



WEB COPY

(CBI Crime No.RC0502020 S0008) &



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Dated: 24/04/2023

PRESENT

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP(MD)Nos.6125 and 6127 of 2023

S.Sridhar : Petitioner / Accused No.1
(in both cases)

Vs.

1.State rep. by
Additional Superintendent of Police,
CBI, SC II, New Delhi.
(CBI Crime No.RC0502020 S0008) &
(CBI Crime No.RC0502020 S0009)

2.The Director General of Police,
Mylapore,
Chennai.

: Respondents / Complainants
(In both cases)

3.J.Selvarani

: Intervenor / Petitioner
in CRL MP(MD) Nos.6171 and
6175 of 2023

For Petitioner
(in both cases)

: Mr.G.Karuppasamy Pandiyan

For 1st Respondent : Mr.C.Muthusaravanan
(in both cases) Special Public Prosecutor
for CBI

For 2nd Respondent : Mr.B.Nambiselvan
(in both cases) Additional Public Prosecutor

For Intervenor : Mr.V.Rajiv Rufus
(in both cases)

PETITIONS FOR BAIL UNDER SECTION 439 OF THE CODE OF CRIMINAL
PROCEDURE.

COMMON PRAYER:-

For Bail in Case No.RC 0502020 S0008 and Case No.RC 0502020
<https://www.mhc.tn.gov.in/judis>



S0009 on the file of the respondent/CBI respectively.

COMMON ORDER:- The Court made the following order:-

The petitioner is Accused No.1 in both Cases in RC 0502020 S0008 and RC 0502020 S0009, respectively, on the file of the respondent/CBI. The petitioner was arrested and remanded to judicial custody on 02.07.2020, seeking bail, the present petitions have been filed.

2.The aforesaid case in RC 0502020 S0008 relates to the death of one Benniks, S/o.Late P.Jeyaraj, and RC 0502020 S0009 relates to the death of P.Jeyaraj, father of the deceased Benniks, both died in judicial custody.

3.The brief facts leading to the filing of the present bail petitions are as follows:-

3.1.The deceased in these cases, namely Benniks and Jeyaraj were arrested relating to Crime No.312 of 2020, for the offences punishable under Sections 188, 269, 294(b), 353 and 506(2) of the Indian Penal Code on the file of Sathankulam Police Station, and both of them were remanded to judicial custody and lodged in Sub Jail, Kovilpatti on 20.06.2020. Subsequently, on 22.06.2020, at about 07.35 p.m., the deceased Benniks complained of wheezing problem and he was immediately taken to the Government Hospital, Kovilpatti, where he died at about 09.00 p.m. Based on the complaint given by the Jail Superintendent, Sub Jail, Kovilpatti, an FIR was registered in Crime No.649 of 2020 under Section 176(1A)(i) of the Code of Criminal Procedure, at Kovilpatti East Police Station.

3.2.Thereafter, on the very same day, at about 10.20 p.m., the deceased Jeyaraj also fell sick and he was also taken to the Government Hospital, Kovilpatti and he died at about 05.40 a.m., on 23.06.2020. Once again, based on the complaint filed by the Jail Superintendent, Sub Jail, Kovilpatti, an FIR was registered in Crime No.650 of 2020 under Section 176(1A)(i) of the Code of Criminal Procedure.

3.3.In both the cases, inquest was conducted by the learned Judicial Magistrate No.1, Kovilpatti. Thereafter, autopsy was conducted by a Board of three doctors of Forensic Medicine and Toxicology Department of Tirunelveli Medical College, Tirunelveli and they gave an opinion that, both the deceased would appear to have died of complications of blunt injury sustained.

3.4.In the meantime, the Madras High Court, Madurai Bench, has taken suo motu Writ Petition in W.P.(MD)No.7042 of 2020 and ordered investigation of the case by CBCID. Based on the direction, CBCID



took up the investigation and registered two FIRs in Crime No. 18 of 2020, and during investigation, the complicity of the petitioner *prima facie* established and he was arrested by CBCID on 02.07.2020. Subsequently, investigation of both the cases was transferred to CBI, by the Government of Tamil Nadu, vide Notification dated 29.06.2020. Subsequently, the Government of India, also issued a Notification for CBI enquiry on 06.07.2020. Based on the same, the CBI took over the investigation and registered the fresh First Information Reports in RC 0502020 S0008 and RC 0502020 S0009. During investigation, it was found that after the arrest of both the deceased, they were kept in Sathankulam Police Station, and at the instigation of the petitioner herein, the other accused, namely, Sub-Inspector of Police and Constables brutally tortured the deceased and caused as many as 18 injuries on both the deceased, subsequently, they were died due to complications of blunt injuries sustained by them. Now, seeking bail, the petitioner is before this Court with the present bail petitions.

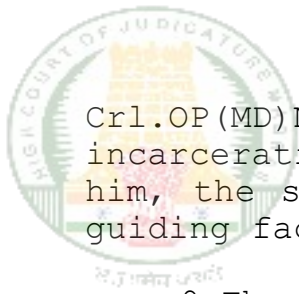
4. Heard both sides.

5. The ground on which these petitions came to be filed is that for the past 2-1/2 years he is in custody. Since from the date of arrest, repeated bail applications filed by the petitioner came to be dismissed by this court on the earlier occasions. Later, liberty was granted to the petitioner to move the trial court for bail, since final report was stated to be filed. On the ground, he moved the bail application before the trial court and that came to be dismissed, by order, dated 28/02/2022 in CrI.OP(MD)No.400 and 401 of 2022. After that, these two applications have been filed.

6. The facts of the case need not be elaborated and only subsequent events can be taken into account for considering the bail applications.

7. The point on which, the learned counsel appearing for the petitioner would press upon this court is that 47 witnesses have been examined so far and it consumed almost three years and the remaining witnesses examination may take another five years; The large incarceration is sufficient enough to enlarge the petitioner on bail; By relying upon the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. K.A.Najeeb (2021)3 SCC 713; (2) Raghu Ganesh Vs. State rep. by the Additional Superintendent, CBI, SCU-V, SC II, New Delhi (CrI.OP(MD)No.4980 of 2022, dated 18/05/2022); (3) Yedala Subba Rao & another Vs. Union of India (Criminal Appeal No.1153 of 2023, dated 17/04/2023); (4) Mohd Muslim @ Hussain Vs. State (NCT of Delhi) (2023 LiveLaw (SC) 260).

8. Per contra, the learned Additional Public Prosecutor would submit that considering the judgment of the Hon'ble Supreme Court in several cases on this point, the coordinate bench of this court in the application of the co-accused namely Raghu Ganesh in



Crl.OP(MD)No.4980 of 2022, dated 18/05/2022 that mere p of incarceration cannot be considered for granting bail. According to him, the seriousness as well as as severity of the offence are the guiding factors.

9.The De-facto complainant has also represented by Advocate and would point out that even during the pendency of the trial process, the petitioner involved in some sort of illegal activity, which itself is sufficient for rejecting the bail application. There is every likelihood of tempering the witnesses and hampering of trial process. So according to him, the severity of the offence must be taken into account.

10.The learned Additional Public Prosecutor required to come with a schedule for completion of the above said trial process and he promised to come with the schedule and scheme, as the case may be and filed a counter. Apart from that, he has also submitted that since because a lengthy cross examination running to several days for a single witness is undertaken by the accused, the trial is not in a position to be completed within a stipulated time. He would further submit that only six more witnesses are going to be examined and within three months, the trial process will be completed. For that, purpose, he was requested this court a direction to the trial court to conduct the trial even during Summer Vacation by exercising the power under Section 482 of Cr.P.C and Article 227 of the Constitution of India.

11.I am afraid that such an order can be passed by this court directing the trial court to conduct the trial process during the vacation. Only the Hon'ble Chief Justice is a competent authority to order such a direction and this Bench is not competent to give any such direction against the notification to be issued by the Government in consultation with the High Court. So the option is not now available.

12.I need not elaborate much on the point of long incarceration, since the coordinate bench of this court in Crl.OP (MD)No.4980 of 2022, dated 18/05/2022 has made an exhaustive discussion in the above said issue.

13.Now let us concentrate on the above said judgment of the Hon'ble Supreme Court in the case of Union of India Vs. K.A.Najeeb (2021)3 SCC 713. In that case, the Hon'ble Supreme Court has stated that when the matter was taken up, considering period of incarceration, the High Court granted bail. Over which, the Union of India filed appeal. It has been pointed out as under:-

"18.Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat



to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind in the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's right guaranteed under Part III of our Constitution have been well protected.

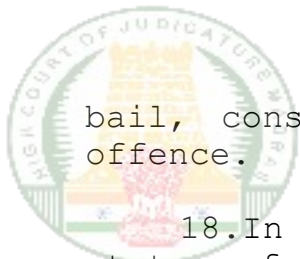
So reading of the above said observation shows that the length of the period of detention exceeded the substantial part of sentence prescribed under the relevant penal provision and unlikelihood of trial would have completed within a particular period was considered to be the ground. So bail was granted by the High Court. The Supreme Court approved the above said and also dismissed the appeal.

14. Now the question, which arises for consideration is whether the petitioner can draw any advantage or support from the above said judgment. Here the period of incarceration is not the substantial part of the sentence prescribed. As undertaken by the learned Additional Public Prosecutor, the trial process will be completed within a period of three months. So the above said parameter upon the point, bail was granted by the High Court as confirmed by the Hon'ble Supreme Court are the factors not available in the present case.

15. He would further rely upon the judgment of the Hon'ble Supreme Court reported in Mohd. Muslim @ Hussain Vs. State (NCT OF DELHI) and submit that considering the incarceration period only the above said two persons have been enlarged on bail. By drawing the analogy of the above said judgment to the present accusation against the petitioner, the learned Counsel would submit that the allegation against the petitioner is that he instigated the other accused to assault the deceased; two of the star witnesses have been examined in full and remaining witnesses are not material. So there is no necessity for tempering the above said witnesses. So according to him, his further incarceration is not going to serve any purpose.

16. No doubt the petitioner is in custody for more than 2-1/2 years. Now point which arises for the consideration is whether at the end of the trial process, he is entitled to be released on bail.

17. But in the light of the above said undertaking given by the learned Additional Public Prosecutor that the trial will be completed within three months, at the end of the trial process, it may not be proper for this court to enlarge the petitioner on



bail, considering the gravity as well as the seriousness of the offence.

18. In the light of the above said factual aspects and the status of the petitioner, if released on bail, he may tamper the further witnesses who are going to be examined and hampering the trial process also. This petitioner alleged to have been a prime person in the above said entire occurrence. Since substantial evidence has also been available in record, any discussion made by this court with regard to the merit, may affect the outcome of the trial process. so I need not discuss anything about the merits of the case and the evidence let in by the prosecution and the facts extracted during the course of cross examination. Without expressing any opinion on the merit of the allegation and the charge as pointed out earlier, the only point is whether at the fag-end of the trial process, the remedy can be extended to the petitioner. But as pointed by the learned Additional Public Prosecutor, as mentioned above, some sort of activity has also been brought to the notice of this court by the de-facto complainant.

19. Considering the factual circumstances as well as the severity of the offence, I am of the considered view that if the petitioner is released on bail, there is every likelihood of tempering the remaining witnesses and hampering of the trial process. So I am of the considered view that even though the petitioner is in custody for more than 2-1/2 years, that itself is not sufficient to grant bail. The parameter for granting the bail if applied to the case of the petitioner and fair justice, I am of the considered view that he is not entitled for release, since the trial process, as undertaken by the learned Additional Public Prosecutor, will be completed within a period of three months. I find no reason to enlarge the petitioner on bail.

20. In the result, both the bail applications are **dismissed**.

sd/-
24/04/2023

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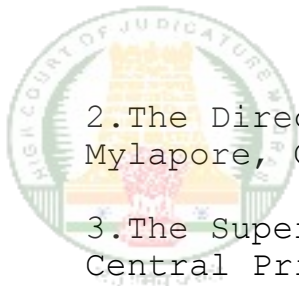
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

To

1. The Additional Superintendent of Police,
SBI, SC II,
New Delhi.

<https://www.mhc.tn.gov.in/judis>



2.The Director General of Police,
Mylapore, Chennai.

3.The Superintendent,
Central Prison, Madurai.

4.The Special Public Prosecutor for CBI,
Madurai Bench of Madras High Court, Madurai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.V.RAJIV RUFUS, Advocate, SR-6456(I), dated 24.04.2023

ORDER

IN

CrI.OP(MD)Nos.6125 and 6127 of 2023

Date :24/04/2023

ED/MMS/SAR- (12/06/2023) 7P 7C