



Crl.A(MD)No.547 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.07.2023

Pronounced on : 01.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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1.Sabari @ Mohana Sabarinath

2.Karthick

3.Moorthi @ Udayamoorthi

.. Appellants /
Accused Nos.1 to 3

Vs.

State represented by its,
1.The Deputy Superintendent of Police,
Tiruchendur Sub Division,
Tiruchendur,
Thoothukudi District.

2. The Inspector of Police,
Authoor Police Station,
Thoothukudi District.
(Crime No.110 of 2023)

.. Respondents/Complainants

3.Suresh

.. Respondent/Defacto
Complainant



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PRAYER: Criminal Appeal filed under Section 14A(2) of the SC/ST (Prevention of Atrocities) Act, 1989, to set aside the order dated 26.06.2023 passed by the learned II-Additional District and Sessions Judge, Special Court for trial of cases under SC/ST(POA) Act, Thoothukudi, in Crl.M.P.No.588 of 2023 in S.C.No.25 of 2022 on the file of the learned II-Additional District and Sessions Judge, Special Court for trial of cases under SC/ST(POA) Act, Thoothukudi, and enlarge the appellants/A1 to A3 on bail.

For Appellant : Mr.N.Mohideen Basha

For Respondents : Mr.R.Sivakumar
Government Advocate(Criminal side)
for R1 and R2

: Ms.D.Saranya
Legal Aid counsel
for R3

JUDGMENT

The Accused Nos.1 to 3 in S.C.No.25 of 2022 on the file of the learned II-Additional District and Sessions Judge, Special Court for trial of cases under SC/ST(POA) Act, Thoothukudi, are the appellants before this Court. The appellants are said to have committed the offence under Sections 294(b), 302, 506(ii), 109, 120B IPC and Sections 3(1)(r), 3(1)



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(s), 3(2)(v) of the SC/ST (POA) Amendment Act.

2. Case of the Prosecution:

On 29.05.2021, one Sathyamurthy belongs to Thevar community was said to have murdered by persons belongs to the scheduled caste. To retaliate the same, the complainant's brother Shanmugaraj, A4 and A5 planned to murder the person belongs to the scheduled caste in the second anniversary of the deceased Sathyamurthy. On 29.05.2022 the defacto complainant and his cousin Santanaraaj proceeded towards Aathoor from Thlaivanvadi and the deceased Shanmugaraj also followed them in another bike. They stopped the bike for attending the natures call. At the time, A1, A2 and A3 came from the opposite direction with deadly weapons assembled unlawfully and attacked the diseased Shanmugaraj and criminally intimidated him using his caste name and Shanmugaraj succumbed to injuries and died. So, the respondent police, on receipt of the complaint from the defacto complainant registered the case in Crime No.110 of 2022 for the following offence under Sections 294(b), 302, 506(ii), 109, 120B IPC and Sections 3(1)(r), 3(1)(s), 3(2)(v) of the SC/ST (POA) Amendment Act.



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2.1. The accused were arrested on 02.06.2022 and subsequently, they were detained by the detaining authority under the Tamil Nadu Act 14 of 1982, branding them as 'Goondas' by the detention order dated 15.06.2023. After the detention period is over, the appellants filed the bail petition before the learned trial Judge in Cr.M.P.No.588 of 2023 and the same was dismissed by the learned trial Judge vide impugned order dated 26.06.2023. The learned trial Judge assigned the reason that both the communities were frequently made quarrel. There is a specific overtact against the appellants and the murder was taken place with an intention to retaliate the earlier murder. In the earlier action also, both communities murdered the opposite community and hence, every chance of retaliation is possible, more particularly, witness to occurrence are under threat. Hence, the learned trial Judge dismissed the bail petition. He also stated that earlier bail petition was dismissed on 12.12.2022. According to the learned trial Judge, on instructions, he found that there is no change of circumstances.

3. Aggrieved over the same, the appellants preferred this appeal and the learned counsel for the appellants submitted that eventhough this



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is a retaliation murder, in view of the incarceration for more than one year, the plea of bail may be considered. Further, the final report was filed and the case was posted for framing of charges. Hence, to contest the case on merits, in the interest of justice, the appellants have to be released on bail.

4. The defacto complainant appeared before this Court and he seeks for legal aid counsel. Hence, as per the direction of this Court, the Legal Services Authority appointed the Legal Aid counsel Mrs.D.Saranya to appear on behalf of the second respondent/defacto complainant.

5. The learned Government Advocate (Criminal side) also filed a detailed counter reiterating the possibility of retaliation. Further, the two community people are always entered into retaliation murder. Hence, if the appellants are released on bail, their life also would be put in danger and the life of the witnesses at the hands of the appellants are in danger. Since investigation has been completed and final report has also been filed and the same was taken on file in S.C.No.25 of 2022 and charges were framed, he requested this Court to issue a direction to the trial Court



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to expedite the trial.

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6. This Court has considered the rival submissions made by both parties and perused the records.

7. Before devolve upon the facts of the case, it is relevant to bear in mind the following principle of the Hon'ble Supreme Court in granting bail:

(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



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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 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.



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(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 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*



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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 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*



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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.

(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.”



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8. From the above narration of the facts, it is clear that the appellants belong to the caste Hindus and committed the murder of the deceased belongs to the scheduled caste in retaliation to the earlier murder. The investigation agency also filed detailed counter stating that till date, there is a disharmony in that locality and there is every chance of threat to the life of the witnesses. The relevant portion of the counter reads as follows:

5. I humbly submit that in the above circumstances, during the month of May 2023, temple festival was conducted by the Thevar community people between 01.05.2023 and 03.05.2023. Again the memorial day of both the deceased Sathiyamoorthy (belonging to Thevar Community) & Shanmugaraj (belonging to Schedule Caste Community) were commemorated on 29.05.2023 (same date). In this regard an elaborate scheme of bandobust was prepared on the instructions of the Superintendent of Police, Theothukudi District,



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6 temporary check posts, Police pickets at 20 places and 10 mobile patrols were deployed in and around the area. One Additional Superintendent of Police, 3 Deputy Superintendents of Police, 8 Inspectors, 28 Sub Inspectors, 214 Police constables, in all 254 Police personnel were engaged in shift duty round the clock. Due to the above stringent bandobust arrangements, the temple festival and the memorial days of the 2 deceased went off without any untoward incidents. Moreover the village is under scrutiny with the respondent police till now and 30 police personnel under the head of one Inspector are utilized every day in the mode of mobile patrols and Police pickets 24 X 7.

6. I humbly submit that apart from the above said facts, history sheets are also opened against the accused persons namely 1. Mohana Sabarinath @ Sabari and Karthick in Rowdy H.S. Nos. 193/2022 and 194/2022 respectively on the file of Authoor police station and for the accused namely Udayamoorthy @ Morrthy in Rowdy H.S. No. 301/2022 on the file of Arumuganeri Police station. Further if the accused persons (who were the petitioners herein) come out on bail, there is a huge probability of one another taking revenge which will result in law and order issues and Communal disharmony. Moreover if the accused persons come out on bail, they may tamper the evidence and threaten the witnesses. They will also evade from appearing before the trial court. Further the petitioners/ accused persons already filed a bail petition before this Hon'ble Court in Crl. A. (MD) No. 824/2022 and that was dismissed by order dated 12.12.2022.



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7. I humbly submit that the averments stated by the petitioners herein in are not acceptable. The lower court correctly considered all the facts and rightly dismissed the petition in Cr.M.P. No. 588/2023 and regarding the other grounds i.e., regarding interrogation of the petitioners herein, it is humbly submitted that, even though the investigation of the case was completed, the tense situation still persists in the village and if the accused persons come out on bail, there are possibilities of further retaliatory attacks between Shanmugaraj family members and their caste fanatics, resulting in caste based murders. Hence the averments stated by the petitioners herein are liable to be rejected.

9. There is a specific overtact against the appellants. The appellants committed murder in gruesome manner to retaliate earlier murder. The appellants have previous antecedents and they are history sheeted rowdies. In addition to that, according to the law enforcing authority, there is a disharmony in that locality and hence, the village is under the surveillance through the deployment of 30 police personnel under the head of the Inspector of Police. In view of the above stand of the law enforcing authority, the apprehension expressed by the defacto complainant and the prosecution agency that there will be a serious threat to the lives of the witnesses deserves to be accepted. Hence, the grant of bail to the appellants is against the interest of the society. Therefore, by



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applying the above principles laid down by the Hon'ble Supreme Court, to the special circumstances of this case, this Court is not inclined to grant bail to the appellants.

10. In the result, this Criminal Appeal stands dismissed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJJ

To

1. The II-Additional District and Sessions Judge,
Special Court for trial of cases under SC/ST(POA) Act,
Thoothukudi.

2. The Deputy Superintendent of Police,
Tiruchendur Sub Division,
Tiruchendur,
Thoothukudi District.



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3. The Inspector of Police,
Authoor Police Station,
Thoothukudi District.

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



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K.K.RAMAKRISHNAN, J.

PJL

**Predelivery Judgment made in
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