



CRL OP(MD). No.15201 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 01/09/2023

PRONOUNCED ON: 08/09/2023

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

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Ragu Ganesh

... Petitioner/ Accused No.3

Vs

State represented by
Additional Superintendent of Police
CBI/SCU-V/SC-II/
New Delhi,
(Cr.No. RC.050 2020 S008/2020)
(Cr.No. RC.050 2020 S009/2020)

... Respondent/Complainant

J.Selvarani

... Intervene Petitioner/Deceased Wife

IN CRL MP(MD).12631/2023 IN CRL OP(MD).15201/2023

For Petitioner : Mr.KA.Raama Krishnan, Advocate.
For Respondent : Mr.C.Muthu Saravanan,
Special Public Prosecutor for CBI cases.
For Intervenor : Mr.V.Rajiv Rufus, Advocate.

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

PRAYER :-

For Bail in S.C.No.470 of 2020 on the file of the learned I Additional District and Sessions Court, Madurai, in Crime No.RC0502020S008/2020 and Crime No. RC0502020S009/2020 on the file of the respondent police.

ORDER : The Court made the following order :-

This is the 5th bail application filed by the petitioner/ A.3, who was arrested and remanded to judicial custody on 01.07.2020 for the offences punishable under



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Sections 342, 201, 193, 211, 218, 302 and 109 IPC in Crime No.RC0502020S008/2020

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and Crime No.RC0502020S009/2020, on the file of the respondent police.

2. It is not in dispute that the petitioner, who was then working as Sub-Inspector of Police in Sathankulam Police Station, registered a case in Crime No.312 of 2020 for the offences punishable under Sections 188, 269, 294(b), 353 and 506(2) IPC, against two persons viz., Jeyaraj and Benniks, who are father and son respectively, that both the persons were arrested and were produced before the learned Judicial Magistrate, Sathankulam and they were remanded to judicial custody and lodged in Sub Jail, Kovilpatti, that both the persons, who fell ill, were admitted in the Government Hospital, Kovilpatti, that the said Jeyaraj and Benniks died on 23.06.2020 and 22.06.2020 respectively, that on the basis of the complaint lodged by the Superintendent of Sub Jail Kovilpatti, two FIRs came to be registered in Crime Nos.649 and 650 of 2020, under Section 176(1A)(i) Cr.P.C., that a team of Doctors, who conducted postmortem, have given their opinion that both the deceased would appear to have died of complications of blunt injuries sustained, that in the meanwhile, this Court has taken suo moto writ petition in W.P.(MD)No.7042 of 2020 and directed the CBCID to conduct the investigation and on the basis of the said direction, two FIRs came to be registered in Crime Nos.1 and 2 of 2020 and the offences were altered to under Sections 302, 342, 201 r/w 109 IPC, that subsequently,



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the investigation was transferred to CBI, the respondent herein and two FIRs came to be registered, that after completing the investigation, the CBI has laid a final report against 9 accused including the petitioner herein under Sections 120(B) r/w 302, 342, 201, 182, 193, 211, 218 IPC, r/w 34 IPC and the case was taken on file in the Court of Chief Judicial Magistrate, Madurai, that subsequently, the case was committed to the Principal Sessions Court, Madurai and the case was taken on file in S.C.No.470 of 2020, that the case was then made over to I Additional District and Sessions Court, Madurai and that the case is now pending on the file of the said Court.

3. It is evident from the records that the petitioner has moved bail applications in CrI.O.P.(MD)Nos.11324 and 11355 of 2020 and the same were ordered to be dismissed on 03.11.2020, that the petitioner subsequently moved bail applications in CrI.O.P.(MD)Nos.14877 and 14878 of 2021 before this Court and the same were also ordered to be dismissed on 22.03.2021, that the petitioner has then approached the Hon'ble Supreme Court in S.L.P.(CrI)Nos.3762 and 3763 of 2021 seeking bail and the same were also dismissed on 07.09.2021, that the petitioner has then filed another application for bail before the trial Court in CrI.M.P.No.3 of 2022 and the same was dismissed on 15.02.2022 and that thereafter he moved another bail application before this Court in CrI.O.P.(MD)No.4980 of 2022 and the same was also ordered to be dismissed on 18.05.2022. The petitioner has then moved a bail application in



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Crl.M.P.No.13 of 2023 before the trial Court and the same was ordered to be dismissed on 28.02.2023 and then the petitioner has filed another bail application before this Court in Crl.O.P.(MD)No.6308 of 2023 and the same was ordered to be dismissed on 14.06.2023 and that thereafter the above petition came to be filed before this Court seeking bail.

4. It is also not in dispute that the intervenor Selvarani who is none other than the wife and mother of the deceased Jeyaraj and Benniks has filed a writ petition in W.P.(MD)No.3665 of 2021 for issuance of a writ of Mandamus, directing the trial Court to conclude the trial within a time stipulated and this Court, vide order dated 18.03.2021, has directed the learned trial Judge to conduct the trial expeditiously and dispose of the case in S.C.No.470 of 2020 within a period of six months from the date of receipt of a copy of that order and that subsequently, at the request made by the learned trial Judge, further period of five months was granted by this Court for the disposal of the said case vide order dated 17.12.2021. The petitioner has approached the Hon'ble Supreme Court challenging the order passed in W.P.(MD)No.3665 of 2021, dated 18.03.2021, directing the trial Court to dispose of the case within six months and the same was ordered to be dismissed, vide order dated 07.09.2021.

5. It is also not in dispute that the petitioner has filed an application seeking discharge in Crl.M.P.No.165 of 2021 and the same was ordered to be dismissed, that



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the Criminal Revision Petition filed by the petitioner in CrI.R.C.(MD)No.274 of 2021 was also dismissed on 09.03.2021 and that the Special Leave Petition filed before the Hon'ble Apex Court was also dismissed vide order dated 03.12.2021.

6. The learned counsel appearing for the petitioner would submit that originally there are 105 witnesses cited in the charge sheet and subsequently added 27 more witnesses making a total of 132 witnesses, that 47 witnesses have been examined so far on the side of the prosecution, that examination of all eye witnesses including the police witnesses were already completed and as such, the question of tampering the witnesses does not arise at all, that the petitioner is unable to instruct his counsel, who is coming from Thoothukudi and to put his defence effectively in future course of trial, that the financial requirements of the petitioner are of concern, as he is in custody for long period, that even if the prosecution dispenses with some of the witnesses, examination and cross-examination of the remaining witnesses will not be possible in the near future, that though the prosecution has informed earlier that they are restricting the examination of witnesses, they have now come forward with another petition under Section 311 Cr.P.C. to examine a surprising witness before the trial Court and as such, the prosecution is not prepared to complete the trial within the time stipulated by this Court and they are only attempting to drag on the proceedings and that therefore, the petitioner may be enlarged on bail.



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7. The learned Special Public Prosecutor appearing for the respondent would submit that the prosecution has already examined 48 witnesses so far, that though chief examination has been completed within one or two days, the cross-examination would go on for several hearings, that the trial Court has been taking all the earnest steps to complete the trial within the stipulated time, that the trial is at the crucial stage of examination of important prosecution witnesses and hence, if the petitioner is released on bail, definitely he will tamper with the witnesses and consequently it will affect the case of the prosecution and no truth will come out from the mouth of the witnesses especially police officials, that the prosecution has no intention to drag on the proceedings, that the defence counsels only have such intention to drag on the trial proceedings which would itself proved from the Court proceedings of the above case, that they have taken time to cross-examine the witnesses as per their own wishes and pleasures, that the prosecution has filed the petition under Section 311 Cr.P.C. to summon one J.Prabhu, who is the owner of the shop, namely, M/s.King Electrical from where CCTV footages were collected during the investigation and his name has not been cited in the charge sheet inadvertently, that the trial Court allowed the petition under Section 311 Cr.P.C. on 21.08.2023 and issued summons to the said witness as his evidence appeared to be essential for the just decision of the case and that therefore, since there is no change in circumstances, the bail application is liable



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to be dismissed.

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8. The learned counsel appearing for the intervenor would submit that on the complaint lodged by one Raja Singh that he was tortured by the police, FIR was registered in Crime No.323 of 2020 on the file of Sathankulam Police Station against the petitioner and others, that the victims preferred a complaint before the police authorities and State Human Right Commission requesting to initiate departmental and legal action against the petitioner and Head Constable of Sathankulam Police Station for the offences committed against Rev. Father Lauser Barnabas of Palaniappapuram Village, Thoothukudi District and others, that another complaint came to be registered against the petitioner and others for subjecting one Mahendran to third degree treatment, who died subsequently, that 3 eye witnesses are to be examined from police department and since the witnesses were the subordinates of the police and if the petitioner is released, the chances of the petitioner reaching them and threatening them are extremely high, that the petitioner cannot plead the delay as a reason for his bail as all the accused are the main reason for the delay of the proceedings, that the main accused used to file petitions to defer the witnesses on one reason or other and they are filing petitions under Section 311 Cr.P.C. to recall the witnesses and thereby they are adopting delaying tactics and that therefore, the petitioner is not entitled to be released on bail.



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9. The learned counsel appearing for the petitioner would submit that this Court has already directed the trial Court to complete the trial within a period of 6 months and subsequently time was extended again and again, that the respondent, after giving an undertaking that they are not going to examine all the remaining witnesses and they have decided to examine atleast another 20 to 25 witnesses including the police personnel, but now they have filed the petition under Section 311 Cr.P.C. to examine a new witness not cited in the charge sheet and that the said petition was allowed by the trial Court.

10. It is evident from the records that recently, the learned trial Judge has submitted a requisition seeking extension of time for completing the trial of the case, this Court, recording the submission made by the learned Special Public Prosecutor that they are going to examine 8 more witnesses and taking note of the fact that there was no Presiding Officer in the Court of I Additional District and Sessions Court, Madurai and the Special Judge for CBI cases is in full additional charge of the said Court, granted 3 months time as finally to complete the trial and dispose of the case in S.C.No.470 of 2020 from the date of new Presiding Officer assumes charges of the Court of I Additional District and Sessions Court, Madurai.

11. The submission made by the learned Special Public Prosecutor earlier that they are going to examine 8 more witnesses, by itself will not prevent them from



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examining any new witness or other witness cited in the charge sheet, if they are of the opinion that the examination of that witnesses is very much necessary for the just decision of the case.

12. It is not in dispute that the prosecution has filed the petition under Section 311 Cr.P.C. to examine one new witness J.Prabhu, who is alleged to be the owner of M/s.King Electrical from where CCTV footages were collected during the investigation and that after enquiry, the said petition came to be allowed by the trial Court.

13. According to the learned counsel appearing for the petitioner, filing the petition under Section 311 Cr.P.C. for examination of a new witness and the failure of the prosecution to examine any other witness since the dismissal of the earlier bail application, are to be considered as change in circumstances and as such, the petitioner is certainly entitled to be released on bail.

14. It is not in dispute that there was no Presiding Officer to the I Additional District and Sessions Court, Madurai for some months and recently the Special Judge, who was working in the Special Court for CBI cases, has been transferred and posted as I Additional District and Sessions Judge and the Officer assumed charges only on 22.08.2023.

15. Considering the above, as rightly contended by the learned Special Public



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Prosecutor, the above reasons, by no stretch of imagination, can be considered as a change in circumstances enabling the petitioner to get the bail order.

16. The learned counsel appearing for the petitioner has relied on the judgment of the Hon'ble Supreme Court in Mohd Muslim @ Hussain Vs. State (NCT of Delhi) reported in (2023) 2 MLJ (Crl) 549 (SC) and referred second paragraph of the Judgment, wherein, the Hon'ble Supreme Court has referred its earlier decision in Hussainara Khatoon Vs. Home Secy., State of Bihar reported in (1980) 1 SCC 81, wherein, the Hon'ble Apex Court has held that speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India and has dealt with the question as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.

17. It is pertinent to note that the Hon'ble Supreme Court in the case of State of Uttar Pradesh Vs. Jail Superintendent (Ropar) and others in W.P.(Crl.)No.409 of 2020 has specifically held that the concept of fair trial as a facet of Article 21 of the Constitution of India, covers the interest of the accused, prosecution and the victim and that though the victim may be a singular person who has suffered, the injury suffered by singular is likely to affect the community interest.



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18. The learned Special Public Prosecutor appearing for the respondent and the learned counsel appearing for the intervenor have relied on the judgment of the Hon'ble Supreme Court in Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and another reported in (2004) 7 SCC 528 and this Court, in the orders passed in the earlier bail applications, has referred the same and the same is extracted hereunder:-

12. This Court, in the earlier bail application filed by the petitioner, has referred a judgment of the Hon'ble Supreme Court in Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and another reported in (2004)7 Supreme Court Cases 528, and the relevant passages in the earlier order are reproduced hereunder:

“8. In that case, the accused had earlier made several applications for grant of bail which were rejected by the High Court and also some such rejections have been confirmed by the Hon'ble Supreme Court. Subsequently, the High Court has granted bail to the accused therein and when the same was challenged before the Hon'ble Supreme Court by the brother of the deceased therein, the above decision came to be rendered by the Hon'ble Apex Court, wherein, it has specifically been held that in cases, where earlier applications have been rejected, there is a further



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onus on the Court to consider the subsequent application for grant of bail by noticing the grounds on which earlier applications have been rejected and after such consideration, if the Court is of the opinion that the bail has to be granted, then the said Court will have to give specific reasons why in spite of such earlier rejection, the subsequent application for bail should be granted. It is necessary to refer the concluding paragraph of the said judgment hereunder:

“20.Before concluding, we must note though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26th July, 2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any



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indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character.

21. For the reasons stated above, we are of the considered opinion that the High Court was not justified in granting bail to the first respondent on the ground that he has been in custody for a period of 3 = years or that there is no likelihood of the trial being concluded in the near future, without taking into consideration the other factors referred to hereinabove in this judgment of ours."

19. The learned counsel appearing for the petitioner has also referred the passage Nos.14 and 15 in the above Mohd Muslim @ Hussain's case, wherein, the Hon'ble Supreme Court, by observing that the accused was arrested when he was 23 years of age and he had been in custody for over 7 years and 4 months, that there was no recovery of contraband from the accused and that the progress of the trial had been at a snail's pace, has held that the grant of bail on the ground of undue delay in trial, cannot said to be fettered by Section 37 of NDPS Act, given the imperative of



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Section 436A Cr.P.C., granted bail. In the case on hand, admittedly, the petitioner is in custody from 01.07.2020 for 3 years and 2 months.

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20. The petitioner, in the bail application, has reiterated the other contentions, which were already raised in the earlier bail petition regarding his financial requirements and his inability to instruct his counsel, who is coming from Thoothukudi were considered and rejected by this Court. The petitioner has not shown any other valid reason or ground that was not available while earlier application for bail was enquired and he has also not shown any valid and acceptable change in circumstances, since the dismissal of the bail applications by this Court and the Special Leave Petition by the Hon'ble Supreme Court.

21. The learned Special Public Prosecutor appearing for the respondent would submit that the trial Court may be directed to conduct the examination of witnesses on day to day basis, so as to enable the Court to comply with the direction of this Court. It is evident from the records that this Court has originally granted 6 months time to dispose of the case vide order dated 18.03.2021 and subsequently at the requisition of the learned trial Judge, time was extended for 5 months vide order dated 17.12.2021 and again by 4 months vide order dated 29.08.2022 and lastly by 3 months from the date of assumption of the new Presiding Officer, as finally, vide order dated 13.06.2023. It is informed that at present, the trial Court is taking the case



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for examination of witnesses on two days in a week, taking note of the convenience of the learned Advocates coming from other Districts. Considering the submission made by the learned Special Public Prosecutor that cross-examination of witnesses was going on for several hearings, the learned trial Judge is directed to explore the possibilities of conducting the trial proceedings on day to day basis or to increase the number of days, so as to enable the trial Court to complete the trial within the time stipulated.

22. Considering the above facts and circumstances and also taking note of the nature and seriousness of the offences alleged against the petitioner and also the fact that the petitioner has not shown any valid reason or ground or change in circumstances, since the dismissal of the Special Leave Petition by the Hon'ble Supreme Court and the bail applications by this Court and taking note of the serious objections raised by the prosecution and the intervenor, this Court is not inclined to grant bail to the petitioner.

23. In the result, this Criminal Original Petition is dismissed.

sd/-

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



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1 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI, MADURAI DISTRICT.

3 THE ADDITIONAL SUPERINTENDENT OF POLICE,
CBI/SCU-V/SC-II, NEW DELHI.

4 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.15201 of 2023

Date :08/09/2023

RS/VRS/SAR-(08.09.2023) 16P 6C

Madurai Bench of Madras High Court is issuing
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