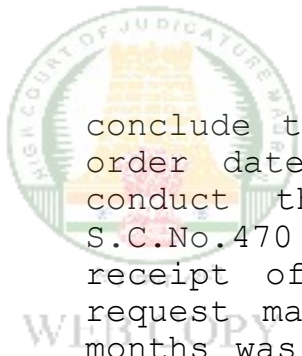
2. It is not in dispute that the petitioner, who was then working as Sub-Inspector of Police in Sathankulam Police Station, registered a case in Cr.No.312 of 2020 for the offences punishable



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 moto* 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 I Additional District and Sessions Court, Madurai and that the case is now pending on the file of the said Court.

3. It is evident from the records that the petitioner has moved bail applications in CrI.O.P.(MD)Nos.11324 and 11355 of 2020 and the same were ordered to be dismissed on 03.11.2020, that the petitioner subsequently moved bail applications in CrI.O.P.(MD)Nos.14877 and 14878 of 2021 before this Court and the same were also ordered to be dismissed on 22.03.2021, that the petitioner has then approached the Hon'ble Supreme Court in S.L.P.(CrI)Nos.3762 and 3763 of 2021 seeking bail and the same were also dismissed on 07.09.2021, that the petitioner has then filed another application for bail before the trial Court in CrI.M.P.No.3 of 2022 and the same was dismissed on 15.02.2022 and that thereafter he moved another bail application before this Court in CrI.O.P.(MD)No.4980 of 2022 and the same was also ordered to be dismissed on 18.05.2022. The petitioner has then moved a bail application in CrI.M.P.No.13 of 2023 before the trial Court and the same was ordered to be dismissed on 28.02.2023 and that thereafter the above petition came to be filed before this Court seeking bail.

4. It is also not in dispute that the intervenor Selvarani who is none other than the wife and mother of the deceased Jeyaraj and Benniks has filed a writ petition in W.P.(MD)No.3665 of 2021 for issuance of a writ of Mandamus, directing the trial Court to

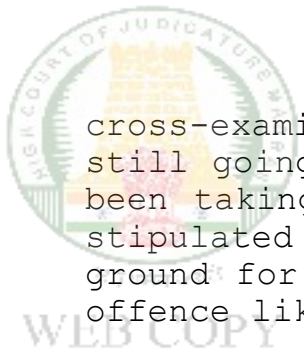


conclude the trial within a time stipulated and this Court, vide order dated 18.03.2021, has directed the learned trial Judge to conduct the trial expeditiously and dispose of the case in S.C.No.470 of 2020 within a period of six months from the date of receipt of a copy of that order and that subsequently, at the request made by the learned trial Judge, further period of five months was granted by this Court for the disposal of the said case vide order dated 17.12.2021. The petitioner has approached the Hon'ble Supreme Court challenging the order 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 ordered to be dismissed, vide order dated 07.09.2021.

5. It is also not in dispute that the petitioner has filed an application seeking discharge in CrI.M.P.No.165 of 2021 and the same was ordered to be dismissed, that the Criminal Revision Petition filed by the petitioner in CrI.R.C.(MD)No.274 of 2021 was also dismissed on 09.03.2021 and that the Special Leave Petition filed before the Hon'ble Apex Court was also dismissed vide order dated 03.12.2021.

6. The learned Counsel for the petitioner would submit that originally there are 105 witnesses cited in the charge sheet and in the additional charge sheet, there are 27 witnesses, all totally 132 witnesses, that the prosecution has examined only 47 witnesses so far, that though this Court has directed the trial Court to dispose of the case within six months and subsequently the time was extended by further five months, the trial Court has examined only 47 witnesses out of 132 witnesses, that even if the prosecution dispenses with the examination of some witnesses, the examination and cross-examination of the remaining witnesses will not be possible in the near future and that since all the eye-witnesses including the police witnesses have been examined, the question of tampering the witnesses does not arise at all. The learned Counsel would further contend that the petitioner is not in a position to instruct his Senior Counsel from Tuticorin and to put his defence effectively in future course of trial and that the financial requirements are of concern, as he is in custody for long period.

7. The learned Special Public Prosecutor appearing for the respondent would submit that the above application is the fourth bail application filed before this Court, that the gravity of the offence alleged against the petitioner is very severe and the materials available on record prima facie disclose that the petitioner along with the other accused had committed the offence, that the trial Court has been conducting speedy and fair trial by considering the convenient dates for the defence and the prosecution has also been sailing with the trial Court for fixing the dates for examination of the witnesses, that though the chief examination has been completed within one or two days, the cross-examination would go on for several hearings, that the cross-examination of some of the witnesses would proceed for more than two days and P.W.47 was



cross-examined for 14 days, that the cross-examination of 1... is still going on for the past five hearings, that the trial Court has been taking all the earnest steps to complete the trial within the stipulated time and that the delay for trial cannot be a reason or a ground for enlarging the accused on bail particularly in a heinous offence like murder.

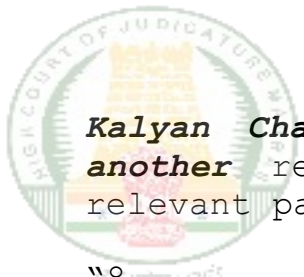
8. It is evident from the records that out of 132 witnesses (105+27), 47 witnesses have been examined so far and it is further evident that all the accused, who had engaged separate Counsel have been cross-examining the witnesses at length. It is not the specific case of the petitioner that the prosecution has been delaying the examination of the witnesses by non-production of the witnesses and by non-examination of the produced witnesses. It is also not the specific case of the petitioner that the trial Court has not been proceeding with the trial with the required speed and has been delaying the examination of the witnesses.

9. The learned Special Public Prosecutor appearing for the CBI would submit that the prosecution is not going to examine all the remaining witnesses and that they have decided to examine at least another 20 to 25 witnesses including the police personnel who were working along with the accused police officials. He would further submit that out of 47 witnesses examined, three witnesses were not cross-examined by the defence, that out of three witnesses, P.W.26 being police personnel, who was working along with the accused police officials was not cross-examined and that if the petitioner is released on bail, definitely he will tamper the witnesses and consequently, it will affect the prosecution case.

10. The learned Counsel appearing for the intervenor would submit that the petitioner cannot plead the delay as a reason for his bail, as all the accused are the main reason for the delay of proceedings, that many of the accused used to file petitions to defer the witnesses on one or other reasons, that they have been filing regularly petitions under Section 311 Cr.P.C., to recall the witnesses and that since the accused had been adopting delaying tactics, the same cannot be taken advantage by the petitioner and the other accused.

11. Considering the submissions made by the learned Counsel for the petitioner and the learned Special Public Prosecutor, this Court directed the Registry to call for a report from I Additional District and Sessions Judge, Madurai, after reserving the above petition for orders, with regard to the present stage of the case. In pursuance of the same, the learned I Additional District and Sessions Judge, Madurai has submitted a report 17.05.2023, wherein the learned trial Judge has narrated as to what had happened till now.

12. This Court, in the earlier bail application filed by the petitioner, has referred a judgment of the Hon'ble Supreme Court in



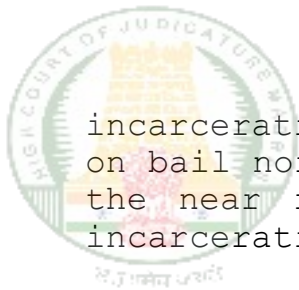
Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and another reported in (2004) 7 Supreme Court Cases 528, and the relevant passages in the earlier order are reproduced hereunder:

"8..... 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 paragraph 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."

13. Considering the above, it is very much clear that the hon'ble Supreme Court has reiterated the legal position that the mere fact that the accused has undergone certain period of



incarceration by itself would not entitle the accused to be charged 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 accused on bail.

14. Regarding the other contentions of the petitioner regarding his financial requirements and his inability to instruct his Counsel who is coming from Tuticorin and to put his defence effectively, the respondent in their counter statement has raised a counter argument that there is a provision for free legal aid and the defence Counsel can get instruction from the petitioner even at the jail or even at the Court and that the same was reiterated by the learned trial Judge also. As rightly pointed out by the learned Counsel appearing for the CBI, the petitioner has not shown any fresh or additional ground that was not available, while earlier application for bail was dismissed and that they have also not shown any specific reason as to why the bail should be granted despite the rejection of earlier applications.

15. Considering the above facts and circumstances of the case and also the gravity and seriousness of the offence alleged against the petitioner 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 bail applications by this Court and also taking note of the objections of the prosecution that since the petitioner was working in the police department along with the witnesses - police officials, who are yet to be cross-examined and examined, there is every possibility to influence the witnesses or tamper with the witnesses which is likely to affect the ongoing trial and the case of the prosecution, this Court is not inclined to grant bail to the petitioner.

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

sd/-

14/06/2023

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/06/2023

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

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TO

1 THE ADDITIONAL SUPERINTENDENT OF POLICE,
CBI/SCU-V/SC-II NEW DELHI

2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.



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

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+1. CC to Mr.C.Muthusaravanan, Advocate SR.No.28070

ORDER

IN

CRL OP (MD) No.6308 of 2023

Date :14/06/2023

SS/CG/21/06/2023/7P/5C