



*Crl.A.(MD).No.499 of 2023*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved On : 18.07.2023  
Pronounced On : 01.06.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

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Malaikolunthu

... Appellant

Vs.

1.State through  
The Deputy Superintendent of Police,  
Melur Sub Division,  
Madurai District.

2.The Inspector of Police,  
Melavalavu Police Station,  
Madurai District.  
(Crime No.39 of 2020)

3.Lakshmanan

... Respondents

**PRAYER** : Petition filed under Section 14A(2) of SC & ST (POA) Amendment Act, 2015, to call for the records relating to the impugned order passed in Crl.M.P.No.1798 of 2023 dated 22.06.2023 on the file of the learned III Additional District and Sessions Judge (PCR), Madurai District and set aside the same as illegal and arbitrary and enlarge the



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appellant/accused No-3 in Crime No.39 of 2020, on the file of the respondent on bail by allowing this Appeal.

For Petitioner :Mr.K.Jeyamohan

For Respondents :Mr.M.Muthumanikkam  
Counsel for Government of Tamilnadu  
(Crl.Side)for R1 and R2

:Mr.K.K.Bharathi Kannan for R3

### **ORDER**

This Criminal Appeal has been filed against the order impugned in Crl.M.P.No.1798 of 2023 dated 22.06.2023 on the file of the learned III Additional District and Sessions Judge (PCR), Madurai District.

2 (i). The case of the prosecution is that the appellant is arrayed as accused No.3 in Crime No.39 of 2020 on the file of the second respondent police. The appellant and the other accused said to have committed the offences under Sections 147, 148, 447, 341, 294 (b), 323, 324, 307, 379 IPC and Section 3(2)(va) of SC and ST (Prevention of Atrocities) Amendment Act, 2015.



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2(ii). The defacto complainant's wife have the lands in the Sambiranipatti, Melur Taluk, Madurai District. The accused family have the lands adjoining to the defacto complainant's land and the injured witness Suresh's land. The accused family had the dispute with the defacto complainant and also injured witness Suresh. The defacto complainant got the order in favour of his wife and made fencing after measurement. On 24.02.2020, when the injured Suresh, and his father Dharmaraj were trying to fence their land, the appellant and his remaining family members along his friends unlawfully assembled together and assaulted the said Suresh and his father Dharmaraj with aruval, sticks and other deadly weapons. The defacto complainant captured the said incident in his mobile phone. Enraged the same, the appellant and other accused assaulted the defacto complainant by abusing his caste name. Hence, the defacto complainant and other witnesses sustained injuries. Therefore, the respondent police registered the case in Crime No.39 of 2020 for the alleged offences under Sections 147, 148, 447, 341, 294 (b), 323, 324, 307, 379 IPC and Section 3(2)(va) of SC and ST (Prevention of Atrocities) Amendment Act, 2015 against the appellant and other accused.



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3. Since the offence attracted the provisions of SC/ST (PoA) Act, the accused had approached this Court by filing Crl.O.P.(MD) Nos.4893 of 2020 and 5163 of 2020 seeking direction to the III Additional District and Sessions Judge, (PCR Court) Madurai, to consider the bail applications. By orders dated 19.03.2020 and 24.03.2020 in Crl.O.P.(MD)Nos.4893 and 5163 of 2020 respectively, this Court directed the III Additional District and Sessions Judge (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.

4. As a consequence, the orders dated 09.09.2020 in Crl.M.P Nos. 447 and 445 of 2020 came to be passed by the III Additional District and Sessions Court (PCR Court) Madurai, granting bail to the accused. Suresh is one of the injured witness, filed the application in the above proceedings to oppose the bail. But the learned trial Judge granted bail. Taking that animosity, some of the accused in the original crime number, committed murder of the said injured witness/Suresh.



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5. Thereafter, the defacto Complainant Lakshmanan filed a petition for cancellation of bail before this Court. This Court after hearing all the parties, including the accused, cancelled the bail granted to the appellant and other accused by allowing the Crl.O.P.(MD).Nos.10559 of 2020 and 10561 of 2020 dated 31.03.2023. This Court is also observed that the learned trial judge, while granting bail to the accused, has not considered the objection raised by the victim and passed the non-speaking order. Hence, this Court set aside the bail granted to the appellant and other accused and directed the Court below to consider the plea of bail. After giving notice to the defacto complainant under Section 15(A) of the SC/ST Act, this Court further directed the appellant and other accused to surrender before the Court. As per the direction of this Court, the appellant surrendered on 25.04.2023.

6. But, Gobalakrishnan filed SLP.No.7101 of 2023 as against the order of the cancellation of bail petition and the same was disposed off on 23.06.2023, directing the accused to file application for bail before the



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concerned court.

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7. Thereafter, the appellant/accused No.3 filed bail application before the learned III Additional District and Sessions Court (PCR Court) Madurai, the same was dismissed in Crl.M.P.No.1798 of 2023 dated 22.06.2023. Being aggrieved over the said Order, the appellant/accused No. 3, has come forward with the present appeal.

8. The learned counsel for the appellant would submit that even though this Court cancelled the bail granted in favour of the appellant earlier, the appellant never involved in the subsequent murder of the witness. The other accused have previous antecedents. But, this appellant has not any previous antecedents. The only allegation against the appellant is that he was said to have assaulted the witness Suresh in the earlier occurrence. The said allegation is not true. As per the order of this Court, the appellant has surrendered who is in custody from 24.05.2023 onwards. Hence, he seeks for bail.



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9. Per contra, learned Government Advocate (Criminal Side) would submit that in earlier occasion, this Court cancelled the bail, considering the threat made to the witnesses. Further he would submit that the appellant has been arrested and remanded for the offence under SC/ST (POA) Act in Crime No.39 of 2020 on the file of the Respondent Police. This appellant/accused No.3 already involved in two previous cases in the respondent police station. The offences are heinous in nature and if the appellant is released on bail, he will tamper the evidence and evade the process of the Court and commit similar nature of offences and would cause threat to the Defacto Complainant. Now, the investigation is completed and filed the final report before the trial Court and the same is taken on file in S.C.No.25 of 2010 on the file of the learned III Additional District and Sessions Judge, PCR Court, Madurai. Hence, he has made strong objections to allow this criminal appeal.

10. The learned counsel for the defacto complainant made a detailed submission that after grant of bail, witnesses were threatened and one of the witness was murdered. The remaining witnesses are under the



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threat. He further submitted that even though SC/ST Act 2015 provided specific provision to give protection to the witnesses, there is no protection given and hence, the witnesses are under threat perception. He also cautioned that the Hon'ble Supreme Court in the case of heinous offence like this murder, the Court ought to have considered the interest of the witnesses and society. In support of his contention, he has relied upon a judgment of the Apex Court reported in **(2005) 8 SCC 21** in the case of ***State of Utra Pradesh through CBI Vs. Madhumani Tripathi*** and reported in **(2019) 14 SCC 615** in the case of ***Mahender Chawla and Others Vs. Union of India and Others***. Further he reiterated the submission that there is a continuous threat to the witnesses and hence, a direction may be issued to expedite the trial and decide the issue once for all.

11. This Court considered the rival submissions made by the parties and perused the materials available on records.

12.1. Before devolving on the merits of the case, it is relevant to bear in mind the following principle laid down by the Hon'ble Supreme



(i) In the case *State of U.P. Through CBI Vs. Madhumani Tripathi* reported in 2005 (8) SCC 21, the relevant portion is extracted here under:

*18.It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the 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[seePrahlaad Singh Bhati v.NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.)[(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] ]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that*



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*his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.*

(ii) In the case of **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana**, reported in **(2021) 6 SCC 230**:

*This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest.*

(iii) In the case of **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana**, reported in **(2021) 6 SCC 230**

*This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their*



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*families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest.*

(iv) In the case of ***Jaibunisha v. Meharban***, reported in **(2022) 5 SCC 465**

*21.6. Another factor which should guide the courts' decision in deciding a bail application is the period of custody. However, as noted in Ash Mohammad v. Shiv Raj Singh [Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172] , the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.*

(v) In the case of ***Mahipal V. Rajesh Kumar***, reported in **(2020) 2 SCC 118**

*The provision for being released on bail draws an appropriate balance between public*



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*interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis.*

(vi) In the case of ***Naveen Singh v. State of U.P.***, reported in **(2021) 6 SCC 191** :

*12.5. Merely because the charge-sheet is filed is no ground to release the accused on bail. The submission on behalf of the accused that as the record is now in the court's custody there is no chance of tampering, is concerned, the allegation against the respondent-accused is of tampering/forging/manipulating the court record which was in the custody of the court. Seriousness of the offence is one of the relevant considerations while considering the grant of bail, which has not been considered at all by the High Court while releasing Respondent 2-accused on bail.*



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(vii) In the case of ***Sudha Singh v. State of U.P.***, reported in **(2021) 4 SCC**

*7. We find in this case that the High Court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.*

12.2.The third respondent, the listed witness lakshmanan and the deceased Suresh have the land adjoining the lands of the accused. They have serious dispute regarding the enjoyment of the properties. On 24.02.2020, when the deceased Suresh and his father Lakshmanan along with their workers were trying to lay fencing over his land, the appellant and other accused allegedly assaulted them and the same was video graphed by the third respondent in his mobile phone. Therefore, he was assaulted by the



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appellant and the other accused and his jewels were looted by the accused.

Hence, the respondent police registered a case for the offences under Sections 147, 148, 447, 341, 294 (b), 323, 324, 307, 379 IPC and Section 3(2)(va) of SC and ST (Prevention of Atrocities) Amendment Act, 2015.

12.3. The respondent police has not arrested the accused and the accused got direction from this Court in Crl.O.P.Nos.10559 and 10561 of 2021. In the said Criminal Original Petition, the deceased Suresh filed impleading petition to oppose the same. Taking revenge, some of the accused murdered him. Therefore, the third respondent filed the cancellation of bail petition before this Court in Crl.O.P.(MD).Nos.10559 and 10561 of 2021, and this Court passed the following orders:

*"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 victim and his family members. The PCR Court has passed a non-speaking order merely recording the objection without considering the genuineness of*



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*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 defacto complainant as well as the learned Government Advocate (Criminal Side) that the co-victim by name D.Suresh, who had filed an application in Crl.M.P.(MD).No.8218 of 2021 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 09.01.2023 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*



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*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 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*



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*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.*

13. Thereafter, the appellant surrendered on 25.04.2023 and was confined in prison. As observed by this Court, in the earlier cancellation of bail petition, as contented by the learned Government Advocate and the learned counsel for the defacto complainant, there is still continuous threat to the life of the witnesses. Therefore, the third respondent filed a petition in the Crl.O.P.(MD).No.11964 of 2023 to complete the trial in a speedy



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manner and this Court passed the following orders:

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*“4. It is submitted by the learned counsel for the petitioner that L.W.2/one of the eye witness in this case, was allegedly killed by accused Nos.1,2,4 and 10 and a case in Crime No.202 of 2022, has been registered on the file of Melavalavu police station, Madurai. It is reported that the case is posted for serving copies of charge sheet to the accused.*

*5. Considering the submissions, made by the learned counsel for the petitioner and taking into consideration that one of the prime witness in this case was already killed by the other accused persons, it is a fit case where appropriate directions to be given by the learned III Additional Sessions Judge, PCR Court, Madurai, to dispose of the case.*

*6.In the result, the learned III Additional Sessions Judge, PCR Court, Madurai is directed to fix the date for serving copies of charge sheet and thereafter post this matter for framing of charges and fix the schedule to complete the trial as expeditiously as possible not later than four months, from the date of receipt of this order.*



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14. The learned trial Judge, considering the entire circumstances of the case, apart from the gravity of the offence, etc., dismissed the bail petition. This Court finds no merit in the contention of the learned counsel for the appellant. This Court is inclined to dismiss the Criminal Appeal on the following circumstances:

(i) The occurrence took place out of the strong enmity between two community people ie., retaliation to the earlier murder.

(ii) This appellant said to have assaulted the victims with aruval

(iii) Subsequently, the injured witness was murdered only on the ground that he opposed the bail petition filed by the accused.

(iv) According to the prosecutor and the defacto complainant, till date there is a threat to the witnesses and also the same has been observed by this Court in cancelling the earlier bail order. Therefore, there is a life threat to the witnesses, hence in order to protect the interest of the witnesses, and considering the specific provision under the SC/ST Act to provide the protection to the witnesses, this Court is not inclined to grant bail.



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(v) the other accused have the number of previous cases. More particularly, the first accused Gobalakrishanan is a history sheeted rowdy and hence, the threat perception expressed on the side of the prosecution agency and the defacto complainant deserves to be taken into consideration.

15. Therefore, in view of the above discussion, this Court is not inclined to grant bail to the appellant and hence, the criminal appeal is dismissed.

16. Since the appellant is inside the jail and the case is also ready for trial, this Court inclined to issue direction to the learned trial Judge, to expedite the trial proceedings and complete the same within a period of three months from the date of receipt of a copy of this judgment.

**01.09.2023**

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**K.K.RAMAKRISHNAN, J.**

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