



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 26/06/2023
PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.11467 of 2023

1. Sivaperumal @ Siva,

2. Muthuraja @ Babhuraja, ... Petitioners/Accused 3 & 4

Vs

The State rep.by
The Inspector of Police,
Kurumbur Police Station,
Thoothukudi District.
(Crime No.98 of 2022).

... Respondent/Complainant

For Petitioner : M/s.VISHNUVARDHAN S,
Advocate.

For Respondent : Mr.R.M.ANBUNITHI,
Additional Public Prosecutor

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

PRAYER :- For Bail in Crime No.98 of 2022 on the file of the respondent police

ORDER : The Court made the following order :-

The petitioners/A3 and A4 who were arrested and remanded to judicial custody on 13.07.2022 for the offences under sections 302 of IPC @ 120(b), 302 IPC r/w.34 of IPC in Crime No.98 of 2022 on the file of the respondent police seek bail.

2. The case of the prosecution is that there exists enmity between the deceased and one kesavan and Muthuselvam regarding the death of one Velkumar who is the younger brother of the deceased. Due to that on 12.07.2022 the detainee and the other accused persons attacked the deceased with deadly weapons and caused his death, hence the case.

3. Heard both sides and perused the materials available on record including the First Information Report.

4. It is seen that there are four accused in this case and the petitioners herein are arrayed as A3 and A4.



5. The learned counsel for the petitioners would submit that though the petitioners were detained under Act.14 of 1982, subsequently the detention order was quashed by this Court in HCP (MD) No.1643 and 1653 of 2022 dated 02.06.2023. The petitioners are no way connected with the alleged occurrence and only based on the confession given by the co-accused the petitioners have been implicated as an accused. They have nothing to do with the alleged crime as alleged by the prosecution and they had no motive to murder the deceased. All the allegations are as against A1 and A2. Further the petitioners are in custody from 13.07.2022. That apart there is no threat to the witnesses as alleged by the prosecution. The trial is yet to be taken , therefore he sought for bail.

6. The learned Additional Public Prosecutor would submit that it is a case of retaliation murder, since the deceased was the witness in the earlier murder case, in which A1 and A2 were accused. The brother of the deceased was murdered by A1 and A2 and even before chief examination in the trial deceased was murdered by A1 to A4. In so far petitioners are concerned , they are arrayed as A3 and A4. The first petitioner/A3 has five previous case and the second petitioner/A4 has three previous cases. Though the detention order was quashed by this Court it is a case of retaliation murder and if the petitioners are released on bail they will indulge in same crime and they will threaten the witnesses. Therefore he sought for dismissal of the case and also sought for speedy disposal of the case inorder to protect the entire witnesses.

7. Taking into consideration all the above facts and circumstances of the case and also taking into consideration the gravity of offence this court is not inclined to grant bail to the petitioners.

8. Hence the petition stands dismissed.

9. It is also seen that fair trial is the main object of criminal procedure and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of accused, the victim and of the society , and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned and the same must be ensured as this is a constitutional as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. It is relevant to point out Section 7(m) of the Witness Protection Scheme,2018 here which reads thus :

" Ensuring expeditious recording of deposition during trial on a day to day basis without adjournments".



10. While this Court dealing with the similar case had dealt with in Crl.O.P.No.12934 of 2021, wherein while following the dictum of the Hon'ble Apex Court in Mahender Chawal's case, ensuring safety and security of the victims, who would be the witnesses in the trial as also the other witnesses who would be deposing during the trial, had issued the following directions:

i) As undertaken by the respondent/CBI, all earnest efforts be made to commence the trial by the 1st week of September, 2021 and to that extent the respondent/CBI shall take all earnest efforts to apprehend all the persons, if not already apprehended and file necessary report before the commencement of the trial.

ii) It is open to the respondents to file necessary application seeking identity protection of the witnesses before the Competent Authority, who, on receipt of the same, shall pass appropriate order in terms with Para-III of the Scheme.

iii) The trial court shall, during the course of hearing of such application, shall ensure that the name of the witness is not revealed to any other person, which is likely to lead to the identification of the witness.

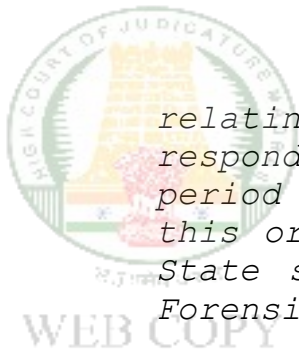
iv) The Witness Protection Measures as spelt out in in Part-II, Part-III, Part-IV and Part-V of the Witness Protection Scheme, 2018, shall be strictly adhered to once the competent authority has passed an order protecting the identity of the witness.

v) The State Government also shall ensure that the types of protection measures, as envisaged under Clause-7 of the Witness Protection Scheme, is strictly adhered to, so that the identity of the witness would be closely guarded pretrial and post-trial so that the safety and security of the victims and witnesses would stand protected.

vi) The State Government shall provide the necessary funds for implementing the witness protection programme pursuant to the Witness Protection Order passed by the competent authority.

vii) The State shall also take all necessary steps for providing Live Link for taking deposition of the victims and the witnesses for the purposes of interacting with the competent authority as also for the purpose of deposing before the Court.

viii) The Forensic Lab, which comes under the control of the State Government, shall submit the necessary reports



relating to the items, which have been sent by respondent for analysis, to the respondent/CBI within a period of two weeks from the date of receipt of a copy of this order. The learned Public Prosecutor appearing for the State shall ensure that the reports are dispatched by the Forensic Lab, within the time frame as given above.

ix) In view of the sensitivity of the case, the trial court shall take all necessary steps to conduct "In Camera Proceedings", wherever necessary as provided under Clause 2 (f) of the Witness Protection Scheme.

x) As informed by the learned Public Prosecutor for the State, the State shall issue necessary notification nominating Ms.J.Mutharasi, Superintendent of Police, CBCID - Unit-2, for the purpose of assisting the respondent CBI in prosecuting the case before the trial court.

xi) The Government shall initiate appropriate departmental action forthwith against the then Superintendent of Police and also the other police personnel, who were involved in divulging the names of the victims and the accused to the media.

xii) The learned Sessions Judge, Mahalir Neethi Mandram, Coimbatore, is directed to conduct the trial on day-to-day basis and complete the trial within a period of six months from the date of commencement of the trial, as undertaken by the respondent/CBI.

xiii) The Public Prosecutor appointed by the CBI before the trial court for the purpose of conducting the trial before the Sessions Judge, Mahalir Neethimandram, Coimbatore shall take the assistance of Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases, High Court, Madras, for effective conduct of the trial in accordance with. The Public Prosecutor appointed for conducting the trial shall also keep the Special Public Prosecutor for CBI Cases, High Court, Madras, informed of the day-to-day affairs in the conduct of the trial so that the Special Public Prosecutor for CBI Cases, High Court, Madras, can give his rich experience in the proper conduct of the case for ensuring fair delivery of justice to all the parties concerned".

11. In view of the above, the Director General of Police, Tamil Nadu is directed to issue necessary instructions to the police authorities to follow the above directions in letter and spirit for each and every trial.



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12. Accordingly the trial Court is directed to complete the trial in S.C. No.307 of 2022 as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

sd/-
26/06/2023

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30/06/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

AAV

TO

- 1 THE ADDITIONAL DISTRICT JUDGE NO.I,
THOOTHUKUDI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE INSPECTOR OF POLICE,
KURUMBUR POLICE STATION,
THOOTHUKUDI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO:

- 1 THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 2 THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- 3 THE DIRECTOR GENERAL OF POLICE,
TAMIL NADU, CHENNAI.

ORDER

IN

CRL OP(MD) No.11467 of 2023
Date :26/06/2023

SA/SAR. /30.06.2023/5P/8C