



Crl.O.P.(MD) Nos.10559 & 10561 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 2.3.2023

Delivered on : 31.3.2023

CORAM

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

Crl.O.P.(MD) Nos.10559 & 10561 of 2020
and
Crl.M.P.(MD) No.8218 of 2021

Crl.O.P.(MD) Nos.10559 of 2020

D.Lakshmanan

Petitioner

VS.

1. M.Karmegam
2. R.Malaikolundu
3. Malaisamy
4. Veeranan
5. State through the
Sub Inspector of Police,
Melavalavu PS in Cr.No.39/2020
u/s.147, 148, 447, 341, 294(b), 323
324, 307 IPC
r/w 3(2)(va) SC/ST POA Act 2015

Respondents

PRAYER: Criminal Original Petition filed under Section 439(2) of Cr.P.C. to cancel the bail granted to respondents 1 to 4 by the III Additional District and Sessions Court (PCR Court), Madurai in order dated 9.9.2020 in Crl.M.P.No.445 of 2020 and direct the fifth respondent police to take respondents 1 to 4 into custody and remand.



Crl.O.P.(MD) Nos.10559 & 10561 of 2020

Crl.O.P.(MD) Nos.10561 of 2020

D.Lakshmanan

Petitioner

VS.

1. M.Gopala Krishnan

2. State through the
Sub Inspector of Police,
Melavalavu PS in Cr.No.39/2020
u/s.147, 148, 447, 341, 294(b), 323
324, 307 IPC
r/w 3(2)(va) SC/ST POA Act 2015

Respondents

PRAYER: Criminal Original Petition filed under Section 439(2) of Cr.P.C. to cancel the bail granted to the first respondent by the III Additional District and Sessions Court (PCR Court), Madurai in order dated 9.9.2020 in Crl.M.P.No.447 of 2020 and direct the second respondent police to take the first respondent into custody and remand.

Crl.M.P.(MD) Nos.8218 of 2021

D.Suresh

Petitioner

VS.

1. M.Gopala Krishnan

2. State rep. by the
Sub Inspector of Police,
Melavalavur PS
Madurai District.
(Cr.No.39/2020)

3. D.Lakshmanan

Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 482 of Cr.P.C. to pass an order to implead the petitioner as third respondent in



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For Petitioner : Mr.T.Sakthikumaran
For State : Mr.Kottaichamy, Govt. Advocate
(Crl. Side)
For other respondents
in both the Crl.O.Ps : Mr.N.Dilipkumar

ORDER

The present Criminal Original Petitions have been filed by the de facto complainant challenging the order passed dated 9.9.2020 by the III Additional District and Sessions Court (PCR Court), Madurai in Crl.M.P.No.445 and 447 of 2020 granting bail to the accused.

2. Crl.M.P.No.8218 of 2021 has been filed by one D.Suresh Son of Dharmraj, a co-victim of the occurrence, seeks to get impleaded as respondent in Crl.O.P.No.10561 of 2020.

3. Brief facts behind filing of the present petitions are as under:-

i) On 24.2.2020, at about 8.15 pm, the Sub Inspector of Police, Melavalavu Police Station, having received information from Meenakshi Mission Hospital, Madurai about admission of one



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Lakshmnan, the petitioner in the Criminal Original Petitions, for his injuries, had rushed to the hospital and on enquiring the said Lakshmnan, received a complaint from him and registered the same in Crime No.39 of 2020 for the offences punishable under Sections 147, 148, 447, 341, 294(b), 323, 324, 307, 379 IPC and Section 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

ii) The complaint contained the following allegations:-

The de facto complainant Lakshmanan's wife Anitha has got ancestral properties at Sambiranipatti, Melur, Madurai, which, they were cultivating and a dispute arose with regard to possession of such lands at the instance of the accused Gopalakrishnan and his family members and that dispute was decided in favour of the de facto complainant and thereupon, the land was being surveyed for fencing. Despite the decision of the court in favour of the de facto complainant, the accused Gopalakrishnan was continuing with animosity with the de facto complainant on the land dispute. Similarly, the neighbouring land owner one D.Suresh Son of Dharmaraj was facing hostility from the accused Gopalakrishnan. Whiles, on 24.2.2020, the land belonging to the said Suresh was being surveyed in the presence of Suresh and his



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father Dharmaraj. The de facto complainant, being friend of the said Suresh was also there. By then it was about 5.30 pm and at that time, the accused Gopalakrishnan and the other accused Karmegam, Malaikolundu, Malaichamy, Veeranan and some of their relatives, armed with Aruval, Stick and other weapons attacked the said Suresh and his father Dharmaraj questioning them as to how they could lay the boundary stone when they hail from other place and in that attack, both Suresh and his father had sustained bleeding, abrasive and cut injuries. The de facto complainant, who was capturing the incident in his mobile phone, was also attacked by them by calling his caste name and he was also inflicted with bleeding injuries and subsequently, they had snatched the cell phones of the de facto complainant and the said Suresh and 5 sovereigns of gold chain worn by Suresh. The injured de facto complainant, Suresh and his father reached the Government Hospital, Melur, where they were given first aid and on being referred for further treatment, they got admitted in Meenakshi Mission Hospital and subsequently, they had given the statement to the Sub Inspector of Police, Melavalavu, who came to the Hospital on receipt of information about the incident.

iii) Since the offence alleged against the accused attracted the



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provisions of SC/ST (PoA) Act, the accused had approached this court filing Crl.O.P.(MD) Nos.4893 of 2020 and 5163 of 2020 seeking direction to the III Additional District and Sessions Court (PCR Court), Madurai to consider their bail applications.

iv) This court, by order dated 19.3.2020 in Crl.O.P.(MD) No. 4893 of 2020 and 24.3.2020 in Crl.O.P.(MD) No.5163 of 2020 directed the III Additional District and Sessions Court (PCR Court), Madurai to consider the bail applications of the accused after affording due opportunity to the victim under Section 15A of the SC/ST Act.

v) As a consequence, the orders dated 9.9.2020 in Crl.M.P.Nos.447 of 2020 and 445 of 2020 came to be passed by the III Additional District and Sessions Court (PCR Court), Madurai granting bail to the accused. Seeking to cancel the bail so granted, the present Criminal Original Petitions have been filed by the de facto complainant.

vi) Subsequent to filing of the present Criminal Original Petitions, the co-victim of the occurrence has filed a petition in Crl.M.P. (MD) No.8218 of 2021 seeking permission to get impleaded in Crl.O.P.No.10561 of 2020.



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4. Mr.T.Sakthi Kumaran, learned counsel appearing for the petitioner would submit his arguments as under:-

i) The accused M.Gopalakrishnan and the other accused are rowdy and history sheeters on the file of the respondent police and they have 12 previous cases pending against them.

ii) The accused are quite well off. With their money and muscle power, they indulge into criminal activities and escape from the clutches of law by lodging false counter complaints against the victims.

iii) Despite the pendency of the complaint, the accused had been threatening the de facto complainant with dire consequences when the de facto complainant went to his land.

iv) The police had filed a detailed report before the Special Court against the accused on the law and order problems created by them. The de facto complainant had also filed a statement of objection pointing out that the accused are history sheeted rowdies having many previous cases, the weapons used by them in their attack have not been recovered by the police, the cell phones and 5 sovereign of jewel snatched by the accused from the de facto complainant and the co-victim Suresh have also not been recovered, further threats were made by the accused to withdraw the complaint or else to do away with the



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de facto complainant and his family members, however, the Special Court, without properly considering the same, has proceeded to grant bail to the accused by passing a non-speaking order in a mechanical manner, totally ignoring the objection made by the police as well as the de facto complainant.

v) The Special Court has failed to consider the guidelines for grant of bail issued by the Apex Court in State of U.P. through CBI vs. **Amaramani Tripathi** (2005) 8 SCC 21.

vi) After coming out on bail, the accused had continued their atrocities and ultimately, on 18.12.2022, they had murdered the co-victim in the case on hand viz., Suresh Son of Dharmaraj and thereby a case in Crime No.202 of 2022 under Sections 147, 148, 341, 302, 506(ii) IPC @ 147, 148, 212, 294(b) 341, 355, 302, 506(ii) read with 120(B) IPC came to be filed and their Applications in Crl.M.P.No.588, 843 of 2023 seeking bail and Crl.M.P.No.261 of 2023 seeking anticipatory bail were dismissed by the Principal Sessions Judge (FAC), Madurai, which shows the attitude of the accused in abusing the personal liberty granted by the court. Therefore, the bail granted to them is liable to be dismissed.



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5. Affirming the allegations of the de facto complainant, a detailed counter affidavit has been filed by the respondent-police and pointing out the contents of the counter affidavit, Mr.Kottaichamy, learned Government Advocate (Crl. Side) would seek for cancellation of bail granted to the accused.

6. Detailed counter affidavit has been filed by the accused opposing the petitions filed for cancellation of bail, the crux of which is as under:-

i) The Special Court, by properly considering the bail application and the objections and considering the balance of convenience of the parties, had granted the bail and no case is made out for cancellation of the bail as the accused have not violated any condition of bail order.

ii) The investigation in Crime No.39 of 2020 has been completed, final report has been filed and the case has been taken on file as Spl.S.C.No.25 of 2021 on the file of the Additional District Judge (PCR), Madurai against the present accused and others.

iii) The accused are innocent agriculturists and they took initiatives to retrieve water bodies of their locality from being



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encroached by real estate promoters and one of such persons affected by the welfare measures is one Kusalavan, father-in-law of the de facto complainant. He had set up the de facto complainant to lodge the present complaint to thwart the activities of social service that goes against his land encroachment activities.

iv) One such measure is W.P.No.8286 of 2012 filed by the accused which came to be allowed by a Division Bench of this court, by order dated 6.8.2014 directing for protection and preservation of the water body. To wreak vengeance, the present complaint has been lodged portraying the innocent agriculturists as history sheeted rowdies.

v) The cases enlisted by the petitioners, which are said to have been pending against the present accused, are either quashed or closed as mistake of fact or having become infructuous or having been compromised and some cases are nothing but, counter blast. In some cases, the present accused are not at all arrayed as accused.

vi) The order of the PCR Court granting bail to the accused is proper in law and hence, it does not warrant any interference and the petitions seeking cancellation of bail are liable to be dismissed.



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7. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. The point for consideration is whether the order passed by the PCR Court granting bail to the present accused is sustainable or it is liable to be cancelled.

9. To decide the issue as to whether a bail order is sustainable or not, a balanced view is required in between two sides, **personal liberty** of the person accused being predominant on one side, safety and protection of the victims, subsequent conduct of the accused, new circumstance arisen after grant of bail and misuse of liberty play a major role on the other side. No doubt, **bail is the rule and jail is an exception**. Equally, there are several aspects to be considered for grant of bail. The Apex Court in **State of U.P. through CBI vs. Amaramani Tripathi** (2005) 8 SCC 21 has issued the following guidelines to be considered for grant of bail:-

"(i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;



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- (ii) nature and gravity of the charge;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of accused absconding or fleeing if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being tampered with; and*
- (viii) danger, of course, of justice being thwarted by grant of bail."*

10. In the cases on hand, though there is a direction by this court vide orders dated 19.3.2020 in Crl.O.P.(MD) No.4893 of 2020 and 24.3.2020 in Crl.O.P.(MD) No.5163 of 2020 to consider the bail applications after affording opportunity to the victim, under Section 15A of SC/ST Act, it appears that the PCR Court has proceeded to grant bail by passing a mechanical order merely recording the objection filed by the de facto complainant to the effect that if the accused are released



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on bail, they would continue to do the same offence against the victim and there would be a threat from the accused to the the victim and his family members.

11. It is relevant to note at this juncture that the SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of uppercastes. The prime objective of the SC/ST Act is to deliver justice to marginalised through proactive efforts, giving them a life of dignity, self-esteem and a life without fear, violence or suppression from the dominant castes.

12. Therefore, when a bail application is moved in respect of an offence alleged to have been committed against a person belonging to SC/ST at the hands of other dominant castes and the same has been objected by the victim, the duty cast upon the court becomes heavier to consider the objection in a proper perspective.

13. In **Hariram Bhambhi vs. Satyanarayan and another** (2021) SCC OnLine SC 1010, a Division Bench of the Apex Court has



held as under:-

"22. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well.

23. Quite apart from the infraction of the provisions of the SC/ST Act, there has been no application of mind by the Single Judge of the High Court to the considerations that govern the grant of bail. This Court recently in *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana*¹⁵, of which one of us



was a part (Justice DY Chandrachud), has elaborated on the considerations that govern the grant of bail. This Court also emphasized that recording of reasons by a judge is not a task in formality, but an exercise of judicial accountability and transparency, which makes the decision available for further scrutiny at the touchstone of reason and justice. This Court observed:

"39. Grant of bail under Section 439 CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail-as in the case of any other discretion which is vested in a court as a judicial institution-is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective



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standards of reason and justice....

40. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail "without discussing the evidence in detail" taking into consideration:

- (1) the facts of the case;*
- (2) the nature of allegations;*
- (3) gravity of offences; and*
- (4) role attributed to the accused."*

14. Another Division Bench of the Apex Court has held in ***Jaibunisha vs. Meharban and another*** (2022) 5 SCC 465 as under:-

"22. *On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates (P) Ltd. v. Masood Ahmed Khan [Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010)*



9 SCC 496 : (2010) 3 SCC (Civ) 852] , wherein after referring to a number of judgments this Court summarised at SCC para 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

22.1. *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

22.2. *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

22.3. *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*

22.4. *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice*



by judicial, quasi-judicial and even by administrative bodies.

22.5. *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

22.6. *Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

22.7. *Insistence on reason is a requirement for both judicial accountability and transparency.*

22.8. *If a Judge or a quasi-judicial*



authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

22.9. *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.*

22.10. *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [Defence of Judicial Candor, (1987) 100 Harvard Law Review 731-37].)*

22.11. *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for*



development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

.....

25. *We have extracted the relevant portions of the impugned orders [Meharban v. State of U.P., 2020 SCC OnLine All 1858] v [Jumma v. State of U.P., 2020 SCC OnLine All 1859] above. At the outset, we find that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As evident from the judgments of this Court referred to above, a court deciding a bail application cannot grant bail to an accused without having regard to material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused;*



tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused.

26. *While we are conscious of the fact that it is not necessary for a court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused may not have been crystallised as such, an order dehors any reasoning whatsoever cannot result in grant of bail. If bail is granted in a casual manner, the prosecution or the informant has a right to assail the order before a higher forum. As noted in Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] , when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking*



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cancellation of bail under Section 439(2)CrPC. However, if no new circumstances have cropped up since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima facie case against the accused."

15. In the case on hand, the victim had objected for grant of bail by contending specifically that if the accused are released on bail, they would continue to do the same offence against the victim and there would be a threat from the accused to the the victim and his family members. The PCR Court has passed a non-speaking order merely recording the objection without considering the genuineness of the same or otherwise.

16. In such a background, producing copy of the order, it has been brought to the notice of this court by the learned counsel appearing for the de facto complainant as well as the learned Government Advocate (Criminal Side) that the the co-victim by name D.Suresh, who had filed an Application in Crl.M.P.(MD) No.8218 of 2021



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for impleading himself Crl.O.P.(MD) No.10561 of 2020, has been murdered by some of the present accused on 18.12.2022, for which, a case in Crime No.202 of 2022 was registered by the respondent and they were arrested and remanded to judicial custody on 9.1.2023 and their Applications seeking bail and anticipatory bail in Crl.M.P.Nos.588 of 2023, 843 of 2023 and 261 of 2023 were dismissed by the Principal Sessions Judge (FAC), Madurai by order dated 6.2.2023.

17. The occurrence in the present cases is said to have taken place upon a land dispute. The murder of the co-victim is also said to have taken place upon the same reason. The date of occurrence in the present cases is 24.2.2020. The accused were granted bail on 9.9.2020 on their surrender before the PCR Court. Whiles, they are alleged to have murdered the co-victim Suresh on 18.12.2022, nearly after two years after coming out on bail which shows the character and attitude of the accused and strong enmity and hatred maintained by them towards the victims of the occurrence for these two long years and also the likelihood of their committing similar offence against the other victims of the occurrence.

18. In view of the above, this court, left with no other option, is of the view that the order dated 9.9.2020 passed by the III



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Additional District and Sessions Court (PCR Court), Madurai in Crl.M.P.Nos.445 and 447 of 2020 granting bail to the accused are liable to be set aside and accordingly, they are set aside and the bail granted to the accused stands cancelled. The matters are remitted back to the III Additional District and Sessions Court (PCR Court), Madurai for deciding the Bail Petitions afresh on merits and in accordance with law after providing sufficient opportunity to the de facto complainant as contemplated under Section 15A of the SC/ST Act.

19. In the result, the Criminal Original Petitions are allowed. Respondents 1 to 4 in Crl.O.P.(MD) No.10559 of 2020 and first respondent in Crl.O.P.(MD) No.10561 of 2020 are directed to surrender before the Committal Court within a period of two weeks from the date of this order, if they are out of incarceration, or else, the respondent police shall produce them before the Committal Court within the period stipulated above. In view of the subsequent development viz., the death of the petitioner, Crl.M.P.No.8218 of 2021 abates.

31.3.2023

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Index: Yes.



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To
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1. III Additional District and
Sessions Court (PCR Court), Madurai.
2. Sub Inspector of Police,
Melavalavu Police Station,
Madurai.
3. The Public Prosecutor,
Madurai Bench of
Madras High Court, Madurai.



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A.D.JAGADISH CHANDIRA.J.

ssk.

P.D. ORDER IN
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and
Crl.M.P.(MD) No.8218 of 2021

Delivered on
31.3.2023